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Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

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Web: www.hrrca.org

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Philippines
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

by

Francis Tom F. Temprosa
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**Formal Name**: Republic of the Philippines (Republika ng Pilipinas)  
**Capital City**: Manila

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
</table>
| Population                        | Male: 47,263,600  
Female: 46,749,600  
Both sexes: 94,013,200  
(2010 projections)¹ |
| Life expectancy                   | Male: 68.81  
Female: 74.34  
(2015-2020 projections)² |
| Age structure                     | Children (0-14 years): 35.5%  
Working age (15-64 years): 60.3%  
Elderly (65 years and over): 4.1%  
Voting population (18 years and over): 57.9%  
(as of 2007)³ |
| Sex ratio                         | 102 males/100 females (as of 2007)⁴ |
| Religions                         | Roman Catholic (81.044%), Islam (5.06%), Evangelicals (2.8203%), Iglesia ni Cristo (2.3094%), Aglipay (1.9764%), Seventh Day Adventist (0.7986%), United Church of Christ in the Philippines (0.5459%), Jehovah’s Witness (0.4979%), Others (4.9475%) (2000 census)⁵ |
| Ethnic groups                     | Tagalog (28.15%), Cebuano (13.14%), Hiligaynon/Ilocano (9.07%), Bisaya (7.57%), Ilongo (7.56%), Bicol (6%), Waray (3.36%), Others (25.3%) (2000 census)⁶ |
| Functional literacy rate          | Male: 84.2%  
Female: 88.7%  
Both sexes: 86.4%  
(as of 2008)⁷ |
| National poverty threshold        | PhP 16,841 (Philippine pesos) per month (as of 2009)⁸ |
| Percentage of population living below the national poverty threshold | 20.9% (as of 2009)⁹ |
| Gross Domestic Product per capita  | US$ 1,411 (US dollars) (as of 2011)¹⁰ |
| Net enrolment ratio in secondary schools | Both sexes: 62.38% (as of school year 2009-2010)¹¹ |

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² Ibid, 48.  
⁴ Ibid.  
⁷ Ibid, 36. Basic reading, writing and numeracy skills (10-64 years old).  
⁹ Ibid.  
### Migration and Employment Indicators

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Value and Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Migration rate</td>
<td>Net: -1.29 migrant(s)/1,000 population(^{12})</td>
</tr>
<tr>
<td>Number of citizens working overseas</td>
<td>4,324,388 (as of December 2010)(^{13})</td>
</tr>
<tr>
<td>Number of foreign workers in country</td>
<td>36,150 (as of 2008)(^{14})</td>
</tr>
<tr>
<td>Percentage of female-headed households</td>
<td>21.2 % (as of 2009)(^{15})</td>
</tr>
</tbody>
</table>
| Labour force participation rate               | Male: 79.3%  
                 Female: 50.2%  
                 Both sexes: 64.7%  
                 (as of April 2012)\(^{16}\)                                               |
| Unemployment rate                             | Male: 7.0%  
                 Female: 6.7%  
                 Both sexes: 6.9%  
                 (as of April 2012)\(^{17}\)                                               |
| Proportion of unpaid family workers           | 11.53% (as of 2010)\(^{18}\)                                                   |
| Fertility rate                                 | 3.2 children born/woman (as of 2006)\(^{19}\)                                  |
| Maternal mortality rate                       | 97.0 deaths/1,000 live births (as of 2008)\(^{20}\)                            |
| Infant mortality rate                          | Male: 13.8 deaths/1,000 live births  
                 Female: 10.9 deaths/1,000 live births  
                 Both sexes: 12.4 deaths/1,000 live births  
                 (as of 2009)\(^{21}\)                                                      |

---


\(^{13}\) “Stock Estimate of Overseas Filipinos,” Commission on Filipinos Overseas, accessed 7 July 2012, http://www.cfo.gov.ph/pdf/statistics/Stock%202010.pdf. This refers to those whose stay overseas is employment related, and who are expected to return at the end of their work contracts. It excludes immigrants, dual citizens or legal permanent residents abroad whose stay does not depend on work contracts (4,423,680 persons); and those not properly documented or without valid residence or work permits, or who are overstaying in a foreign country (704,916 persons).


\(^{17}\) Ibid.


\(^{19}\) National Statistics Office, Philippines in Figures 2012, 25.

\(^{20}\) Ibid, 78.

\(^{21}\) Ibid, 77.
| **Legal definition of “child”** | For purposes of the law against child abuse, exploitation and discrimination: “Children” refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.  
For purposes of the law against violence on women and children: “Children” refers to those below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610 (see above). As used in this Act, it includes the biological children of the victim and other children under her care.  
For purposes of the law against trafficking in persons: “Child” refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.  
For purposes of the law on domestic adoption and aspects of criminal law other than the law penalizing child abuse as cited above: “Child” refers to a person below or under the age of eighteen (18) years.  
For purposes of the law on inter-country adoption: “Child” means a person below fifteen (15) years of age unless sooner emancipated by law. |
| **Age of majority** | Unless otherwise provided (by law), majority commences at the age of eighteen years.  |
| **Marriageable age** | Eighteen (18) years of age. Contracting marriage shall require parental consent until the age of twenty-one.  |
| **Age of consent (also referred to as legal age for sexual activities)** | Twelve (12) years of age. Children (see above for legal definition), whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. Rape is committed: By a man who shall have carnal knowledge of a woman under any of the following circumstances: Through force, threat, or intimidation; When the offended party is otherwise unconscious; By means of fraudulent machination or grave abuse of authority; and When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or oral orifice, or any other instrument or object, into the genital or anal orifice of another person. |

---

22 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 3(a).
23 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 3(h).
24 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 3(b).
25 See, Republic Act No. 8552 or the Domestic Adoption Act, 1998, Article I, Section 3(a); and Republic Act No. 9344 or the Juvenile Justice and Welfare Act, 2006, Section 4(e).
26 Republic Act No. 8043 or in the Inter-Country Adoption Act, 1995, Article I, Section 3(b).
27 Executive Order No. 209 or the Family Code of the Philippines, 1989, as amended, Article 234.
28 Executive Order No. 209 or the Family Code of the Philippines, 1989, as amended, Article 236.
29 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, 1992, Section 5.
### Age of criminal responsibility

Above fifteen (15) years of age. However, “[a] child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act. The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.”

### Minimum age of employment

Fifteen (15) years of age. However, a child below fifteen (15) years of age may be employed:

1) When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed: Provided, however, That his/her employment neither endangers his/her life, safety, health, and morals, nor impairs his/her normal development: Provided, further, That the parent or legal guardian shall provide the said child with the prescribed primary and/or secondary education; or

2) Where a child's employment or participation in public entertainment or information through cinema, theatre, radio, television or other forms of media is essential: Provided, That the employment contract is concluded by the child's parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: Provided, further, That the following requirements in all instances are strictly complied with:

(a) The employer shall ensure the protection, health, safety, morals and normal development of the child;
(b) The employer shall institute measures to prevent the child’s exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and
(c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

In the above-exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements.

For purposes of this Article, the term ‘child’ shall apply to all persons under eighteen (18) years of age.”

### Minimum age for military recruitment and participation

Eighteen (18) years of age, “except for training purposes whose duration shall have the students/cadets/trainees attain the majority age at the completion date.”

However, the 1987 Constitution of the Philippines provides that: “The Government may call upon the people to defend the State, and in the fulfilment thereof, all citizens may be required, under conditions provided by law, to render personal, military or civil service.”

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31 Republic Act No. 9344 or the Juvenile Justice and Welfare Act, 2006, Section 6.
32 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, 1992, as amended, Section 12.
A. OVERVIEW

The last few years were a period of profound change in the environment for the protection of women and children in the Philippines. Several landmark laws which aim to protect women and children were passed. Institutions and mechanisms were established to address issues relating to violence against women and children and trafficking. Despite a marked paradigm shift in legislation and policies, no one can deny that violence against women and children, including their exploitation, and abuse and discrimination in the context of migration, still happen in the Philippine context. Reform contends with geopolitics and the social environment, resulting in the interplay of change and continuity in the protection of women and children in the Philippines.

This baseline survey examined various reports relating to the above issues that were published in the last few years (2005 onwards). It considered those written by different UN treaty bodies, UN and international organizations; the Government of the Philippines and its agencies; and non-state actors such as civil society/non-governmental organizations and the academe. In reviewing this body of literature, the prevalence of these social realities in the Philippine context; related de jure State responses; implementation, monitoring and prevention mechanisms of the responses; and progress and challenges, as reflected in reports, were taken into account. This study is not a chronicle of all reports produced on the topic. It contains some baseline information from a selection of studies that shed light on the issues.

Several key themes were observed in literature. First, the problem of abuse and violence against women and children, including exploitation and discrimination in the context of migration, was described in various reports through the use of different forms of research and methodologies. There was no nationally representative comprehensive survey on violence against children, unlike the survey on women (including the girl child), which was published in 2005. There were notable differences between the available information on the prevalence of violence in urban areas and in rural areas; such differences were also observed between the data from areas not affected by conflict and conflict-affected areas.

Second, de jure responses of the Philippines, particularly the policy and legal framework for protection, were well documented in the literature, except for the specific protection of migrants in (not from) the Philippines. This can be explained by the fact that the Philippines is primarily an out-migration country and much of the literature focused on this present-day phenomenon. None of the reports reviewed classified Philippine policies according to the objectives of prevention and response, including protection and cure.

Third, mechanisms to address the problem included inter-agency approaches in which civil society as non-state actor is involved. Results of the assessments of the responses occasionally represented divergent views due to, inter alia, the varied lenses and frameworks of analysis used.

Fourth, the progress of the Philippines in addressing the problem was discussed in various reports. However, its progress in addressing some specific types of violence and aspects of the phenomenon remained untracked. Thus, while much has been written about these issues in the Philippines, there are areas which the literature have not been able to adequately cover and for which further research is hence recommended.
B. VIOLENCE

1. Description of the Problem

a. Prevalence of Violence

i. Prevalence of Violence Against Women

In general

In its concluding comments on the combined fifth and sixth periodic reports of the Philippines, the CEDAW Committee said that it “remains concerned about the prevalence of violence against women” in the Philippines.34 This was in spite of the establishment of family courts all over the country which aimed to foster an active approach in protecting women and children against domestic violence and incest.35

The National Statistics Office (NSO) of the Philippines conducted a survey to capture the extent and types of violence experienced by women. In 2008, the National Demographic and Household Survey (NDHS) collected information on spousal violence and covered several forms of violence against women—physical, sexual, emotional and economic. It was the first time that a survey gathered information on violence from a nationally representative sample (13,594 women from the age of 15 to 49 throughout the Philippines were surveyed).36 Aside from NSO, several groups have performed their own analysis of the NDHS survey findings. In Violence against Women... At Home!, the National Statistical Coordination Board (NSCB) republished the results of the survey and said the fact that 20.1% of women aged 15-49 have experienced physical violence since age 15 is “alarming.”37

Violations of the Anti-Violence against Women and their Children Act of 2004 (VAWC Law) accounted for almost half (44%) of the total number of reported crimes in the Philippines from 2004 to 2010.39 Physical injury (26.3%)40 and rape (11.6%) came in second and third, respectively.41 The Philippine Commission on Women (PCW) has explained that massive information campaign on the law and its strict implementation, inter alia, are reasons for the increase in the number of reports of VAWC Law violations. They claim that it was not that the incidents themselves increased.42

NSCB compiled official statistics on violence against women (VAW) from 1998 to 2007 through reports on the number of women in especially difficult circumstances43 in the Philippines. NSCB concluded that the number has dwindled over the years, from 7,474 in 1998 to 5,359 in 2008. However, the downhill trend was by no means indicative of a decline in incidents of VAW as the analysis

<table>
<thead>
<tr>
<th>Forms of violence</th>
<th>Age group</th>
<th>Reference period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15-19</td>
<td>20-24</td>
</tr>
<tr>
<td>Physical</td>
<td>12.1</td>
<td>15.3</td>
</tr>
<tr>
<td>Sexual</td>
<td>2.1</td>
<td>3.7</td>
</tr>
<tr>
<td>Physical or sexual</td>
<td>3.0</td>
<td>4.6</td>
</tr>
<tr>
<td>Physical and sexual</td>
<td>17.2</td>
<td>23.5</td>
</tr>
</tbody>
</table>

Table 2: Violence against Women: Results of the National Demographic and Household Survey38

35 Ibid.
36 National Statistics Office and ICF Macro, Philippines National Demographic and Health Survey 2008: Key Findings (Calverton, Maryland, USA: NSO and ICF Macro, 2009), xix.
40 Ibid.
41 Ibid, 13.
42 Ibid.
43 According to the “Glossary on Violence against Women and Children and other related Concepts” approved under National Statistical Coordination Board Resolution No. 6, Series of 2001, Women in Especially Difficult Circumstances (WEDC) include women who have been victims of sexual abuse, physical abuse/maltreatment/battering, illegal recruitment, involuntary prostitution, armed conflict, human trafficking, detention, and others like HIV patients/potentials, strandees, abandoned, emotionally distressed, unwed mothers, sexually exploited, voluntary committed/surrendered, and neglected victims of disaster.
was based on cases reported to or by the Department of Social Welfare and Development (DSWD). The most recent NSCB Updates on Women and Men in the Philippines, as of this writing, has incorporated the number of VAW cases reported to the Philippine National Police (PNP) and the number of cases served by the DSWD in 2010 and 2011.

Table 3: Violence against Women: Number of Cases Reported to the Philippine National Police and the Department of Social Welfare and Development

<table>
<thead>
<tr>
<th>No. of Cases Reported to PNP</th>
<th>2011</th>
<th>2010</th>
<th>Inc./Dec. (%)</th>
<th>No. of Cases Reported to DSWD</th>
<th>2011</th>
<th>2010</th>
<th>Inc./Dec. (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>12,948</td>
<td>15,169</td>
<td>(14.6)</td>
<td>Total</td>
<td>51,117</td>
<td>9,734</td>
<td>425.1</td>
</tr>
<tr>
<td>Physical Injuries</td>
<td>1,588</td>
<td>2,031</td>
<td>(21.8)</td>
<td>Physically Abused/ Maltreated/Battered</td>
<td>906</td>
<td>1,081</td>
<td>(16.2)</td>
</tr>
<tr>
<td>Rape</td>
<td>832</td>
<td>1,053</td>
<td>(21.0)</td>
<td>Sexually Abused</td>
<td>231</td>
<td>423</td>
<td>(45.4)</td>
</tr>
<tr>
<td>Acts of Lasciviousness</td>
<td>625</td>
<td>749</td>
<td>(16.6)</td>
<td>Involuntary Prostitution</td>
<td>253</td>
<td>102</td>
<td>148.0</td>
</tr>
<tr>
<td>Threats</td>
<td>213</td>
<td>375</td>
<td>(43.2)</td>
<td>Illegal Recruitment</td>
<td>239</td>
<td>140</td>
<td>70.7</td>
</tr>
<tr>
<td>Attempted Rape</td>
<td>201</td>
<td>272</td>
<td>(26.1)</td>
<td>In Detention</td>
<td>4</td>
<td>69</td>
<td>(94.2)</td>
</tr>
<tr>
<td>Incestuous Rape</td>
<td>23</td>
<td>19</td>
<td>21.1</td>
<td>Armed Conflict</td>
<td>9</td>
<td>37</td>
<td>(75.7)</td>
</tr>
<tr>
<td>Others</td>
<td>9,551</td>
<td>10,670</td>
<td>(10.5)</td>
<td>Others</td>
<td>4,029</td>
<td>1,435</td>
<td>180.8</td>
</tr>
<tr>
<td>Uncategorized</td>
<td>45,446</td>
<td>6,447</td>
<td>604.9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A report by Amnesty International (AI) Philippines and Women Working Together to Stop Violence Against Women (WWTSVAW) described VAW as “very pervasive” in the Philippines. The report analysed historical data on VAW. Citing the then National Commission on the Role of Filipino Women (now PCW), AI found that in 2008, the number of violence against women cases reported to the police rose by 21%. This had caused the trend to go upward after a six-year downward trend from 2001 to 2006. There were 9,132 reported cases of violence against women in 2001, the highest recorded number in recent history.

There were studies on violence against women in certain regions of the country. One of the most recent ones is Violence Against Women is Not Inevitable: A Comprehensive Study on Gender-Based Violence in CARAGA Region. De Dios, Dungo and Herrera found that trafficking and domestic violence as forms of gender-based violence were distinctly happening in all three types of communities covered under the survey. Women were aware of trafficking and domestic violence concepts. However, stories shared by willing participants were replete with “punitive and brutal acts” committed by husbands against wives and incest.

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46 Ibid.


48 Ibid.

49 Aurora de Dios, Nanette Dungo and Miraluna Herrera, Violence Against Women is Not Inevitable: A Comprehensive Study on Gender-Based Violence in CARAGA Region (Manila: Miriam College-Women and Gender Institute, 2009), 59.
Domestic and Spousal Violence, including Marital Rape

According to the NSO study, overall, three in 10 women experienced spousal violence.50 Emotional and other forms of non-personal violence were the most common types (23%) of domestic or spousal violence. Women suffered from, inter alia, insults, humiliation and threats of harm. One in seven experienced some form of physical abuse from their husbands, such as slapping and pushing, shaking or throwing something at the woman.51 It is to be noted that since 2004, wife battering cases had been treated as violations of the VAWC Law if the survivors filed a case under such law. Otherwise, such acts are still dealt with as physical injuries cases.52 Eight per cent of the ever married women reported having experienced sexual violence from their husbands.53 There are no reports specifically dealing with incidents of marital rape in the Philippines.

The CEDAW Committee noted with appreciation the Anti-Rape Law of 1997, which redefined and expanded rape as a crime against persons, and implicitly recognized marital rape. However, it expressed concern over the fact that forgiveness from the wife, as offended party, “extinguishes the criminal dimension of the action and the consequent severity of the penalty.”54 The Committee on Economic, Social and Cultural Rights (CESCR) also shared this sentiment in its more recent concluding observations.55

Violence other than in the Specific Context of Marriage or Domestic Partnership

The NSO survey revealed that one in five women has experienced physical violence since age 15.56 Pregnancy places women in a more vulnerable state as 4% of women in the Philippines experienced physical violence while pregnant.57 Force at first sexual intercourse is not commonplace, but 4% of women aged 15-49 years old reported that their first sexual intercourse was forced against their will.58 Almost one in four (24%) women aged 15-49 years old has experienced either physical or sexual violence in their life.59

Violence in Detention

In 2009, the Committee against Torture noted the enactment of relevant laws and the establishment of a total of 31 dormitories for women. However, it expressed “serious concern” at the “numerous allegations of rape, sexual abuse and torture committed against women detainees by the police, military and prison officials/personnel.” The committee also said there were still reports on women being placed together with male inmates in many provincial jails, and male corrections officers guarding female inmates.60

Violence against Indigenous Women, Women in Rural Areas, and Muslim Women

Concern has been expressed about the “precarious situation of rural and indigenous women, as well as the Muslim women” in the Autonomous Region in Muslim Mindanao (ARMM). The CEDAW Committee said that these are the women who lack access to adequate health services, education, clean water and sanitation services, and credit facilities.61 It is to be noted that five of 97 victims of extra-judicial killings

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51 Ibid.
56 National Statistics Office and ICF Macro, Philippines National Demographic and Health Survey 2008, 204.
57 Ibid, 206.
58 Ibid, 207.
60 Committee against Torture, Concluding Observations of the Committee against Torture: Philippines (CAT/C/PHI/CO/2, 29 May 2009), para. 18.
among indigenous people in 2006 were women, according to the Unrepresented Nations and Peoples’ Organizations (UNPO) General Assembly. A non-governmental organization working with indigenous people has also listed extrajudicial killings, enforced disappearances, displacement and mass evacuation, vilification, and bombing of communities. The CEDAW Committee had alluded to a culture of impunity when it said that these women have limited access to justice in cases of violence, especially in conflict zones. The practice of early marriage was also cited as “persistent” among Muslim women.

Women Affected by Armed Conflict and Internal Displacement

In situations of armed conflict and militarization, the Magna Carta of Women provides that women have the right to protection and security. The law adds that they should be “protected from all forms of gender-based violence, particularly rape and other forms of sexual abuse, and all forms of violence” and that “women who are in especially difficult circumstances” include victims and survivors of sexual and physical abuse, illegal recruitment, prostitution, trafficking, armed conflict, among others.

Women have also been affected by armed conflict in the Philippines. Although only a few instances of sexual violence in the context of armed conflict have been reported, Risser noted that the absence of reports should not be taken as an indication that it was not happening.

“In socially conservative Philippines, it was felt, women would be reluctant to come forward with such information out of shame,” Risser said.

Other studies looked at the nexus between conflict, violence and displacement, and the cycle of conflict in Mindanao and protection challenges in general. These studies were however not specific to concerns about women and children.

Disaggregation of Data According to Age, Gender and Diversity, and Profiling of Survivors and Perpetrators

The NSO report has concluded that women who have more children and the poor were more vulnerable to violence. Various reports have identified vulnerable age groups and regions where violence was more rampant. For instance, the NSO reported that women living in the regions of Caraga, SOCCSKSARGEN, Central Visayas, and MIMAROPA were most likely to report spousal violence (40% or higher). Women in ARMM and CALABARZON were least likely to report violence (lower than 20%). Metro Manila had the most number of incidents of WEDC, except in 2007 when Central Luzon, Northern Mindanao, Zamboanga Peninsula, Central Visayas and Eastern Visayas (in that order) registered the most number.

In 2008, the National Capital Region posted the highest number of reports of violence against women with 1,541 cases (21% of the total reported). In 2010, a PCW

64 Ibid, 9.
65 Ibid, 10.
66 Ibid, 12.
67 Ibid.
69 Republic Act No. 9710 or the Magna Carta of Women, 2009, Section 9(b).
70 Ibid, Section 30.
71 Gary Risser, Children Caught in Conflicts: The Impact of Armed Conflict on Children in Southeast Asia (Bangkok: Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, 2007), 72.
75 Ibid.
77 “Breaking the Silence, Seeking Justice in Intimate Partner Violence

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The documentation of all forms of violence against women has yet to be achieved in the Philippines. Incidents of violence against women are often unreported due to the sensitivity of the issues and its impact on women and their families. Reports invariably do not take into account unreported cases. The NSCB study did not cover incidents which the “culture of silence has veiled out and away from public view.” According to the NSCB, manpower and financial constraints, among other factors, could have also limited the conclusiveness of its findings and the data on regional distribution. PCW noted that their trends analysis, while providing indicative information, was inconclusive as the data merely captured what had been reported. There was also no estimate number of unreported cases.

The CEDAW Committee has recommended that the Philippines “enhance data collection on various forms of violence against women, especially domestic violence.” Research on the prevalence, causes and consequences of domestic violence was urged. While noting the various measures taken against domestic violence, and the establishment of a significant number of Women and Children's Protection desks (WCPD) all over the country and the Women and Children's Protection Center (WCPC) within the Philippine National Police (PNP), the Committee against Torture was concerned about the lack of State-wide statistics on domestic violence.

Paradox and Promise in the Philippines, a joint country gender assessment, found that official statistics of VAW show a very limited number of reported cases per year compared to the size of the population. This was because of women’s poor understanding of their rights, and limited access to legal and social services.

The term “child abuse”, as usually used in the Philippine context, encompasses all forms of physical and/ or emotional maltreatment, and sexual abuse and exploitation. A report of the Government of the Philippines to the Committee on the Rights of the Child
(CRC) provided a summary of reported child abuse cases from 2001 to 2006. These cases were served by DSWD.\textsuperscript{86} Updates on Women and Men in the Philippines has included the number of child abuse cases served by the DSWD in 2010 and 2011.\textsuperscript{87}

<table>
<thead>
<tr>
<th>Number of Cases Served by DSWD</th>
<th>Girls</th>
<th>Boys</th>
<th>Inc./Dec. (%)</th>
<th>Girls</th>
<th>Boys</th>
<th>Inc./Dec. (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>3,727</td>
<td>2,742</td>
<td>35.9</td>
<td>2,105</td>
<td>1,585</td>
<td>32.8</td>
</tr>
<tr>
<td>Sexually Abused</td>
<td>1,372</td>
<td>1,216</td>
<td>12.8</td>
<td>29</td>
<td>79</td>
<td>(63.3)</td>
</tr>
<tr>
<td>Neglected</td>
<td>1,135</td>
<td>491</td>
<td>131.2</td>
<td>1,192</td>
<td>588</td>
<td>102.7</td>
</tr>
<tr>
<td>Physically Abused/Maltreated</td>
<td>271</td>
<td>200</td>
<td>35.5</td>
<td>250</td>
<td>104</td>
<td>140.4</td>
</tr>
<tr>
<td>Abandoned</td>
<td>373</td>
<td>658</td>
<td>(43.3)</td>
<td>511</td>
<td>775</td>
<td>(34.1)</td>
</tr>
<tr>
<td>Victims of Child Labour</td>
<td>61</td>
<td>55</td>
<td>10.9</td>
<td>24</td>
<td>14</td>
<td>71.4</td>
</tr>
<tr>
<td>Sexually Exploited</td>
<td>112</td>
<td>120</td>
<td>(6.7)</td>
<td>4</td>
<td>7</td>
<td>(42.9)</td>
</tr>
<tr>
<td>Others</td>
<td>403</td>
<td>2</td>
<td>20,050</td>
<td>95</td>
<td>18</td>
<td>427.8</td>
</tr>
</tbody>
</table>

In 2010, a United Nations Children's Fund (UNICEF) study revealed that the most common form of child abuse from 2000 to 2006 was sexual abuse, which also covers rape, incest, and acts of lasciviousness.\textsuperscript{89} Furthermore, cases of child abuse served by DSWD had been declining during the 2003-2006 period.\textsuperscript{90} An NSCB report in 2008 had earlier confirmed that reports of child abuse are on a downtrend.\textsuperscript{91} However, it is to be noted that, according to UNICEF, incidents increased from 6,606 in 2006 to 7,182 in 2007. This was due to the significant increase in cases of most types of child abuse; particularly, neglect, child labour, illegal recruitment, child trafficking, and armed conflict.\textsuperscript{92}

Violence against children in the home

It is generally accepted that there is a link between spousal or domestic violence (especially against women) and violence against children. In 2006, the UNICEF estimated that some 1.8 million to 3.2 million children are exposed to domestic violence. The Philippines was included as one of the countries where such exposure to domestic violence happens.\textsuperscript{93} Children in the Philippines who are exposed to violence in the home are thus 15 times more likely to be physically and/or sexually assaulted than the national average.\textsuperscript{94}

Violence against children in schools

Plan Philippines commissioned the Philippine School of Social Work of the Philippine Women’s University to undertake a study on violence against children in public schools in areas covered by Plan programs. The study found that at least 5 out of 10 children in grades 1 to 3; 7 out of 10 in grades 4 to 6; and 6 out of 10 in high school, have experienced some kind of violence in school. Verbal abuse was the most prevalent. The school is thus one setting where violence against children occurs.\textsuperscript{95}


\textsuperscript{88} Ibid.


\textsuperscript{90} Ibid, 93.


\textsuperscript{94} Ibid, 7.

\textsuperscript{95} Plan Philippines, Toward a Child-Friendly Education Environment: A Baseline Study on Violence Against Children in Public Schools (Manila: Plan International, February 2009), 3.
Philippine government noted an estimate by the Child Adolescent Psychiatrists of the Philippines, Inc. of 500 to 800 child abuse cases committed by teachers annually.96

*Corporal Punishment*

The Plan Philippines study revealed that physical and verbal forms of violence were accepted by respondent children “as part of discipline” and seen as “appropriate when inflicted within certain parameters.” However, the preference of children was, of course, a more positive form of discipline such as being talked to and corrected or guided/counselled.97

In 2009, the Committee on the Rights of the Child positively noted the discussions on a bill against corporal punishment in the Congress of the Philippines. Concern was expressed at the “prevalence of corporal punishment against children in society, in particular in the home and regrets that no comprehensive study on this issue has been undertaken.” A comprehensive study on the nature and extent of corporal punishment in different settings was recommended.98

*Abuse, Neglect and Maltreatment*

The Committee on the Rights of the Child, in its concluding observations in 2009, has remarked that: “as acknowledged in the State party’s report, the Committee expresses deep concern at the increasing number of cases of domestic violence, including physical abuse, neglect and sexual abuse of children.”99 The Committee was concerned about reports of abuse in religious institutions and added that cases of domestic violence and abuse of children are “not investigated within a child-friendly procedure”.100

*Children in the Street Situation*

In its report to the Committee on the Rights of the Child in 2008, the Philippine government estimated that there were 246,000 children in the street situation (as of 2001) in major Philippine cities. Of this number, about 54% has experienced drugs and substance abuse. The report cited a 2004 study conducted for the International Labour Organization on children in the street situation and urban working children who were into substance abuse. These groups of children were among the categories of children in need of special protection who are “most vulnerable” to drugs and substance abuse.101 A 2006 study revealed that the number of children in the street situation increased to about 1.5 million. About 90% experienced abuse at home, and they faced great dangers, some of which were gender specific.102

*Children in Conflict with the Law and Children in Detention*

The United States Department of State’s *Country Report on Human Rights Practices* noted that some children were survivors of police abuse while in detention for committing minor crimes.103 Until the passage of the Juvenile Justice and Welfare Act of 2006, the rules and procedures applicable to children in conflict with the law, including children detained for criminal offenses, were not much different from those for adult offenders and were insensitive to the unique situation and psychosocial make up of children.104

*Violence against indigenous children, children in rural areas, and Muslim children*

The Government of the Philippines reported that indigenous children and their families have experienced various human rights violations such as land dispossession, forced displacement, destruction of houses, arbitrary detention and torture, and some instances of summary

99 Ibid.
100 Ibid.
101 Ibid, para. 277.
executions. The UNPO General Assembly also noted that 12 indigenous minors were extra-judicially killed in 2006. The government once said, “IP [indigenous] children are often caught not only in situations of poverty, malnutrition and ill-health but also suffer from acts of abuse, exploitation, violence, and discrimination.” The CEDAW Committee requested information from the Philippine government on the de facto position of rural, indigenous and Muslim women.

Children Affected by Armed Conflict and Internal Displacement, Including Illegal Recruitment and use of Child Soldiers

Almost 4.5 million children have become direct and indirect victims of war in the Philippines from the 1970s to the present. Around 650,000 children had been displaced since then. DSWD was quoted to have once reported that 11,196 children annually become victims of war as a result of the “anti-insurgency campaigns the government is waging in the countryside.”

There are mechanisms that monitor the involvement of children in armed conflict in the Philippines. One example of such mechanism is the Country Task Force on Monitoring and Reporting (CTFMR) Grave Child Rights Violations. According to the 2012 Children and armed conflict report of the UN secretary-general:

An increase was noted in the recorded number of cases of recruitment and use of children by armed groups in 2011 (54 children) compared with 2010 (24 children). The CTFMR documented 26 incidents, involving 33 boys and 21 girls. Of that number, CTFMR verified two incidents, involving two boys and four girls aged between 14 and 17, attributed to the New People’s Army (NPA). The Moro Islamic Liberation Front ( MILF) was implicated in two verified incidents, involving seven boys, who were armed and performing military functions. Although the United Nations currently has no access to the areas under control of the Bangsamoro Islamic Freedom Movement (BIFM), a breakaway faction of MILF led by commander “Kato”, the country task force received reports that the armed group had children within its ranks. Four incidents, involving six boys aged between 13 and 17 years, were attributed to the Abu Sayyaf Group (ASG). Reports indicate that ASG used children as combatants against Armed Forces of the Philippines targets, but these cases could not be verified owing to security concerns.

The Philippine report to the Committee on the Rights of the Child admitted that military operations “as part of the government’s fight against the insurgents or as part of clearing operations to give way to agro-industrial ventures or development projects” have caused some human rights violations against indigenous children who are also affected by armed conflict. Vehicular accidents and the on-going armed conflict—particularly in southern Philippines—may have also contributed to the incidence of disability among children. There is, however, no reliable data on this matter.

Risser comparatively described the situation of children affected by armed conflict in the Philippines: “The relatively low intensity of the conflicts in eastern Myanmar, Aceh, and the Philippines meant that children were rarely exposed to the ferocity of large-scale violence, battles, or complete breakdown of society typical of the situations of Rwanda, Afghanistan, Liberia, Somalia, and Iraq that have so frequently been highlighted by the

106 Ibid., para. 305.
107 Ibid.
110 Ibid.
111 United Nations Secretary-General, Children and armed conflict: Report of the Secretary-General (A/66/782-S/2012/261, 26 April 2012), para. 147. The report also noted a number of incidents of association of children and/or false labelling of children as combatants. During the reporting period, it added that children continued to be victims of bomb explosions, shootings, explosive remnants of war and improvised explosive device attacks; that there was significant increase in incidents affecting schools and hospitals in 2011; that the remainder of the recorded incidents of attacks on schools and hospitals were attributed to the Moro Islamic Liberation Front (6), New People’s Army (4), Abu Sayaff Group (3) and unknown perpetrators (12); and that 13 incidents of abduction of children were recorded, involving at least 12 boys and 8 girls aged between 4 and 17.
113 Ibid., para. 146.
were girl children. About 44% of the girl children were survivors of sexual abuse.

By region, NSCB said that most child abuse cases served by DSWD in 2007 came from Zamboanga Peninsula, Central Luzon, Central Visayas, Metro Manila, and Ilocos Region. More girls were survivors of abuse than boys (two to one). Among girl children, most of them belonged to the age groups 10 to below 14 and 14 to below 18; among boy children, most were from age groups 1 to below 5 and to below 10.

Table 5: Profile of Survivors and Abusers/Perpetrators of Child Abuse 124

<table>
<thead>
<tr>
<th>Factors</th>
<th>Profile of Survivors</th>
<th>Profile of Abusers/Perpetrators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>Average age is 12, with age ranging between 7 and 16 at time of reporting Initial occurrence is between 7 and 12 years old Abuse had been happening for 2 to 4 years if perpetrators are family members</td>
<td>Majority are in their middle and late adulthood (30-59 years old) Average age is 35 years old</td>
</tr>
<tr>
<td>Sex</td>
<td>Females (90%), rather than males</td>
<td>Usually males, rather than females</td>
</tr>
<tr>
<td>Educational</td>
<td>Majority reached elementary level while others stopped schooling due to poverty or when a cases is filed in court</td>
<td>More educated than their victim/s Majority are skilled workers</td>
</tr>
<tr>
<td>Attainment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Socioeconomic</td>
<td>Generally from the lower income classes (90%)</td>
<td>Usually from lower income classes</td>
</tr>
<tr>
<td>Status</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


In 2009, the Committee against Torture expressed “serious concern” about claims of continued abduction and military recruitment of child soldiers by non-State armed actors.119 Meanwhile, the Committee on the Rights of the Child has repeatedly expressed concern on the involvement of children in armed conflict, particularly the “recruitment of children as armed groups to serve as combatants, spies, guards, cooks or medics and at the lack of prosecution of perpetrators of such crimes, partly due to the ambiguity of Republic Act 7610, article 10, section 22 (b) prohibiting the recruitment of children which does not provide for punitive sanctions for the violations.”120

Disaggregation of Data According to Age, Gender and Diversity; Profiling of Survivors and Perpetrators

Updates on Women and Men in the Philippines recorded the number of child abuse cases served by DSWD according to gender and categories of incidents, such as sexually abused, neglected, physically abused/maltreated, abandoned, victims of child labour and sexually exploited.121 The United States Department of State quoted DSWD sex-disaggregated data. According to the report, from January to June 2010, DSWD offices served 4,451 survivors of child abuse, of whom 66%

international news media.” However, there were still few reports of civilian deaths or conflict-related injuries.114 Deaths and injuries of combatants were more prevalent.115 Landmines had also caused problems for children though to a lesser extent than in other countries. Some children had also been subjected to torture.117 More research had been suggested on the use of children in paramilitary forces, such as in barangay (village) defence forces, some of which had allegedly enlisted children in their ranks.118

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The Plan study on violence in schools pointed that children’s peers (more than adults) were the primary perpetrators of such violence. Male children were more likely to experience physical violence than female children. Plan added that teachers of younger pupils used corporal punishment more than any other group; teachers of older pupils used scolding and grade deduction more. Younger children were more accepting of punishment than older ones. The boy child was more tolerant of punishment than the girl child.

A 2006 Child and Adolescent Psychiatrists of the Philippines, Inc. (CAPPI) survey revealed that 50% of the perpetrators of child abuse in schools were teachers, while a small number involved janitors, bus drivers, and other school personnel. Documentation from the Child Protection Unit of the University of the Philippines-Philippine General Hospital (UP-PGH) likewise identified teachers as perpetrators in 5% of physical abuse and 3% of sexual abuse cases it handled.

Profiling of children in the street situation and urban working children, who were into drug abuse, was conducted for ILO in 2004 by the Department of Sociology and Anthropology of the Ateneo de Manila University. Three urban poor communities in Metro Manila were selected for the study. The children are generally male, ages 9-15 years, out-of-school or school drop-outs, and from large and impoverished families where there is high level of violence and vice.

Nonetheless, the Committee against Torture has lamented “the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and military personnel, as well as on extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence.”

Comprehensiveness of data available and issues of underreporting

According to the UNICEF National Report in 2010, there should be a caveat in analysing available data as there may be cases which remained unreported, particularly in remote and far-flung areas. The actual number of child abuse cases could thus be higher.

On violence against children in schools, Plan Philippines also said that the extent and magnitude are largely unknown. It explained that there were many non-governmental organizations assisting children who are survivors of violence but systematic collation of data is weak. Moreover, the figures in the Plan Philippines study represented only reported cases and those often involved serious physical and psychological harm. More subtle forms of violence were rarely reflected.

Available data at the national level was usually limited only to reported cases for the legal department of the Department of Education, DSWD, Child Protection Unit of UP-PGH, and Philippine National Police. As mentioned, the Committee on the Rights of the Child had recommended the undertaking of a comprehensive study on corporal punishment in the Philippines.

125 Plan Philippines, Toward a Child-Friendly Education Environment, 3.
126 Ibid.
127 Ibid.
129 Committee against Torture, Concluding Observations of the Committee against Torture: Philippines (CAT/C/PHL/CO/2, 29 May 2009), para. 27.
131 Plan Philippines, Toward a Child-Friendly Education Environment, 5.
132 Ibid.
133 Ibid.
134 Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Philippines (CRC/C/PHL/CO/3-4, 2 October 2009), para. 42.
b. Root Causes of Violence and Aggravating Practices

i. Violence Against Women

**Definition of Violence Against Women**

Violence against women and their children in Philippine law is defined under the VAWC Law as: "any act or series of acts committed by any person against a women who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or deprivation of liberty."\(^\text{135}\)

The law includes, but does not limit it, to the following: physical violence, sexual violence, psychological violence and economic abuse.\(^\text{136}\) It is to be stated that the law is comprehensive and the enumeration given is non-exhaustive. As a crime, the state punishes such violence when any of the nine acts mentioned in the law is committed.\(^\text{137}\)

**Identification of Root Causes**

The persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society was noted by the CEDAW Committee. According to the Committee, the stereotypes "present a significant impediment to the implementation of the Convention and are a root cause of violence against women, as well as of the disadvantaged position of women in a number of areas, including in all sectors of the labour market and in political and public life."\(^\text{138}\) Measures to change them had been recommended.\(^\text{139}\)

In a gathering of experts from Asia and the Pacific, where a representative from the Philippines participated, violence against women was regarded not as a result of random, individual acts of misconduct, but rather as "deeply rooted in structural relationships of inequality between women and men."\(^\text{140}\) The report said that culture and religious tradition are often used to sanctify customary harmful practices that aim to perpetuate female subjugation. Violence, added the report, is rooted in patriarchy and discrimination and that media can play a proactive, investigative and supportive role in breaking the silence surrounding harmful traditional and cultural practices.\(^\text{141}\) The basic inequality of power relations between men and women, i.e., patriarchy, is the root cause of violence against women.\(^\text{142}\) Qualitative analysis supported such conclusions.

In *Vertido v. The Philippines*, wherein a violation of the CEDAW was found, the CEDAW Committee stressed that stereotyping affected a woman's right to a fair and just trial. Accordingly:

In the particular case, the compliance of the State party's due diligence obligation to banish gender stereotypes on the grounds of articles 2 (f) and 5 (a) needs to be assessed in the light of the level of gender sensitivity applied in the judicial handling of the author's case… [t]he Committee finds that to expect the author to have resisted in the situation at stake reinforces in a particular manner the myth that women must physically resist the sexual assault.\(^\text{143}\)

**Identification of Aggravating Factors**

Certain civil society groups have in general regarded poverty, inequality, marginalization and poor governance as the main causes of conflict and violence in the Philippines.\(^\text{144}\) Women's rights advocates in

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135 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004, Section 3(a).
136 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004, Section 3(a) (A) to (D).
137 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004, Section 5(a) to (i).
139 Ibid, para. 18.
142 Ibid, 38.
the Philippines have cited the lack of adequate laws on domestic violence, double standards of morality, and a traditional societal reluctance to discuss private family affairs as some of the factors related to domestic violence. Some said that the absence of divorce under the law and limited job opportunities together limit the ability of women to escape abusive relationships.\(^{145}\) Sometimes, unplanned pregnancy had become a risk factor and led to more aggression and abuse\(^{146}\) in the home.

ii. Violence Against Children

**Definition of Violence Against Children**

There is no stand-alone definition of violence against children in Philippine law. Instead, it was crafted in relation to violence against women (see, above definition of violence against women and their children) and to child abuse and related abuses.

To be “fully” responsive, the Government of the Philippines said it may consider establishing a standard definition as part of priority national action, saying: “a standard definition of the acts of abuses will have to be established, understood, shared, popularized and used by all individuals with stake on the issue to improve detection, reporting, documentation and immediate appropriate handling and management of cases.”\(^{147}\)

**Identification of Root Causes**

In a visiting expert’s paper published by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Celia Yangco explained the causes of child abuse and maltreatment in the Philippines:

Like any other country, however, the Philippines is constantly affected by global changes and adjustments that somehow also affect its families and their children. Some of these changes, while intended to bring progress and developments, have negatively impacted on families specially children. The fast pace of living, rapid technological development, urban migration and congestion, and increased participation of women in the labour force are some developments that put stresses and pressures on the family.

The stresses and pressures on families are eventually communicated, transmitted and manifested in children, who are among the most vulnerable members of a family, because of their young age and malleability. At worst, these changes lead to maltreatment or abuse of children and, therefore, the violation of their rights.\(^{148}\)

A report attributed most instances or forms of violence against children in the Philippines to poverty, calling the increasing reported cases as social manifestations of a long history of poverty which is characterized by a “chromic or cyclical condition of deprivation of basic services.”\(^{149}\) Along with poverty, injustice, inequality, and family dysfunctions, *inter alia*, were also pointed out as root causes of the “street children” phenomenon.\(^{150}\)

**Identification of Aggravating Factors**

The presence of drug abuse, alcoholism, vice, disease, separation of parents, poverty, and other social problems exacerbate or increase incidents of child abuse in the Philippines.\(^{151}\) Notable was the consideration of poverty as both a cause and aggravating factor of violence against children.

Plan Philippines identified the following as some of the factors contributing to incidents of violence in schools: family background and personal circumstances, influence


\(^{147}\) Government of the Philippines, *Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: Philippines* (CRC/C/OPSC/PHL/1, 13 December 2011), para. 95(a).


of peers and media, lack of awareness about children's rights, fear, inability of authority figures to respond to cases, and lack of policies. Meanwhile, certain Islamic beliefs, e.g., adulthood begins at the onset of puberty, were considered by Camacho, Puzon and Ortiga as among the factors that have induced children into armed conflict. They said that children were being taught at an early age how to carry and use guns in defence of the family and community in conflict-affected areas. There were also social aspects, *inter alia*, prestige, protection, and other perceived benefits to being a member of an armed group (e.g., income from illegal activities, perks of being associated with powerful community personalities). Membership in an armed group could also be a move necessary for survival, especially for the poor and people with low educational attainment.

**c. Impact of Violence**

i. Violence Against Women

**Physical Impact**

The National Demographic and Household Survey in 2008 asked women who have experienced spousal violence about the consequences of abuse on them. Physical injuries in the form of cuts, bruises or aches were reported by one in three women. Also, more than 10% suffered from eye injuries, sprains, dislocations or burns. Over one in 20 reported suffering deep wounds, broken bones, broken teeth, or other serious injuries.

In an analysis of violence against women in the Philippines, Bernabe said, “violence may affect the reproductive health of women through the transmission of sexually transmitted diseases and HIV/AIDS.” Effects of violence may also be fatal as a result of severe injury, homicide or suicide.

**Psychological and Social Impact**

The 2008 survey also reported that, because of abuse, three in five women reported experiencing psychological consequences such as depression, anxiety and anger. More than 10% said they attempted suicide. According to Bernabe, abused women were more likely to suffer from depression, anxiety, psychosomatic symptoms, eating problems, sexual dysfunction, and reproductive health complications.

In a review of the implementation of the VAWC Law, AI came across women who have expressed fear that they were losing their sanity as an effect of violence. Some confessed having thoughts of killing abusive partners (at least two did prepare to kill their partners). Repeated abuse, said AI, made women lose their self-esteem, making it more difficult for them to end abuse. This can clearly create a cycle of violence in family and society.

ii. Violence Against Children

**Physical Impact**

As outlined in the report of the Special Representative of the Secretary-General on Children and Armed Conflict, grave child rights violations have caused the killing and maiming of children. Injuries have been inflicted on them; disabilities were caused as well.

153 Agnes V. Camacho, Marco P. Puzon and Yasmin Ortiga, *Children and Youth in Organised Armed Violence in the Philippines: Contextualisation, Personal Histories and Policy Options* (Manila: University of the Philippines, Center for Integrative and Development Studies, Psychosocial Trauma and Human Rights Program, 2005), 38.
155 Ibid., 219.
157 Ibid.
159 Ibid.
Psychological and Social Impact

Studies indicated that children who survived abuse often suffer long-term physical and psychological damage that impaired their ability to learn and socialize, and made it difficult for them to perform well in school and develop close and positive friendships. Those who grew up in a violent home were more likely to suffer abuse compared to children who had a peaceful home life. At least one study in the Philippines indicated a strong correlation between violence against women and violence against children.164

Listening to stories of children who have experienced armed conflict, Risser noted anger and hatred towards the perceived instigators of conflict or violence.165 Another effect on children was their being accustomed to life in the “war zone” and internal displacement. One girl child felt “numb” from previous displacements due to conflict.166 Fear,167 restrictions on play,168 delay in schooling169 and feelings of helplessness170 were also noted.

An official of the Armed Forces of the Philippines (AFP) agreed that violence has become “part of the children’s everyday life” in Basilan. An interesting excerpt of his account on the children of Basilan states that: “[t]he children of Basilan would scramble to the scene of an armed encounter, wait until it was over, and then try to outrun each other towards the fallen combatants in order to grab their firearms or pick up those that were dropped and left behind.”171

The Committee on the Rights of the Child has expressed “deep concern” over the continuing and increasing displacement of children and the consequent limited access to social and health services, education and development due to the on-going internal armed conflict.172

2. De Jure State Responses

a. Bases of State Responsibility

i. International and Regional Treaties

Table 6. Violence against women and children: International and Regional Treaties (applicable to the Philippines)

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Ratification</th>
<th>Reservations and/or Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Rights of Persons with Disabilities</td>
<td>15 April 2008</td>
<td>None</td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
<td>15 September 1967</td>
<td>None</td>
</tr>
<tr>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
<td>5 July 1995</td>
<td>None</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights</td>
<td>23 October 1986</td>
<td>Article 41 (23 October 1986)</td>
</tr>
<tr>
<td>First Optional Protocol</td>
<td>22 August 1989</td>
<td>None</td>
</tr>
<tr>
<td>Second Optional Protocol</td>
<td>20 November 2007</td>
<td>None</td>
</tr>
<tr>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
<td>5 August 1981</td>
<td>None</td>
</tr>
<tr>
<td>Convention on the Rights of the Child</td>
<td>21 August 1990</td>
<td>On the recruitment to the Armed Forces of the Philippines</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Rights of the Child</td>
<td>26 August 2003</td>
<td>None</td>
</tr>
<tr>
<td>on the involvement of children in armed conflict</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Rights of the Child</td>
<td>28 May 2002</td>
<td>None</td>
</tr>
<tr>
<td>on the sale of children, child prostitution and child pornography</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights</td>
<td>7 June 1974</td>
<td>None</td>
</tr>
<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
<td>18 June 1986</td>
<td>None</td>
</tr>
<tr>
<td>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
<td>Concluded in the Philippines on 6 March 2012</td>
<td>None</td>
</tr>
</tbody>
</table>

165 Gary Risser, *Children Caught in Conflicts*, 73.
166 Ibid., 74.
167 Ibid., 115.
168 Ibid., 116.
169 Ibid., 117.
170 Ibid.
173 As used in this context, “ratification” includes ratification, accession or succession.
1. With reference to article IV of the Convention, the Philippine Government cannot sanction any situation which would subject its Head of State, who is not a ruler, to conditions less favourable than those accorded other Heads of State, whether constitutionally responsible rulers or not. The Philippine Government does not consider said article, therefore, as overriding the existing immunities from judicial processes guaranteed certain public officials by the Constitution of the Philippines.

2. With reference to article VII of the Convention, the Philippine Government does not undertake to give effect to said article until the Congress of the Philippines has enacted the necessary legislation defining and punishing the crime of genocide, which legislation, under the Constitution of the Philippines, cannot have any retroactive effect.

3. With reference to articles VI and IX of the Convention, the Philippine Government takes the position that nothing contained in said articles shall be construed as depriving Philippine courts of jurisdiction over all cases of genocide committed within Philippine territory save only in those cases where the Philippine Government consents to have the decision of the Philippine courts reviewed by either of the international tribunals referred to in said articles. With further reference to article IX of the Convention, the Philippine Government does not consider said article to extend the concept of State responsibility beyond that recognized by the generally accepted principles of international law.

Reports cited the different international obligations of the Philippines for the protection of women and children against violence. A report of AI Philippines and WWTSVAW listed the international human rights instruments which the Philippines must comply with.175

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174 This includes instruments relating to international humanitarian law, which the Philippines signed and ratified and/or acceded.

On violence against children, *Philippine Laws related to the Discipline and Punishment of Children* devoted a section on the international human rights instruments to which the Philippines is a state party.\(^{176}\)

ii. Recommendations on the Commitments and Declarations/Reservations

*Relating to Violence Against Women*

The Philippines stands out as a leader in the region in committing to human rights instruments. It has no reservations to the CEDAW.

*Relating to Violence Against Children*

The Philippines also ratified the CRC without reservation. It made a declaration when it became a party to its Optional Protocol (Involvement of Children in Armed Conflict). Accordingly:

1. The minimum age for voluntary recruitment into the Armed Forces of the Philippines is 18 years, except for training purposes whose duration shall have the students/cadets/trainees attain the majority age at the completion date; 2. There is no compulsory, forced or coerced recruitment into the Armed Forces of the Philippines; and 3. Recruitment is exclusively on a voluntary basis.\(^{177}\)

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\(^{176}\) Save the Children UK, *Philippine Laws related to the Discipline and Punishment of Children* (Quezon City: Save the Children UK Philippines Program, 2006), 5-18.

b. National Policies on Violence

i. Violence Against Women

Table 7: Violence against women: National Policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>The State recognizes the role of women in nation-building and should ensure the fundamental equality before the law of women and men.</td>
<td>The Constitution of the Republic of the Philippines</td>
</tr>
<tr>
<td>The State values the dignity of women and children and guarantees full respect for human rights.</td>
<td>VAWC Law</td>
</tr>
<tr>
<td>Towards this end [policy in the VAWC Law above], the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party. Note that all forms of abuses included economic abuse and penalized men found to have committed acts of violence to their wives, partners and girlfriends, and/or their children and children under their care. The definition of forms of sexual violence included prostitution of the woman or her child.</td>
<td>VAWC Law</td>
</tr>
<tr>
<td>Penallization of crimes relating to violence against women, including crimes against chastity such as seduction, abduction and acts of lasciviousness.</td>
<td>Revised Penal Code of the Philippines (Act No. 3815)</td>
</tr>
<tr>
<td>Expansion of the definition of the crime of rape, reclassification of the same as a crime against persons, inclusion of sexual assault, and increasing the penalty for rape.</td>
<td>Anti-Rape Law of 1997 (Republic Act No. 8353)</td>
</tr>
<tr>
<td>The State should protect working women by providing safe and healthful working conditions, among others.</td>
<td>The Constitution of the Republic of the Philippines</td>
</tr>
<tr>
<td>The State recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.</td>
<td>VAWC Law</td>
</tr>
<tr>
<td>Towards this end [policy in the VAWC Law above], the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.</td>
<td>VAWC Law</td>
</tr>
<tr>
<td>Establishment of a Family Court in every province and city in the country and a system of adjudication of cases where children may be the survivor or offender, or women may be the survivor. The courts take into account their peculiar circumstances and have exclusive jurisdiction to hear and decide almost all cases involving violence against women and children.</td>
<td>Family Courts Act of 1997 (Republic Act No. 8369)</td>
</tr>
</tbody>
</table>

179 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 2.
180 Ibid.
181 Ibid, Section 3.
183 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 2.
184 Ibid.
185 Republic Act No. 8369 or the Family Courts Act, 1997, Sections 2, 3 and 5.
### Women's Rights Policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women have the right to protection and security in times of disasters, calamities, and other crisis situations especially in all phases of relief, recovery, rehabilitation, and construction efforts. The State shall provide for immediate humanitarian assistance, allocation of resources, and early resettlement, if necessary. It shall also address the particular needs of women from a gender perspective to ensure their full protection from sexual exploitation and other sexual and gender-based violence committed against them. Responses to disaster situations shall include the provision of services, such as psychosocial support, livelihood support, education, psychological health, and comprehensive health services, including protection during pregnancy.</td>
<td>Magna Carta of Women</td>
</tr>
<tr>
<td>The State shall protect women senior citizens from neglect, abandonment, domestic violence, abuse, exploitation, and discrimination. Towards this end, the State shall ensure special protective mechanisms and support services against violence, sexual abuse, exploitation, and discrimination of older women.</td>
<td>Magna Carta of Women</td>
</tr>
<tr>
<td>It is hereby declared the policy of the State to provide necessary assistance and protection for rape victims. Towards this end, the government shall coordinate its various agencies and non-government organizations to work hand in hand for the establishment and operation of a rape crisis centre in every province and city that shall assist and protect rape victims in the litigation of their cases and their recovery.</td>
<td>Rape Victim Assistance and Protection Act</td>
</tr>
<tr>
<td>At any stage of the investigation, prosecution and trial of a complaint for rape, the police officer, the prosecutor, the court and its officers, as well as the parties to the complaint shall recognize the right to privacy of the offended party and the accused. Towards this end, the police officer, prosecutor, or the court to whom the complaint has been referred may, whenever necessary to ensure fair and impartial proceedings, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial and that the name and personal circumstances of the offended party and/or the accused, or any other information tending to establish their identities, and such circumstances or information on the complaint shall not be disclosed to the public. The investigating officer or prosecutor shall inform the parties that the proceedings can be conducted in a language or dialect known or familiar to them.</td>
<td>Rape Victim Assistance and Protection Act</td>
</tr>
<tr>
<td>In prosecutions for rape, evidence of complainant’s past sexual conduct, opinion thereof or of his/her reputation shall not be admitted unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.</td>
<td>Rape Victim Assistance and Protection Act</td>
</tr>
</tbody>
</table>

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186 Republic Act No. 9710 or the Magna Carta of Women, 2009, Section 10.
188 Republic Act No. 8505 or the Rape Victim Assistance and Protection Act, 1998, Section 2.
ii. Violence Against Children

Table 8: Violence against children: National Policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>The State values the dignity of women and children and guarantees full respect for human rights. 191</td>
<td>VAWC Law</td>
</tr>
<tr>
<td>Towards this end [policy in the VAWC Law above], the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party. 192 Note that all forms of abuses included economic abuse and penalized men found to have committed acts of violence to their wives, partners and girlfriends, and/or their children and children under their care. The definition of forms of sexual violence included prostitution of the woman or her child. 193</td>
<td>VAWC Law</td>
</tr>
<tr>
<td>The State should exert all efforts necessary to promote and enhance the welfare of children in the Philippines. 194</td>
<td>Child and Youth Welfare Code (Presidential Decree 603 of 1977, as amended)</td>
</tr>
<tr>
<td>It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development including child labour and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same. It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control. 195</td>
<td>Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination (Republic Act No. 7610)</td>
</tr>
<tr>
<td>The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life. 196</td>
<td>Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination (Republic Act No. 7610)</td>
</tr>
<tr>
<td>Penalization of further child abuse and specific acts such as child prostitution, child trafficking, child pornography, and other acts of abuses. 197</td>
<td>Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination (Republic Act No. 7610)</td>
</tr>
<tr>
<td>The State should carry out a comprehensive program for prevention and deterrence of child prostitution and other sexual abuses, child trafficking, obscene publications and indecent shows, other acts of abuse and circumstances which endanger survival and normal development. 198</td>
<td>Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination (Republic Act No. 7610)</td>
</tr>
</tbody>
</table>

191 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 2.
192 Ibid.
193 Ibid, Section 3.
194 Presidential Decree No. 603 or the Child and Youth Welfare Code, 1974.
195 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 2.
196 Ibid.
197 Ibid, Sections 2 and 4.
198 Ibid.

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<table>
<thead>
<tr>
<th>Policy</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalization of abduction, illegal or forcible detention, inducing a minor to abandon her/his home and/or kidnapping of minors for purposes of trade in human beings regardless of their age and sex, slavery, payment of ascendant’s debts, and for labour or services. Included are specific provisions against abduction of girls below 18 years of age for the purpose of indecent acts.199</td>
<td>Revised Penal Code of the Philippines (Act No. 3815)</td>
</tr>
<tr>
<td>Expansion of the definition of the crime of rape, reclassification of the same as a crime against persons, inclusion of sexual assault, and increasing the penalty for rape.</td>
<td>Anti-Rape Law of 1997 (Republic Act No. 8353)</td>
</tr>
<tr>
<td>The State shall institutionalize a National System for early childhood care and development that is comprehensive, integrative and sustainable. The State also mandated the engagement of various sectors and inter-agency collaboration at all levels.</td>
<td>Early Childhood Care and Development Act (Republic Act No. 8980)</td>
</tr>
<tr>
<td>“The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited: (a) Employment of threats of whatever kind and nature; (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement; (c) Employment of degrading, inhuman end cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity”200</td>
<td>Juvenile Justice and Welfare Act (Republic Act No. 9344)</td>
</tr>
<tr>
<td>Raising the minimum age of criminal responsibility from 9 to 15 years of age, provision of measures to appropriately handle and manage cases of children in conflict with the law (including diversion), and adoption of restorative justice that also prohibits inhumane or degrading treatment or punishment and detention of children below 15 in jails.</td>
<td>Juvenile Justice and Welfare Act (Republic Act No. 9344)</td>
</tr>
<tr>
<td>State policy on girl-children:</td>
<td>Magna Carta of Women</td>
</tr>
<tr>
<td>“(a) The State shall pursue measures to eliminate all forms of discrimination against girl-children in education, health and nutrition, and skills development… (c) Equal access of Moro and indigenous girl-children in the Madaris, schools of living culture and traditions, and the regular schools shall be ensured. (d) Gender-sensitive curriculum, including legal literacy, books, and curriculum in the Madaris and schools of living culture and traditions shall be developed. (e) Sensitivity of regular schools to particular Moro and indigenous practices, such as fasting in the month of Ramadan, choice of clothing (including the wearing of hijab), and availability of halal food shall be ensured.”201</td>
<td>Magna Carta of Women</td>
</tr>
<tr>
<td>Policies related to response, including protection and cure</td>
<td>The Constitution of the Republic of the Philippines</td>
</tr>
<tr>
<td>The State should defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.202</td>
<td>The Constitution of the Republic of the Philippines</td>
</tr>
<tr>
<td>The State recognizes the vital role of the Youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being.203</td>
<td>The Constitution of the Republic of the Philippines</td>
</tr>
<tr>
<td>The State recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.204</td>
<td>VAWC Law</td>
</tr>
</tbody>
</table>

199 Act No. 3815 or Revised Penal Code of the Philippines, 1930, Articles 267 to 274 (Chapter 1 and Section 2 entitled “Crimes against Liberty and Kidnapping of Minors”).

200 Republic Act No. 9344 or the Juvenile Justice and Welfare Act, 2006, Section 61.

201 Republic Act No. 9710 or the Magna Carta of Women, 2009, Section 32.

202 The 1987 Constitution of the Republic of the Philippines, Article XV, Section 3(2).

203 Ibid, Art. XV, Sec. 13.

204 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 2.

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Towards this end [policy in the VAWC Law above], the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.205

Community-based implementation of the State’s policy to protect children [see constitutional policy above].206 Through the implementation and establishment of day-care programs and centres in the Barangay (smallest unit of governance in the country), early and immediate interventions can be provided to the children.207

The State should carry out a comprehensive program for crisis intervention to protect children against child prostitution and other sexual abuses; child trafficking, obscene publications and indecent shows, other acts of abuse and circumstances which endanger survival and normal development.208

The State shall ensure the protection and promotion of the rights of every neglected and abandoned child with opportunities for growth and development. The State shall take measures to make sure that domestic and inter-country adoptions are allowed when the same shall prove beneficial to the child’s best interest, and shall serve and protect his/her fundamental rights.209

Establishment of a Family Court in every province and city in the country and a system of adjudication of cases where children may be the survivor or offender, or women may be the survivor. The courts take into account their peculiar circumstances and have exclusive jurisdiction to hear and decide almost all cases involving violence against women and children.210

State policy on girl-children:
”(b) Girl-children shall be protected from all forms of abuse and exploitation.”211

Aside from the laws cited above, there are others that cut across both the rights of women and children to be protected against violence, such as the domestic law against torture and the one concerning international humanitarian law.212

205 Ibid.

206 Republic Act No. 6972 or the Barangay Level Total Development and Protection of Children Act, 1990, Section 2. According to Sec. 3 (e), these day-care programs and centres shall also serve as ”sanctuary for abused, neglected or exploited children either in one child institution in the Barangay and or network of sanctuary homes which will take in children in urgent need of protection due to a situation which endangers the child or which exposed the child to cruelty and abuse.”

207 Ibid.

208 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Sections 2 and 4.

209 Republic Act No. 8043 or the Domestic Adoption Act, 1998, Section 2.

210 Republic Act No. 8369 or the Family Courts Act, 1997, Sections 2, 3 and 5.

211 Republic Act No. 9710 or the Magna Carta of Women, 2009, Section 32.

212 Republic Act No. 9745 or the Anti-Torture Law, 2009; Republic Act No. 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, 2009.

Francis Tom F. Temprosa
c. Assessment of State Policies

i. On violence Against Women

The CEDAW Committee, in a concluding comment, has recommended that the Philippines undertake a systematic review of all legislation and initiate all necessary revisions so as to achieve full compliance with the provisions of the CEDAW.213

The CEDAW Interactive Benchbook of the Ateneo Human Rights Center (AHRC) described Philippine policies on violence against women and children and provided recommendations. According to AHRC, the guarantees needed to be reflected in the laws and jurisprudence in order to be realized and fully implemented. A review of jurisprudence showed that it is vital for members of the bench to be cognizant of the mandate to protect, promote and fulfil the enjoyment of equal rights between women and men.214 Several other reports, such as the CEDAW Report Brief, outlined different laws that implement state policies on violence against women and children.215

In the article Case Study: Laws on Violence against Women in the Philippines, several problems in the laws on violence against women and their implementation were pointed out. According to Guanzon, the VAWC Law lacked the corresponding specific budget appropriation for effective implementation. Litigation could also be costly and lengthy, and there was corruption in the judiciary and prosecution service.216 A national free legal aid program for poor women did not exist, there were conflicts in the use of other laws and rules, and women faced the possibility of retaliation suits. When Guanzon presented her study, there was a constitutional challenge to the VAWC Law.217

A UN Women ASEAN-wide study remarked that Philippine laws are unique in the region as they do not require specific incorporation of obligations under international conventions into domestic law.218 Philippine laws are not gender-neutral,219 and access to support services is a right.220 Recognizing access to support services as a right is a strategy in law shared by the Philippines with Laos and Vietnam.221

Discrimination and gender-based violence

Domestic laws of the Philippines penalize discrimination against women. Violence against women is not incorporated as an element or act constitutive of discrimination. However, an act may be considered as discrimination and/or violence against women when the elements of their respective definitions are met.


216 Inter-Parliamentary Union and A Parliamentary Response to Violence against Women, Conference of Chairpersons and Members of Parliamentary Bodies Dealing with Gender Equality (2–4 December 2008) (Geneva: Inter-Parliamentary Union, 2009), 68.

217 Ibid, 69.


219 Ibid, 15.

220 Ibid, 28.

221 Ibid, xi (para. 20).
Discrimination

(b) “Discrimination Against Women” refers to any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges.

A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices.

Provided, finally, That discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under this Act.  \(^{222}\)

Violence against Women

“Violence Against Women” refers to any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.  \(^{223}\)

“Violence against women and their children” refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.  \(^{223}\)

The definition of “discrimination against women” is found in the Magna Carta of Women, dubbed as the “bill of rights for Filipino women”. The law seeks to eliminate discrimination against women by recognizing, protecting, fulfilling and promoting the rights of Filipino women.  \(^{225}\) The law does not distinguish between state and non-state actors.

\(^{222}\) Republic Act No. 9710 or the Magna Carta of Women, 2009, Section 4(b).

\(^{223}\) Ibid, Section 4(k).

\(^{224}\) Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 3(a).

## Comprehensiveness of Acts Punished, including Harmful Traditional Practices Affecting Women

### Table 10: Some of the Different Acts considered as Violence against Women

<table>
<thead>
<tr>
<th>Act</th>
<th>Definition under Philippine law</th>
<th>Aggravating circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic violence</td>
<td>None. Note however that the definition of “violence against women” and “violence against women and their children” are comprehensive enough to cover domestic violence. This can also include past and present physical, sexual, psychological or economic violence between former or current intimate partners, adult household members, parent or children. (See above)</td>
<td>There are circumstances which may warrant a higher penalty such as if the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of the penalty ordinarily prescribed.</td>
</tr>
<tr>
<td>Acts of lasciviousness</td>
<td>None. However, its essential elements had been defined under jurisprudence. They are: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.</td>
<td>Aggravating circumstances under the Revised Penal Code, which is the general penal law, applies.</td>
</tr>
<tr>
<td>Rape</td>
<td>Rape is committed:</td>
<td></td>
</tr>
<tr>
<td>Marital rape</td>
<td>1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.</td>
<td></td>
</tr>
<tr>
<td>Statutory rape</td>
<td>2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.</td>
<td></td>
</tr>
<tr>
<td>Penetration of orifice by an object</td>
<td>None. Authorities are of the opinion that this is impliedly recognized in the law on rape since it provides that subsequent forgiveness by the wife as offended party, in case the husband is the offender, extinguishes the crime or penalty.</td>
<td>There are circumstances in the law on rape which warrant the imposition of a higher penalty, such as: 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution; 3) When the rape is committed in full view of the spouse, parent, any of the children or relatives within the third civil degree of consanguinity; 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime; 5) When the victim is a child below seven (7) years old; 6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV) Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim; 7) When committed by any member of the Armed Forces of the Philippines of para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime; 8) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and 9) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of crime.</td>
</tr>
</tbody>
</table>

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226 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 3(b).
229 Republic Act No. 8353 or the Anti-Rape Law, 1997, Section 2.
<table>
<thead>
<tr>
<th>Act</th>
<th>Definition under Philippine law</th>
<th>Aggravating circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual harassment</td>
<td>Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favour from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act. It is clear from the definition that sexual harassment is confined to environments related to work, education or training.</td>
<td>None.</td>
</tr>
<tr>
<td>Photo or video voyeurism</td>
<td>Act of taking photo or video coverage of a person or group of persons performing sexual act or any similar activity or of capturing an image of the private area of a person or persons without the latter’s consent, under circumstances in which such person/s has/have a reasonable expectation of privacy, or the act of selling, copying, reproducing, broadcasting, sharing, showing or exhibiting the photo or video coverage or recordings of such sexual act or similar activity through VCD/DVD, internet, cellular phones and similar means or device without the written consent of the person/s involved, notwithstanding that consent to record or take photo or video coverage of same was given by such person.</td>
<td>None.</td>
</tr>
<tr>
<td>Practices harmful to the health of women</td>
<td>None. Note however that these practices had been listed as acts of violence against women. According to the Magna Carta of women, violence against women shall be understood to encompass, but not limited to, the following: (1) Physical, sexual, psychological, and economic violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation; (2) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women, and prostitution; and (3) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs. It also includes acts of violence against women as defused in Republic Acts No. 9208 (law against trafficking in persons) and 9262 (VAWC Law).</td>
<td>None.</td>
</tr>
</tbody>
</table>

234 Republic Act No. 7877 or the Anti-Sexual Harassment Act, 1995, Section 3.

235 Republic Act No. 9995 or the Anti-Photo and Video Voyeurism Act, 2009, Sec. 3(d).

236 Republic Act No. 9710 or the Magna Carta of Women, 2009, Section 4(k).
The passage of the VAWC Law, according to Guanzon, marked the compliance of the Philippines with its obligations under CEDAW. The broad definition of violence against women in the law was patterned after the Declaration on the Elimination of Violence Against Women of the United Nations. As worded, it is gender-specific and protects women and their children, although offenders may either be men or women. The law also followed the framework for model legislation on domestic violence drawn up by the United Nations Special Rapporteur on violence against women.

Several reports, such as the CEDAW Report Brief, outlined different laws that implement state policies on violence against women, such as the laws against sexual harassment (in the workplace, educational and training environments) and rape (redefining rape from being a crime against chastity to a crime against persons and penalizing marital rape). The recent laws amended the Revised Penal Code of the Philippines, which defines and penalizes statutory rape. A PCW report added that the VAWC Law protects women in marital, dating or common-law relationships and their children from physical, psychological and economic abuse. The laws were enacted or amended to expand worker’s benefits and protection and correct gender-based discrimination in the workplace.

The new law on rape also punishes sexual violations such as “sexual assault” or the penetration of an orifice by any object. Steeper penalties are meted out to perpetrators who occupy positions of trust in all laws against violence on women and children.

Female genital mutilation, forced marriage, acid attacks, forced sterilization, and other traditional harmful practices to the health of women—as discussed under CEDAW General Recommendation Nos. 14 and 19—are punishable acts under either the VAWC Law or the Magna Carta of Women. Dowry-related violence is covered under the definition of violence against women in the VAWC Law.

Female Genital Mutilation

In a master’s research paper presented to the Ateneo de Zamboanga University, Calsalin described a “view of the female circumcision beliefs and practices in the Philippines.” One such group which practices female genital mutilation is the Yakan in Basilan, Mindanao. According to Calsalin, the Yakan group’s circumcision procedure is composed of two parts: pagpandih tawal (bathing process) designed to utter tawal (whispered prayer) to the child’s ear to prepare the child for the upcoming ceremony, and pag-Islam (scrapping process) which embraces scraping of the labia majora. After the pag-Islam, another prayer is whispered to mark the end of the ceremony.

Calsalin’s study found that the group continues practicing female genital mutilation because of religion. Respondents who were interviewed said that, “This practice should also be done because it is the way the prophet lived it, and most especially, it is written in the Holy Qur-an.” There was no established mental health implication concerning the practice. However, there were physical consequences, inter alia, pain in the vulva due to the scraping process and possible infections due to unsanitary tools used in the procedure. Another study is that by Arquisal which dealt with the practice of turi among selected Maranao women who resided in Iligan City.

In an interview, Obaid of the United Nations Population Fund (UNFPA) confirmed the continued practice of female genital mutilation in the Philippines. Kontoyannis and Katsetos of the Health Science Journal...
described it as a common practice among Muslim groups in the country.246

Forced Marriage (including child marriage)

The law protects people from forced marriage. Under the Family Code of the Philippines, “no marriage shall be valid, unless these essential requisites are present: (1) legal capacity of the contracting parties who must be a male and a female; and (2) consent freely given in the presence of the solemnizing officer.”247 The absence of any of these requisites makes the marriage void ab initio.248 A marriage contracted by any party below 18 years of age even with the consent of his or her parents or guardians is void from the beginning.249

In addition, the Code declares that a marriage may be annulled for some causes existing at the time of the marriage, including when “consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting fraud, freely cohabited with the other as husband and wife” and “consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceases, such party thereafter feely cohabited with the other as husband and wife.”250 UN Women has called the practice of banning international marriage brokerage by the Philippines as a “promising practice.”251

Despite this, an intervention by Wahab of Nisa Ul Haqq Bansa Moro (Women for Justice in the Bangsa Moro) noted that Presidential Decree No. 1083 or The Code of Muslim Personal Laws in the Philippines: (1) sets different minimum ages for marriage for males and females (15 years of age for males and age of puberty for females); (2) allows the marriage of girls below 15 years; and (3) allows the betrothal of girls below 12 years of age although voidable under certain circumstances.252 A research study conducted by her organization in 2009 confirmed that early and forced marriages were indeed “prevalent among Muslim girls who are 9–17 years old.” More than half of those between 15 to 17 years old who were surveyed reported socio-economic conditions remained poor after marriage because they had lost opportunities for education and work.253 Women surveyed bore an average of 3.5 children, and 3 in 4 women experienced miscarriages and other reproductive health-related illnesses.254

A survey was conducted in ARMM involving a total of 593 respondents from five provinces. Authors of the research paper produced, Determinants and Impacts of Early Marriage on More Women, said there was however no accurate data of how many Muslim girls in the region marry before the age of 18.255 In Jolo, Sulu, arranged marriages are said to be “still popular” among Muslims; A Muslim man may be able to choose his bride if he and his family can raise bride-wealth.256 A study described the marriage practices in Jolo. According to the report, the Tausug (ethno-linguistic group dominant in Jolo) has three distinct transactions leading to a legally binding marriage: arranged marriage by negotiation (pagpangasawa), marriage by abduction (pagsaggau), and elopement (pagdakup).257 More data is needed to gauge current prevalence of these practices.

A profiling of general surveys on the sexual life of younger Filipinos revealed that, in a few cases, youth in smaller

247 Executive Order No. 209 or the Family Code of the Philippines, 1987, Article 2.
248 Ibid, Art. 4.
249 Ibid, Art. 35(1).
250 Ibid, Art. 45(3)–45(4).
253 Ibid.
254 Ibid.
communities who impregnate their girlfriends may be forced by parents to marry them or make amicable financial agreements.\footnote{International Encyclopedia of Sexology: The Philippines,” Jose Florante J. Leyson, accessed 7 July 2012, http://www2.hu-berlin.de/sexology/IES/philippines.html.} Another report said that arranged marriages still happened among families with Chinese descent, and the most common reason was to merge the wealth of two families involved.\footnote{“Arranged Marriages, For Better or For Worse?,” Philippine Marriage, accessed 7 July 2012, http://philippine-marriage.com/?p=14#more-14.}

\textit{Dowry Death}

There is a dearth of literature on dowry deaths in the Philippines. It is to be noted, however, that this act can be covered either under the VAWC Law or the Magna Carta of Women as a punishable offense.

\textit{Acid Attack}

According to Arevalo-Zenarosa, there were reported incidences of acid attacks in many countries. Quoting a dissertation, Feminist Negotiations: Contesting Narratives of the Campaign Against Acid Violence in Bangladesh, she said that the Philippines was not included in the list of countries with many incidences of acid throwing.\footnote{“Gender Equality As Human Right,” J. Monina Arevalo-Zenarosa, Court of Appeals, accessed 7 July 2012, http://ca.judiciary.gov.ph/index.php?action=mnuactual_contents&ap=j80140.}

\textit{Forced Sterilization}

In a conference of the Catholic Physicians’ Guild of the Philippines, Human Life International Executive Director Acosta remarked that forced sterilization was still occurring among indigenous groups particularly in Mindanao “for many years already.”\footnote{“Doctors’ confab stresses health care, physician’s duty,” Catholic Bishops’ Conference of the Philippines, accessed 7 July 2012, http://www.cbcpnews.com/?q=node/18331.}

\textit{Definition of Consent vis-à-vis Sexual Intercourse}

The law does not provide for a comprehensive definition of consent, detailing circumstances where consent cannot be presumed in cases of sexual intercourse. The Supreme Court has, however, provided light on what consent constitutes. An examination of the different jurisprudence on consent vis-à-vis rape would be worthwhile to consider as a possible new area of research. There are also no specific academic studies on the prohibition of bail for sexual assault suspects and the protective measures to rape or sexual assault survivors.

Clearly, according to the Court, being sweethearts does not provide consent to a sexual act.\footnote{People v. Magbanua, 553 SCRA 698, 704 (G.R. No. 176265), 30 April 2008.} In cases where the woman was sleeping or under the influence of alcohol and other mind-altering substances, the Court has come out with some controversial decisions either ruling out or finding rape. In one case, it ruled that an allegation of rape could be made with much facility. However, it may remain hard to prove.\footnote{People v. Aquino, G.R. No. 136840-42, 13 September 2001.} In another, it ruled that moral and physical dominion may be sufficient without use of actual force as an offended party may be sleeping during the commission of rape.\footnote{People v. Galvez, G.R. No. 181827, 2 February 2011.}

\textit{Protective Measures for Survivors of Gender-based Violence}

When the act of gender-based violence entails a penalty of death or reclusion perpetua or life imprisonment, the Rules of Court provides that the person charged of the crime shall not be admitted to bail when evidence of guilt is strong.\footnote{Rules of Court of the Philippines, as amended, Rule 114, Section 7.} Additionally, the VAWC Law contains provisions for the issuance of protection orders for women and children survivors: barangay (village or smallest unit of governance), temporary and permanent protection orders. A violation of the orders is punishable by imprisonment and/or fine, without prejudice to other civil or criminal actions that may be filed against the offender.\footnote{Republic Act No. 9262 Implementing Rules and Regulations, Sections 9-23 and Rule IV on Protection Orders.}
Table 11: Relief that may be availed of through a Protection Order

<table>
<thead>
<tr>
<th>Reliefs that may be availed of through a Protection Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Prohibition of the respondent (perpetrator) from threatening to commit or committing personally or through another, any of the acts penalized by the Anti-VAWC law</td>
</tr>
<tr>
<td>• Prohibition of the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner (victim-survivor) directly or indirectly</td>
</tr>
<tr>
<td>• Removal and exclusion of the respondent from the residence of the petitioner whether temporarily or permanently</td>
</tr>
<tr>
<td>• Directing the respondent to stay away from the petitioner and any designated family or household member at a distance specified by the court</td>
</tr>
<tr>
<td>• Directing lawful possession and use by the petitioner of an automobile and other personal effects regardless of ownership</td>
</tr>
<tr>
<td>• Granting temporary or permanent custody of a child/children to the petitioner</td>
</tr>
<tr>
<td>• Directing the respondent to provide support to the woman and/or her child if entitled to legal support</td>
</tr>
<tr>
<td>• Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same… including revocation of license and disqualification to apply for any license to use or possess a firearm</td>
</tr>
<tr>
<td>• Restitution for actual damages caused by violence inflicted including property damage, medical expenses and loss of income</td>
</tr>
<tr>
<td>• Directing the DSWD or any appropriate agency to provide temporary shelter and other social services that the petitioner may need</td>
</tr>
<tr>
<td>• Provision of other forms of relief as may be necessary to protect and provide for the safety of the petitioner</td>
</tr>
</tbody>
</table>

Aside from this, the battered-woman syndrome has been recognized as a defence. The Supreme Court held that a battered woman, as strictly defined in jurisprudence, may be exculpated from liability for killing an abusive partner. In any event, however, the existence of the syndrome in a relationship does not in itself establish the legal right of the woman to kill her abusive partner. Evidence must be considered in the context of self-defence.268

Review of the Quantum of Evidence Required in the Proof of Violence Against Women

Several law review articles such as that of Ng examined the quantum of evidence required in the proof of rape or sexual assault. Ng explained that the Supreme Court has adopted a 180-degree turn in its wary attitude towards the use of DNA testing and other scientific or technical evidence in the prosecution of rape cases.269 Carrillo noted that the credibility of the private complainant in rape cases has remained to be considered as the single most important factor in the review of rape cases. It is however a tenet in Philippine law that corroborations of testimony and proof of resistance are not essential for convictions in rape cases, and prior sexual history is generally regarded as irrelevant.270

267 Ibid.
### Table 12: Some of the Different Acts considered as Violence against Children

<table>
<thead>
<tr>
<th>Act</th>
<th>Definition under Philippine law</th>
<th>Aggravating circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child abuse</td>
<td>“Child Abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;</td>
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<tr>
<td></td>
<td>2. Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;</td>
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<tr>
<td></td>
<td>3. Unreasonable deprivation of his basic needs for survival such as food and shelter; or</td>
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<tr>
<td></td>
<td>4. Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.271</td>
<td></td>
</tr>
<tr>
<td>Sexual violations</td>
<td></td>
<td>There are circumstances which may warrant a higher penalty such as if the offended party is below 12 years of age, and when a person profited from the sexual abuse of the child.274</td>
</tr>
<tr>
<td>Child Prostitution and Other Sexual abuse</td>
<td>Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.273</td>
<td></td>
</tr>
<tr>
<td>Other Acts of Neglect, Abuse or Cruelty or Exploitation</td>
<td>According to the law against child abuse:</td>
<td>There are circumstances which shall warrant a higher penalty for the offense, such as when offender had been previously convicted under this law, offender commits the crime as an officer or employee of a juridical entity, relationship to offended party, and when the offender is a public officer or employee.272</td>
</tr>
<tr>
<td></td>
<td>(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child’s development including those covered by Article 59 of the Presidential Decree No. 603 (see below), as amended, but not covered of the Revised Penal Code, as amended, shall suffer the penalty of prison mayor in its minimum period.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who is ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlour, beach and/or other tourist resort or similar places shall suffer the penalty of prison mayor in its maximum period and a fine of not less than fifty thousand pesos (P50,000.00): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition, or acts in the performance of a social, moral or legal duty.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty of prison mayor in its medium period and a fine of not less than forty thousand pesos (P40,000): Provided, however, That should the perpetrator be an ascendant, step parent or guardian of the minor; the penalty to be imposed shall be a prison mayor in its maximum period, a fine of not less than fifty thousand pesos (P50,000) and the loss of parental authority over the minor.</td>
<td></td>
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<tr>
<td></td>
<td>(d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall imposed a penalty of Prison Mayor in its medium period and a fine of not less than fifty thousand pesos (P50,000), and the loss of license to operate such a place of establishment.</td>
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<tr>
<td></td>
<td>(e) Any person who shall use, coerce, force or intimidate a street child or any other child to:</td>
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<tr>
<td></td>
<td>(1) Beg or use begging as a means of living;</td>
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<td></td>
<td>(2) Acts as conduit or middlemen in drug trafficking or pushing; or</td>
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<td></td>
<td>(3) Conduct any illegal activities, shall suffer the penalty of prison correccional in its medium period to reclusion perpetua.275</td>
<td></td>
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</tbody>
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271 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 3 (b).
272 Ibid, Section 31.
273 Ibid, Section 5.
274 Ibid, Sections 5(b) and 5(c).
275 Ibid, Section 10.
276 Ibid.
<table>
<thead>
<tr>
<th>Act</th>
<th>Definition under Philippine law</th>
<th>Aggravating circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Other Crimes relating to Violence or Abuse which are Specifically Committed by Any Parent</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conceals or abandons the child with intent to make such child lose his civil status</td>
<td>The penalty may be higher if provided for in the Revised Penal Code (general penal law of the country) or in special laws. The child may also be involuntarily committed.</td>
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</tr>
<tr>
<td>Abandons the child under such circumstances as to deprive him of the love, care and protection he needs</td>
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<tr>
<td>Sells or abandons the child to another person for valuable consideration</td>
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<tr>
<td>Neglects the child by not giving him the education which the family's station in life and financial conditions permit</td>
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<tr>
<td>Fails or refuses, without justifiable grounds, to enrol the child as required by Article 72</td>
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<tr>
<td>Causes, abates, or permits the truancy of the child from the school where he is enrolled.</td>
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<tr>
<td>“Truancy” as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.</td>
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<tr>
<td>It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.</td>
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<td></td>
</tr>
<tr>
<td>Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare</td>
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<tr>
<td>Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignation and other excessive chastisement that embarrass or humiliate him</td>
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<td></td>
</tr>
<tr>
<td>Causes or encourages the child to lead an immoral or dissolute life</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| **Violence against Children in conflict with the law and children in detention** | | |
| **Prohibition against Labelling and Shaming** | In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labelling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin. | The penalty may be higher if provided for in the Revised Penal Code (general penal law of the country) or in special laws. Special penalties are provided if the offender is a public officer or employee. |
| **Other Prohibited Acts** | The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law, prohibited: | The penalty may be higher if provided for in the Revised Penal Code (general penal law of the country) or in special laws. Special penalties are provided if the offender is a public officer or employee. |
| (a) Employment of threats of whatever kind and nature; | (a) Employment of threats of whatever kind and nature; | |
| (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement; | (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement; | |
| (c) Employment of degrading, inhuman end cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and | (c) Employment of degrading, inhuman end cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and | |
| (d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances. | (d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances. | |

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277 Presidential Decree No. 603 or the Child and Youth Welfare Code, 1974, Article 72.
278 Ibid, Art. 59.
279 Ibid, Art. 60.
281 Republic Act No. 9344 or the Juvenile Justice and Welfare Act, 2006, Section 60.
282 Ibid, Section 62.
283 Ibid, Section 61.
284 Ibid, Sec. 62.
### Act

#### Violence against children in armed conflict

Children have been declared as Zones of Peace. It shall be the responsibility of the State and all other sectors concerned to resolve armed conflict in order to promote the goal of children as zones of peace. To attain this objective, the following policies shall be observed:

(a) Children shall not be the object of attack and shall be entitled to special respect. They shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment;

(b) Children shall not be recruited to become members of the Armed Forces of the Philippines or its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies;

(c) Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered;

(d) The safety and protection of those who provide services including those involved in fact-finding missions from both government and non-government institutions shall be ensured. They shall not be subjected to undue harassment in the performance of their work;

(e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots; and

(f) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated due to armed conflict.285

There are circumstances which shall warrant a higher penalty for the offense, such as when offender had been previously convicted under this law, offender commits the crime as an officer or employee of a juridical entity, relationship to offended party, and when the offender is a public officer or employee.286

### Rights of Children Arrested for Reasons Related to Armed Conflict

Any child who has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy is entitled to the following rights:

(a) Separate detention from adults except where families are accommodated as family units;

(b) Immediate free legal assistance;

(c) Immediate notice of such arrest to the parents or guardian of the child; and

(d) Release of the child on recognizance within twenty-four (24) hours to the custody of DSWD or any responsible member of the community as determined by the court.

If after hearing the evidence in the proper proceedings, the court should find that the aforesaid child has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such child to the custody of DSWD or any responsible member of the community as determined by the court.

If after hearing the evidence in the proper proceedings, the court should find that the aforesaid child has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such child to the custody of DSWD or any responsible person, until he has had reached eighteen (18) years of age or for a shorter period as the court may deem proper, after considering the reports and the recommendations of DSWD or the agency or responsible individual under whose care he has been committed.

The aforesaid child shall be subject to visitation and supervision by a representative of DSWD or any duly-licensed agency or such other officer as the court may designate subject to such condition as it may prescribe.

The aforesaid child whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.287

There are circumstances which shall warrant a higher penalty for the offense, such as when offender had been previously convicted under this law, offender commits the crime as an officer or employee of a juridical entity, relationship to offended party, and when the offender is a public officer or employee.288

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285 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 22.

286 Ibid, Section 31.

287 Ibid, Section 25.

288 Ibid, Section 31.
Several reports identified various laws that protect children from neglect or negligent treatment, bullying, corporal punishment and other cruel or degrading forms of punishment.

A report noted that the right given to parents to discipline children was not adequately limited. It concluded that laws employing terms, such as “may be required under the circumstances”, “moderately” and “just and reasonable rules, suggestions and admonitions”, are which are open to subjective interpretation as it is not clear whose point of view is considered in the imposition of corporal punishment and discipline. The restrictions are “too general and vague to guide parents to exercise their rights to discipline children,” said the report.289

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

i. Violence against women

Description of State Implementing and Monitoring Mechanisms

The Philippines implements its policies and laws on violence against women through a network of agencies of government that are involved in the protection of women. The Inter-Agency Council on Violence against Women and Their Children (IAC-VAWC) was established under the VAWC Law. Agencies involved were entrusted to “formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients.” The IAC-VAWC also serves as the monitoring body with regard to VAW initiatives.290

In 2001, a Framework Plan for Women was created, and the need to strengthen the oversight function of the then NCRFW was highlighted. The Violence Against Women Coordinating Committee (VAWCC), a 15-member-agency committee, was established to systematize and synchronize all government efforts to eliminate all forms of VAW. IAC-VAWC dismantled and replaced the VAWCC.292

In 2007, IAC-VAWC formulated a Strategic Plan of Action for 2007-2010. Some of the details of the plan have been tabulated below. Non-governmental organizations and the academe were involved in the plan.293

Table 13: Composition of the Inter-Agency Council on Violence against Women and Their Children

<table>
<thead>
<tr>
<th>Composition of the Inter-Agency Council on Violence against Women and Their Children291</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Social Welfare and Development (DSWD)</td>
</tr>
<tr>
<td>National Commission on the Role of Filipino Women (NCRFW) [now, Philippine Commission on Women]</td>
</tr>
<tr>
<td>Civil Service Commission (CSC)</td>
</tr>
<tr>
<td>Commission on Human Rights (CHR)</td>
</tr>
<tr>
<td>Council for the Welfare of Children (CWC)</td>
</tr>
<tr>
<td>Department of Justice (DOJ)</td>
</tr>
<tr>
<td>Department of the Interior and Local Government (DILG)</td>
</tr>
<tr>
<td>Philippine National Police (PNP)</td>
</tr>
<tr>
<td>Department of Health (DOH)</td>
</tr>
<tr>
<td>Department of Education (DepEd)</td>
</tr>
<tr>
<td>Department of Labor and Employment (DOLE)</td>
</tr>
<tr>
<td>National Bureau of Investigation (NBI)</td>
</tr>
</tbody>
</table>

289 Save the Children UK, Philippine Laws related to the Discipline and Punishment of Children, 118.

290 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act (Anti-VAWC Law), 2004, Section 39.

291 Ibid.


293 Ibid, 5-10.
Affecting Women and Children in ASEAN: A Baseline Study

Table 14: Some Excerpts from the Strategic Plan of Action for 2007-2010 of the IAC-VAWC

<table>
<thead>
<tr>
<th>Vision</th>
<th>Objectives</th>
<th>Key Strategic Areas</th>
</tr>
</thead>
</table>
| A gender - fair and empowered society that protects its people especially women and children from any form of violence and exploitation thus enabling them to fully exercise their rights and participate in all development efforts, and experience a peaceful and fulfilling family and community. | 1. Provide holistic, integrated and sustained programs and services for the protection of the rights and welfare of VAWC victim-survivors, 2. Ensure the effective implementation of the Law through the establishment of efficient systems and mechanisms in government and capacitating service providers, 3. Assist in the rehabilitation of perpetrators and prevention of future VAWC acts, and 4. Develop community-based mechanisms and programs to address issues of VAWC, including the care and support of victims and their children, as well as the non-tolerance of all forms of VAWC. | KSA 1: Public Information and Advocacy  
KSA 2: Capacity Building and Service Delivery  
KSA 3: Research and Policy Development  
KSA 4: Sustained Linkages and Partnerships  
KSA 5: Resource Generation and Mobilization |

Specialized Institution with Mandate to Oversee the Implementation of Laws on Violence Against Women

The PCW is the specialized institution tasked under the Magna Carta of Women to be the primary policymaking and coordinating body of the women and gender equality concerns under the Office of the President. It is also the overall monitoring body and oversight to ensure the implementation of the Magna Carta. It has the power to “direct any government agency and instrumentality, as may be necessary, to report on the implementation” of the Magna Carta and “for them to immediately respond to the problems brought to their attention” in relation to it.295

ii. Violence Against Children

Description of State Implementing and Monitoring Mechanisms

Violence against children is also approached through the inter-agency model. The Council for the Welfare of Children (CWC), created under the Child and Youth Welfare Code, is now an attached agency to DSWD (before, Office of the President). The membership of the Council is tabulated below.296 In 2000, a law was passed making the CWC also a functioning National Early Childhood and Development Coordinating Council.297

Table 15: Composition of the Council for the Welfare of Children and Related Agencies

<table>
<thead>
<tr>
<th>Composition of the Council for the Welfare of Children298</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Social Welfare and Development (DSWD), Chairman</td>
</tr>
<tr>
<td>Department of Justice (DOJ), Member</td>
</tr>
<tr>
<td>Department of Labor and Employment (DOLE), Member</td>
</tr>
<tr>
<td>Department of Education (DepEd), Member</td>
</tr>
<tr>
<td>Department of Health (DOH), Member</td>
</tr>
<tr>
<td>Department of the Interior and Local Government (DILG), Member</td>
</tr>
<tr>
<td>Department of Agriculture (DA), Member</td>
</tr>
<tr>
<td>National Economic and Development Authority (NEDA), Member</td>
</tr>
<tr>
<td>National Nutrition Council (NCC), Member</td>
</tr>
<tr>
<td>Council for the Welfare of Children (CWC), Member</td>
</tr>
<tr>
<td>Three private individuals concerned with the welfare of children and youth with no dual role as a government employee and with at least one being an active member of a legitimate youth organization (to be appointed by the President of the Philippines upon recommendation of the Chairman, each for a term of two years and subject to renewal), Members</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Offices to Coordinate with the Council for the Welfare of Children299</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Justice (DOJ)</td>
</tr>
<tr>
<td>Department of Social Welfare and Development (DSWD)</td>
</tr>
<tr>
<td>Department of Education (DepEd)</td>
</tr>
<tr>
<td>Department of Labor and Employment (DOLE)</td>
</tr>
<tr>
<td>Department of Health (DOH)</td>
</tr>
<tr>
<td>Department of Agriculture (DA)</td>
</tr>
<tr>
<td>Department of Local Government and Community Development (now, Department of the Interior and Local Government or DILG)</td>
</tr>
<tr>
<td>Local Councils for the Protection of Children; and such other government and private agencies which have programs on child and youth welfare</td>
</tr>
</tbody>
</table>

The main powers and functions of the CWC include the coordination of the implementation and enforcement of all laws relative to the promotion of child and youth welfare, and programs, goals and policy formulation relative to that. It may also call upon other government agencies for assistance to

294 Ibid.

295 Republic Act No. 9710 or the Magna Carta of Women, 2009, Section 38.

296 Presidential Decree No. 603 or the Child and Youth Welfare Code, 1974, Article 205.

297 Republic Act No. 8980 or An Act Promulgating a Comprehensive Policy and a National System for Early Childhood Care and Development, Providing Fund Therefor and for Other Purposes, 2000, Section 8.

298 Executive Order No. 233, Redefining the Role and Organizational Structure and Enlarging the Membership of the Council for the Welfare of Children, 1987, Section 3.

299 Presidential Decree No. 603 or the Child and Youth Welfare Code, 1974, Article 205.

Francis Tom F. Temprosa
implement its functions. Local Councils for the Protection of Children are at the provincial, city, municipal and barangay levels, addressing all child protection concerns. Such councils at the barangay level are community bodies.

Other inter-agency bodies and councils exist to protect children. These include the Inter-agency Councils of the National Streetchildren Program and the National Child Labour Program. Most line agencies also have units dedicated to child protection. Most notable are efforts to put up Women and Children Protection Desk in all police stations across the country and the setting up of the Regional Sub-Committee for the Welfare of Children in all 16 regions by the CWC. There is also the Inter-agency Committee on the Comprehensive Program on Children in Armed Conflict.

Specialized Institution with Mandate to Oversee The Implementation of Laws on Violence Against Children

The CWC is also the specialized institution tasked to oversee the implementation and enforcement of all laws relative to the promotion of child and youth welfare. This includes laws on violence against children.

iii. Reports that study mechanisms that monitor the implementation and observance of laws related to violence against women and children

The implementation and observance of laws on VAWC have been a subject of several reports. While the IAC-VAWC monitors the performance of national and local government agencies and units, AI reported that compliance by all agencies with responsibilities to implement the VAWC Law has not been ensured. It argued, for instance, that the documentation of cases of intimate partner violence was “erratic and very poor” as tracking of cases by the Department of Interior and Local Government was “dismal” although it has issued a circular directing barangays to report VAWC cases. Information from only six out of 17 regions in the country was generated. AI said this corresponded to the regions where 2,000 officials had been trained on the VAWC Law.

As AI explained, “locating critical interventions at the local government unit (LGU) level, particularly in the barangays (village level government unit) is a significant feature of the Anti-VAWC Law. This took into account the reality of poor women who do not go to courts to seek protection from abuse for reasons of shame, lack of resources or inaccessibility of courts and other national institutions, lack of women’s awareness of their rights and limited information on the services that are available to them.”

b. Complaints Process

Description of The State’s Complaint Process

As explained by Vilches, any person with actual knowledge of acts of violence against women and children (except private crimes against women such as abduction, seduction and acts of lasciviousness) may initiate a complaint. There are special procedures that apply in violence against women and children cases. Some of them are discussed below:

(1) For women survivors, pursuant to the Rape Victim Assistance and Protection Act, the investigation of offenses committed against women has to be handled by an all-female team of police officers, examining physicians and prosecutors. Protective measures including the right to privacy and closed-door investigations are to be observed.

(2) For children survivors, the Anti-Child Abuse Law and the Rule on Examination of a Child Witness mandates that there be only a single interview by a multidisciplinary group

Ibid., Art. 207.

Ibid, 5.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.
of professionals recorded in audio or video tape. Inside the courtroom, the child's rights under the Rule on Examination of a Child Witness has to be strictly observed.

Table 16: Complaints Process observed by the Police in Violence against Women and Children Cases

<table>
<thead>
<tr>
<th>Violence against Women and Children, specially violations specific to the VAWC Law(^{311})</th>
<th>Rape and related crimes(^{312})</th>
<th>Child abuse(^{313})</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Upon receipt of the complaint from the desk officer, the Women and Children's Protection Desk (WCPD) officer shall conduct initial investigation and record the incident in the blotter purposely used by WCPD.</td>
<td>• Upon receipt of the complaint from the desk officer, the WCPD officer shall conduct initial investigation and record the incident in the blotter purposely used by WCPD.</td>
<td>• Upon receipt of the complaint from the desk officer, the WCPD officer shall conduct initial investigation and record the incident in the blotter purposely used by WCPD.</td>
</tr>
<tr>
<td>• Refer and accompany the survivor to the nearest [Philippine National Police] PNP Crime Laboratory and/or government hospital for appropriate medico-legal examination. It shall be the WCPD officer's duty to ensure that as far as possible, the examining physician must be of the same gender as the survivor, especially in sexual violence cases.</td>
<td>• Refer and accompany the survivor to the nearest PNP Crime Laboratory and/or government hospital for appropriate medico-legal examination. It shall be the WCPD officer's duty to ensure that as far as possible, the examining physician must be of the same gender as the survivor, especially in sexual violence cases.</td>
<td>• Refer and accompany the survivor to the nearest PNP Crime Laboratory and/or government hospital for appropriate medico-legal examination. It shall be the WCPD officer's duty to ensure that as far as possible, the examining physician must be of the same gender as the survivor, especially in sexual violence case.</td>
</tr>
<tr>
<td>• In all investigations involving children, the survivor shall be accompanied by his/her unoffending parent, guardian, or local social worker.</td>
<td>• In all investigations involving children, the survivor shall be accompanied by his/her unoffending parent, guardian, or local social worker.</td>
<td>• In all investigations involving children, the survivor shall be accompanied by his/her unoffending parent, guardian, or local social worker.</td>
</tr>
<tr>
<td>• In all investigations involving women other than children in sexual abuse cases, only persons expressly authorized by the survivor shall be allowed by the WCPD officer inside a room where police investigations as well as medical/physical examination are being conducted in private.</td>
<td>• In all investigations involving women other than children in sexual abuse cases, only persons expressly authorized by the survivor shall be allowed by the WCPD officer inside a room where police investigations as well as medical/physical examination are being conducted in private.</td>
<td>• In all investigations involving women other than children in sexual abuse cases, only persons expressly authorized by the survivor shall be allowed by the WCPD officer inside a room where police investigations as well as medical/physical examination are being conducted in private.</td>
</tr>
<tr>
<td>• Ensure the confidentiality of identity of the survivor and all other parties directly involved with the case under investigation. For this purpose, the WCPD officer must maintain a separate blotter on crimes committed under the Act. Under no circumstances shall any police officer allow media access to information concerning VAWC reported to PNP.</td>
<td>• Ensure the confidentiality of identity of the survivor and all other parties directly involved with the case under investigation. For this purpose, the WCPD officer must maintain a separate blotter on crimes committed under the Act. Under no circumstances shall any police officer allow media access to information concerning VAWC reported to PNP.</td>
<td>• Ensure the confidentiality of identity of the survivor and all other parties directly involved with the case under investigation. For this purpose, the WCPD officer must maintain a separate blotter on crimes committed under the Act. Under no circumstances shall any police officer allow media access to information concerning VAWC reported to PNP.</td>
</tr>
<tr>
<td>• Get the sworn statement of the survivor to include all the witnesses.</td>
<td>• Get the sworn statement of the survivor to include all the witnesses.</td>
<td>• Get the sworn statement of the survivor to include all the witnesses.</td>
</tr>
<tr>
<td>• After the conduct of police investigation, the WCPD officer shall refer the survivor to the social worker of the LGU, any available DSWD shelter, NGOs and other service providers for psychological intervention and other rehabilitation programs.</td>
<td>• After the conduct of police investigation, the WCPD officer shall refer the survivor to the social worker of the LGU, any available DSWD shelter, NGOs and other service providers for psychological intervention and other rehabilitation programs.</td>
<td>• After the conduct of police investigation, the WCPD officer shall refer the survivor to the social worker of the LGU, any available DSWD shelter, NGOs and other service providers for psychological intervention and other rehabilitation programs.</td>
</tr>
<tr>
<td>• If the survivor is found to have manifestations of the Battered Woman Syndrome which is validated by past police records and testimonies from witnesses in the case under investigation, the WCPD officer shall inform the punong barangay (barangay chairman), the local social worker, or the concerned NGOs, local professional or civic groups in the area for appropriate psychiatric and psychological evaluation which may form part of the evidence to be presented in court.</td>
<td>• If the survivor is found to have manifestations of the Battered Woman Syndrome which is validated by past police records and testimonies from witnesses in the case under investigation, the WCPD officer shall inform the punong barangay (barangay chairman), the local social worker, or the concerned NGOs, local professional or civic groups in the area for appropriate psychiatric and psychological evaluation which may form part of the evidence to be presented in court.</td>
<td>• If the survivor is found to have manifestations of the Battered Woman Syndrome which is validated by past police records and testimonies from witnesses in the case under investigation, the WCPD officer shall inform the punong barangay (barangay chairman), the local social worker, or the concerned NGOs, local professional or civic groups in the area for appropriate psychiatric and psychological evaluation which may form part of the evidence to be presented in court.</td>
</tr>
<tr>
<td>• Assist in the application and enforcement of the provisions of the protection order as may be issued by the barangay or the court.</td>
<td>• Assist in the application and enforcement of the provisions of the protection order as may be issued by the barangay or the court.</td>
<td>• Assist in the application and enforcement of the provisions of the protection order as may be issued by the barangay or the court.</td>
</tr>
<tr>
<td>• Respond, with the assistance of other police personnel, barangay officials, and other parties in interest, to a call for emergency assistance to ensure immediate protection of the survivor by entering the dwelling if necessary whether or not protection has been issued.</td>
<td>• Respond, with the assistance of other police personnel, barangay officials, and other parties in interest, to a call for emergency assistance to ensure immediate protection of the survivor by entering the dwelling if necessary whether or not protection has been issued.</td>
<td>• Respond, with the assistance of other police personnel, barangay officials, and other parties in interest, to a call for emergency assistance to ensure immediate protection of the survivor by entering the dwelling if necessary whether or not protection has been issued.</td>
</tr>
</tbody>
</table>


313 Ibid, 134.
The graphical representation below of the process—from the making of the complaint to the filing of an actual case—applies to VAWC cases.

![Flowchart in Handling Violence Against Women and Their Children Cases](chart1)

**Legend:**
- BPO - Barangay Protection Order
- DOJ - Department of Justice
- DSWD - Department of Social Welfare and Development
- LSWDO - Local Social Welfare and Development Office
- PB - Punong Barangay (Barangay Chairperson)
- PNP - Philippine National Police
- PPO - Permanent Protection Order
- TPO - Temporary Protection Order

**Assessment of the complaints process**

Few reports assess the complaints process related to court cases related to violence against women and children. In 2006, the Government of the Philippines said that a study has yet to be made on the effectiveness of the Family Courts as well as of the VAWC Law “in terms of protecting the rights of women and children against domestic violence and incest.” Despite having reports on violation against women’s rights, when asked by the CEDAW Committee, the Government answered that the Commission on Human Rights of the Philippines would not be able to provide information on the number of prosecutions from 1995 to 2001 since once a resolution of a case is made, referral to the appropriate prosecutorial agency follows.  

According to AI, when it comes to access to justice, the legal process is costly and survivors may not have the means to appear in court for a prolonged period of time. The survivors of physical violence usually have moved away from their homes in search of safe havens. Thus, the financial costs of court proceedings discourage women from seeking relief and justice. This was in spite of the waiver of docket fees and other expenses in the VAWC Law when the survivor is “indigent or in cases of immediate necessity due to imminent danger or threat of danger”. It should be noted that this was also despite laws which protect survivors of rape, and witnesses in general, from harassment.

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315 Government of the Philippines, *Responses to the list of issues and questions with regard to the consideration of the combined fifth and sixth periodic reports: Philippines* (CEDAW/C/PHI/Q/6/Add.1, 17 May 2006), 6.

Complaint Processes Against Children

Chart 2: Child in Conflict with Law Case Flowchart: Light Offense

Chart 3: Child in Conflict with Law Case Flowchart: Less Serious/Serious Offense

Legend:
LSWDO - Local Social Welfare and Development Office
WCPD - Women and Children's Protection Desk


318 Ibid.
c. Protection and Rehabilitation

Description of the State’s Protection and Rehabilitation Program

Various agencies have mandates relating to the protection and rehabilitation of women and children survivors. For instance, government reported that a VAWC division within the National Bureau of Investigation (NBI) investigates cases and provides protective services, counselling, medical examination and assistance, and proper custody to child survivors of molestation and rape, and victims of drug abuse. At the Department of Justice, a task force on child protection investigates, prosecutes and litigates cases of child abuse and exploitation. All police stations have Women’s and Children’s Protection Desks, which are staffed by women police officers. They receive complaints on violence against women and children.319

The DSWD and other welfare agencies of government provide similar psychosocial and assistance services for the survivors.

Violence Against Women

In 2007, the IAC-VAWC identified gaps in government efforts that needed to be filled, inter alia, lack of standards in providing anti-VAWC services, the need for a comprehensive research on VAWC and a VAW documentation system, the need for a monitoring and evaluation system at the national and local level, the lack of an organized survivors support group, and the need for a program intervention for the rehabilitation of VAWC perpetrators.320

<table>
<thead>
<tr>
<th>Key Strategic Area</th>
<th>Goals</th>
<th>Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>KSA 2: Capacity Building and Service Delivery</td>
<td>Goal 1: Service providers are competent to render services and implement programs</td>
<td>Assessment of existing capacity building programs</td>
</tr>
<tr>
<td></td>
<td>Goal 2: Victims are empowered and enabled</td>
<td>Development of capacity building programs and support systems according to the needs/roles of the different service providers based on the assessment</td>
</tr>
<tr>
<td></td>
<td>Goal 3: Viable or effective rehabilitation program for perpetrators in place</td>
<td>Establishment of orientation program for service providers</td>
</tr>
<tr>
<td></td>
<td>Goal 4: Relevant and Responsive Service Delivery Mechanism established</td>
<td>Implementation of comprehensive competency development for service provider in the management of: victims-survivors / perpetrators</td>
</tr>
</tbody>
</table>

| | Assessment of current programs and services delivery structures | Development of protocol in the management and handling of rehabilitation program |
| | | Assessment of pilot cases in rehabilitation program for perpetrators |
| | | Improvement of rehabilitation programs based on the assessment |
| | | Assessment of existing capability building programs and services |
| | | Needs assessment of victims/survivors |
| | | Development of support systems and programs for victims/survivors based on the assessment |
| | | Development of Monitoring & Evaluation System of programs and services |
| | | Establishment of benchmark for best practices in preventing VAWC |


321 Ibid, 5-10.
Violence Against Children

The Special Committee for the Protection of Children, jointly organized by the DSWD and DOJ in compliance with the anti-child abuse law, formulated a Comprehensive Program on Child Protection which has the following components: Prevention; Reporting, Rescue, Investigation and Judicial Involvement of Children; and Rescue, Recovery and Reintegration.

Table 18: Aspects of the Comprehensive Program on Child Protection related to Protection and Rehabilitation

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
<th>Strategies</th>
</tr>
</thead>
</table>
| Rescue                     | The Rescue Component shall entail a Multi-disciplinary Team Approach. It will involve various improvements in the juvenile justice system that include legislative reforms based on restorative justice approach; training and continuing education of the five pillars of the justice system; research and improvement of the database and monitoring system; improvement of the correctional and rehabilitation facilities; and, installation of a diversion program at all levels. | Reporting of and Responding to individual cases involving children will involve the adoption of differing approaches in dealing with children as victims and with children as witness
Unifying procedures for investigation and preparation of a child to face the court. Also, a core of duty holders shall be appointed as guardian to provide support to children and represent them
Defining agency jurisdiction and coordinating actions through a Child Abuse Network that will adopt a simplified process
Clarification of the roles of the local government units towards facilitating the organization of functional local councils for the protection of children and establishing barangay-level reporting system
Improving monitoring, feedback and evaluation procedures and system from the LGU to the national level that will allow the assessment of the efficacy of programs |
| Recovery and reintegration | Recovery and reintegration of children begins at the centre which provides a therapeutic environment that includes individual and group counselling/therapy, theatre arts, play therapy, leadership training, socio-cultural activities and sports. | Improvement of the psycho-social recovery and reintegration of rescued children into their families and communities. This includes the enhancement of support services for families; development of rehabilitation programs for the perpetrators and adoption of indigenous approaches in conflict resolution
Family and community empowerment by strengthening existing community structures such as the LCPC (Local Child Protection Council), organizing foster care, capability building of leaders, developing family-enrichment programs and organizing support systems in the community
Conduct of/Replication of innovative, centre-based as well as community-based psycho-social interventions
Enhancement of the technical capacities of program managers, supervisors, social workers and other service providers |

Assessment of the State’s Rehabilitation and Protection Program

According to Bernabe, there were modest achievements in developing facilities and programs which primarily address the issue of violence against women, including temporary care and shelter for WEDC (called “Haven”).323 DOH institutionalized Women and Children Protection Units in all its hospitals nation wide-tasked to provide 24-hour quick response for survivors of violence. A training program to enable doctors to engage in forensic work was also developed.324

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322 Government of the Philippines, Written Replies by the Government of the Philippines to the List of Issues (CRC/C/PHL/Q/3-4) Prepared by the Committee on the Rights of the Child in Connection with the Consideration of the Third and Fourth Periodic Reports of the Philippines (CRC/C/PHL/3-4) (CRC/C/PHL/Q/3-4/Add.1, 3 September 2009), 58-60.


324 Ibid.
However, in 2009, AI said that there was a wide gap between the demand for social welfare services and their availability. Specific to temporary shelters, it was noted then that only 43 DSWD-run shelters in the country (12 Havens for women, 14 homes for girls and 17 crisis intervention units) serviced women survivors from 117 cities and 79 provinces. Social welfare offices under the administration of local government units were evaluated as inadequate, especially for rural women.325

A survey in 2006 showed that 18.13% of the total VAWC complaints reported resulted in the issuance of a barangay protection order. Most barangay officials were familiar with the VAWC Law (96.3%). The reasons for the low number of protection orders were not discussed.326

d. Prevention Strategy

Description of the State's Prevention Program

The law mandates a comprehensive strategy for the prevention of violence against women and children, including child abuse.

Violence Against Women

Table 19: Aspects of the Plan of IAC-VAWC related to Prevention327

<table>
<thead>
<tr>
<th>Key Strategic Area</th>
<th>Goals</th>
<th>Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>KSA 2: Capacity Building and Service Delivery</td>
<td>Goal 2: Victims are empowered and enabled</td>
<td>Assessment of existing capability building programs and services&lt;br&gt;Needs assessment of victims/survivors&lt;br&gt;Development of support systems and programs for victims/survivors based on the assessment&lt;br&gt;Development of Monitoring &amp; Evaluation System of programs and services&lt;br&gt;Establishment of benchmark for best practices in preventing VAWC</td>
</tr>
<tr>
<td>KSA 4: Sustained Linkages and Partnerships</td>
<td>Goal 1: Sustained high impact linkages and mutually beneficial partnerships</td>
<td>Assessment of existing linkages and partnership&lt;br&gt;Building of collaborative mechanisms on the bilateral/regional/multilateral levels&lt;br&gt;Establishment cooperative systems flow of assistance involving all stakeholders covering prevention, protection and reintegration&lt;br&gt;Organization of Regional and local structures for collaboration&lt;br&gt;Forging or signing of bi-lateral agreements with partners&lt;br&gt;Strengthening referral system&lt;br&gt;Develop programs to sustain linkages</td>
</tr>
</tbody>
</table>


326 Ibid.

Violence Against Children

Table 20: Aspects of the Comprehensive Program on Child Protection related to Prevention

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
</table>
| Rescue    | A government report once described the prevention strategy against violence on children as follows: “The overall goal of the CPCP [Comprehensive Program on Child Protection] is to build a protective and caring environment for Filipino children who are at risk, disadvantaged and vulnerable to abuse, exploitation and violence. With a protective environment in place, by 2010, all identified children in need of special protection (CNSP) are provided with appropriate interventions including rescue, recovery, healing and reintegration services as well as legal and judicial protection measures. More importantly, under a protective environment, children at risk are prevented from becoming victims of various forms of abuse, exploitation and violence by facilitating their effective access to basic social services such as health and nutrition as well as opportunities for basic education, life skills education, and vocational training, among others.”

<table>
<thead>
<tr>
<th>Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Prioritization of education in child abuse prevention programs – Prevention focus on educating the various stakeholders about personal safety, child development, parent-child relationship and children’s rights</td>
</tr>
<tr>
<td>• Provision of support system for families and care-givers especially families at risks – This entails improving access to family-focused and community-based basic services such as livelihood and early childhood care and development</td>
</tr>
<tr>
<td>• Establishment of effective, built-in screening and detection programs for children at risk and for abused children within basic social services at the barangay, city and municipal levels. Capabilities of ECCD (early childhood care and development) implementers at the LGU levels shall be enhanced to integrate mechanisms for early detection and referral of disability and child abuse</td>
</tr>
<tr>
<td>• Integration of child abuse prevention with other family support programs and initiatives for children</td>
</tr>
<tr>
<td>• Establish and activate community “child watch”</td>
</tr>
</tbody>
</table>

Assessment of the State’s Prevention Program

In analysing gender-based violence in the Philippines, ADB concluded that despite progressive legislation and an active women’s agency, there were cultural factors that may make reporting of gender-based crimes difficult. This has an impact on preventing violence. ADB noted that gender stereotypes are present in society, and stereotypes are sometimes used in the judicial system to weigh women’s credibility.

WWTSVAW gathered information on gaps in the implementation of even earlier programs and policies addressing gender concerns which had impacts on preventing violence against women. It was still a concern that Gender and Development (GAD) budgets, which are mandatory, were “considered by many national agencies and local government units as ‘optional’ and hence may be non-existent or may be used in activities not related to gender concerns and gender mainstreaming.” The Department of Education informed WWTSVAW that it has not looked into many aspects of their mandate and their activities basically consisted of conducting gender sensitivity trainings among teachers since 1989. It was understood that the success of gender mainstreaming efforts, in relation to preventing violence against women, was not examined.

Several studies assessed innovative approaches and/or best practices, but in our opinion none specifically dealt with assessing programs for the prevention of violence against children.

328 Government of the Philippines, Written Replies by the Government of the Philippines to the List of Issues (CRC/C/PHL/Q/3-4) Prepared by the Committee on the Rights of the Child in Connection with the Consideration of the First and Fourth Periodic Reports of the Philippines (CRC/C/PHL/3-4) (CRC/C/PHL/Q/3-4/Add.1, 3 September 2009), 58-60.
332 Ibid.
333 Government of the Philippines, Written Replies by the Government of the Philippines to the List of Issues (CRC/C/PHL/Q/3-4) Prepared by the Committee on the Rights of the Child in Connection with the Consideration of the Third and Fourth Periodic Reports of the Philippines (CRC/C/PHL/3-4) (CRC/C/PHL/Q/3-4/Add.1, 3 September 2009), 68.
4. Role of Non-State Actors

a. Assistance to Survivors and Protection

**Assistance**

International and local non-governmental organizations are involved in providing assistance to survivors. Business groups and academe have also some level of participation in abating violence. There are however no comprehensive reports which identify all the the forms of assistance and protection given by these non-state actors.

**Protection**

Government has acknowledged that non-governmental organizations have played very significant roles in the protection of children, *e.g.*, leading in various advocacies for the passage of legislations; continuing campaigns to increase awareness regarding the rights of children and the relevant national laws as well as to resource generation activities; implemented various preventive, rehabilitative and reintegration services as well as adopted innovative approaches for child protection. It added that they were represented in the various child-related inter-agency at all levels. A WWTSVAW survey of 77 barangays in 2006 revealed that 58 per cent knew VAWC Law principles through NGO-conducted seminars. The remaining 42 per cent understood the law through government-sponsored seminars.

b. Prevention Programs

Government reported that the formulation of the Philippine Plan for Gender-Responsiveness Development, 1995-2025, involved advocates in non-governmental organizations and the academe. Also, various non-governmental groups, such as private educational institutions, non-government organizations, and professional groups, launched programs and projects to improve women’s and girl’s access to education and promote educational environments that are women- and girl-friendly.

Other than some literature, including those mentioned above and in the preceding section, prevention programs of non-state actors, such as lobbying for laws, advocacy and information drives, are not comprehensively discussed in reports. Several groups were active in advocating for the passage of laws penalizing the crime of violence against women and children and some child welfare laws.

c. Monitoring and Cooperation

An active civil society is involved in monitoring the compliance of the Philippines with international obligations on protecting the rights of women and children. The CEDAW Committee and the Committee on the Rights of the Child welcomed the collaboration of government with a high number of organizations. The CRC encouraged the State to continue to strengthen its cooperation with civil society, including national and international NGOs.

There are numerous reports by non-governmental organizations on government compliance with its obligations, but no report was found in this review which analysed the reports and described their points of view in giving assessments. Most were critical of government responses. For instance, an NGO referred to the “government’s duplicitous way of signing on to many UN human rights covenants while resisting social justice and redistributive programs that would have increased women’s defences against violations and discriminations.”

One notable initiative was the collaboration of prominent men representatives to raise awareness on gender-based

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337 Ibid, para. 298.

338 Ibid, para. 146-153.


violence. In 2007, the group Men Opposed to Violence Against Women Everywhere (MOVE) was established. It was formed after a series of inter-country dialogue between male activists. Groups at the local level included Men Opposed to Violence Against Women (MOVAW) in Cebu, Men Responsible for Gender and Development (MR. GAD) in Davao and the program on the Empowerment and Reaffirmation of Parental Abilities (ERPAT).341

5. Progress Indicators and Challenges

Availability and Accessibility of Progress Reports

Reports on the progress of the Philippines in dealing with issues involving violence against women and children are available and accessible. However, it should be pointed out that the reports can be more widely circulated to ensure adequate public information.

Effectiveness of Policies and Measures, and Assessment of Success Indicators

According to Bascos-Deveza, one of the best strategies to attain the Gender and Development (GAD) vision of the Philippines was to address the critical areas of concern of the Beijing Platform for Action, which includes violence against women. There were at least two indicators mentioned that relate to violence: “incidence and number of violence against women and children by type” and “growth rate and number of political detainees/ executions/ other human rights violations by sex and age group.”342

She added that statistics are helpful in emphasizing that VAWC is a serious social problem in the Philippines. Mostly, they are based on reported cases in police, government social services, and non-government records. The NSCB formulated a VAWC glossary and statistical framework in order to standardize concepts used.343 However, as several reports above admitted, available data on the decrease or increase of incidences of violence were unable to conclusively indicate progress. As discussed, this was due to undisclosed or unreported cases which statistics did not capture.

Table 21: Statistics on Violence Against Women and Child Abuse344

<table>
<thead>
<tr>
<th>Statistics on Violence Against Women and Child Abuse343</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Total number of reported VAW and child abuse cases by various forms of physical and sexual abuse</td>
</tr>
<tr>
<td>2. Reported VAWC cases by place of commission</td>
</tr>
<tr>
<td>3. Reported VAWC cases by weapons or means used</td>
</tr>
<tr>
<td>4. Reported VAWC cases by status of the case</td>
</tr>
<tr>
<td>5. Reported VAWC cases by whereabouts of perpetrator</td>
</tr>
<tr>
<td>6. Perpetrators by age and sex</td>
</tr>
<tr>
<td>7. Victims by age and sex</td>
</tr>
<tr>
<td>8. Relationship of victim to perpetrator</td>
</tr>
</tbody>
</table>

A paper published by AI concluded that after four years since the enactment of the VAWC Law in 2009, the objectives of protecting women and children against violence and access to justice for substantive equality with men still had to be fulfilled. It said that some officials surveyed were unaware of the VAWC Law and the fact that violence against women and child is a public crime. Cultural barriers and stereotypes persist, and very few cities, municipalities and provinces had well-established systems for efficiently addressing cases of violence. Barangays, like other government agencies, were also surveyed, and it was found out that many do not allocate the 5% of their budget to GAD-related activities. One lawyers’ group observed that protection orders mandated under the VAWC Law were not issued within the time limits prescribed.346

The Committee on the Rights of the Child and the CEDAW respectively asked the Philippines to reply to certain questions involving its implementation of the CRC and CEDAW. Some of the replies—considered by the rapporteur as crucial to an evaluation of VAWC—are outlined below.


343 Ibid, 5.

344 Ibid.

345 Ibid.

Table 22: Replies to some of the issues raised in the implementation of CEDAW and CRC

<table>
<thead>
<tr>
<th>Area of Information</th>
<th>Reply</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CEDAW</strong>&lt;sup&gt;347&lt;/sup&gt;</td>
<td>The Philippine government, in its reply described its progress as measured by the indicators above. The report stated that as of December 2000, the Supreme Court of the Philippines has designated 71 Regional Trial Courts across the country to be Family Courts. They have original jurisdiction over cases involving children, conjugal matters such as nullity of marriage and domestic violence. Mobile courts have also been instituted. The Court also created the Committee on Gender Responsiveness in the Judiciary which implements gender mainstreaming within plans and policies in the judiciary. The Committee and the Philippine Judicial Academy train justices, judges and prosecutors in gender-related laws. Gender Sensitivity has been one of the required subjects in a mandatory legal program for lawyers. However, government said studies on the effectiveness of the Family Laws and the VAWC Law in protecting women's and children's rights against violence and incest remain lacking. No data can be provided by government.</td>
</tr>
<tr>
<td>Number of prosecutions that have been brought against the suspects and the sentences imposed</td>
<td>Government was unable to provide the number of prosecutions and convictions as no inter-agency mechanism was in place to keep track of the information.</td>
</tr>
<tr>
<td>Measures taken to prevent violation of women's human rights by police officers and other public officials who abuse their authority</td>
<td>Government said the Commission on Human Rights of the Philippines upholds a very stringent policy in issuing a certification that police officers and other public officials had not been subject to a complaint for human rights violation. The certification was said to be often required for promotions and access to benefits. Various government agencies are said to be involved in raising the awareness of public officers on women's rights.</td>
</tr>
<tr>
<td>Measures taken by the Government to address the issue of violence against indigenous women</td>
<td>The report said that a reconciliation of data was needed on the measures taken. The Commission on Human Rights of the Philippines reported a number of abuses on women. However, the National Commission on Indigenous People denied having knowledge of the existence of violence against indigenous women.</td>
</tr>
<tr>
<td>Measures taken to disseminate the Act in society, especially among women and other people in the community, and how many &quot;protection orders&quot; have been issued since the passage of the VAWC Law</td>
<td>The report described the mechanism within which the IAC-VAWC operates as lead agency in ensuring the VAWC Law is disseminated in society. Information on the number of protection orders for women and children has remained unanswered.</td>
</tr>
<tr>
<td><strong>CRC</strong>&lt;sup&gt;348&lt;/sup&gt;</td>
<td>The government enlisted some jurisprudence that effectively cited the CRC. For instance, in <em>Crisanto Rafaelito Guitalberto v. Court of Appeals</em>, et. al., G.R. No. 156254, 28 June 2005, the Court recalled Art. 8 of the CRC in reasoning out that the issue of filiation strikes at the &quot;very identity and lineage&quot; of children. (p. 16) In <em>Gerardo B. Concepcion v. Court of Appeals</em>, et. al., G.R. No. 123450, 31 August 2005, the Court held that a child is deemed subjected to sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. Art. 19 of the CRC was cited in the decision of the Court.</td>
</tr>
<tr>
<td>Whether CRC has been directly invoked or referred to in domestic courts</td>
<td>As a contribution of the country to its follow up actions after the launch of the World Report on Violence Against Children in 2006, the study by UNICEF Plan Philippines, CWC and the Philippine Women's University-Philippine School of Social Work was conducted because of the dearth of information on violence against children. Some key findings of the study revealed that at least four of 10 children in grades 1 to 3 and seven of 10 in both Grades 4 to 6 and High School have experienced some kind of violence in school. Verbal abuse, which includes being shouted at, ridiculed, teased or humiliated, was the most prevalent form of violence at all school levels.</td>
</tr>
<tr>
<td>Findings of the studies conducted by the CWC (government lead agency) on violence against children in the home and in school</td>
<td></td>
</tr>
</tbody>
</table>

<sup>347</sup> Government of the Philippines, *Responses to the list of issues and questions with regard to the consideration of the combined fifth and sixth periodic reports: Philippines* (CEDAW/C/PHI/Q/6/Add.1, 17 May 2006).

<sup>348</sup> Government of the Philippines, *Written Replies by the Government of the Philippines to the List of Issues (CRC/C/PHL/Q/3-4) Prepared by the Committee on the Rights of the Child in Connection with the Consideration of the Third and Fourth Periodic Reports of the Philippines (CRC/C/PHL/Q/3-4)* (CRC/C/PHL/Q/3-4/Add.1, 3 September 2009).
6. Recommendations for Further Study

Summary of What is and is not known

The body of literature on violence against women and children in the Philippines evolved significantly through the years. With the passage of the VAWC Law and the Magna Carta of Women, a growing awareness of the other forms of violence against women and their children was reflected in literature. For instance, results of a nationwide representative survey on violence against women were released in 2008. Reports analysed state programs and institutions devoted to addressing this issue in society. However, there are some types of violence which remained undocumented in research—e.g., prevalence of economic abuse, marital rape, dowry-related violence, and forced marriages—leaving still an incomplete picture of violence against women in the country. It is the hope of this report that data collection on such issues will be improved and such information will find their way into studies.

Based on literature gathered in this review, no nation wide representative survey on violence against children has been conducted. While several laws on child protection were passed through the years, the literature on this matter remained deficient in assessing the effectiveness of policies in preventing violence against children. This could be attributed to the fact that the prevalence of the different forms of violence against children were mostly estimates. Nonetheless, there were several notable landmark studies such as those on corporal punishment, children in conflict with the law, children in detention, and children in armed conflict.

Identification of areas of controversy in reports

The facts and figures relating to VAWC differed according to source. Some analyses of trends, whether the figures show an increase or decrease in the prevalence of violence, had conflicting conclusions. However, it should be noted that the studies all qualified their findings as mainly coming from reports or surveys, and should not be regarded as ultimate truths in this area of research. Reports many times failed to factor in unreported cases, which may significantly alter findings and trends altogether.

Some recommended areas for data collection and further research

<table>
<thead>
<tr>
<th>Area</th>
<th>Research recommendations</th>
</tr>
</thead>
</table>
| Prevalence of abuse and discrimination of women and children migrants | • Update on the findings of a government survey on the prevalence of violence against women in 2008  
• Prevalence of economic abuse of women  
• Prevalence of marital rape  
• Prevalence of violence against women and children in detention  
• Prevalence of acts of lasciviousness and specific forms of rape  
• Prevalence of photo or video voyeurism  
• Prevalence of traditional practices harmful to the health of women  
• Prevalence of bullying and neglect or negligent treatment of children  
• Prevalence of violence against children in the street situation  
• Prevalence of violence based on gender and sexual orientation against lesbian, gay, bisexual, transgender, and inter-sex persons  
• More researches on the violence against indigenous women and children, those in rural areas, and Muslim women and children  
• More researches on violence against women and children affected by armed conflict  
• More researches on violence against women and children affected by natural disasters  
• More researches on violence against children in homes  
• More researches on violence against children in streets  
• More researches on profiling of perpetrators of violence |
| De Jure state responses | • Assessment of the deterrence effect of the law against photo or video voyeurism, and prosecution and conviction of violators  
• Research on a standard monitoring and documentation system for intimate partner violence against women and children for all government agencies at all levels, police, public hospitals and the judiciary  
• Analysis of laws, policies and jurisprudence on consent vis-à-vis sexual intercourse and rape  
• Analysis of the effectiveness of protection and rehabilitation programs  
• Review of the Protection Orders, including different aspects of implementation thereof, under the VAWC Law  
• Review of rape convictions vis-à-vis evidence required therefor |
| Role of non-state actors | • More researches on the role of non-state actors |
| Progress indicators and challenges | • Development of gender-indicators related to violence against women and children for use in programs  
• Researches on progress other than through the use of statistics on VAWC as indicators  
• Challenges: reasons for the prevalence of violence against women despite a high gender equality rating and model legislation |

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349 Ibid, 15.

351 Ibid,
C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

i. In General

In its Concluding Observations, the CEDAW Committee noted with concern that, “trafficking in women and girls and the exploitation of prostitution continue to thrive in the Philippines, owing to the poverty of women and girls.” The Committee against Torture also expressed concern about the Philippines as a “source, transit and destination country for cross-border trafficking of women and children for sexual exploitation and forced labour.”

Data on the exploitation of women and children were captured together with the DSWD statistics of people served.

ii. Trafficking

Traffic of Women

Government and non-governmental organizations estimate that 300,000 to 400,000 women are trafficked annually. The Philippines was previously under the human trafficking blacklist and watch list of the Trafficking in Persons Report of the U.S. Department of State. In this year’s report, the U.S. department said that the Government of the Philippines does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.

The Philippines is a source country and, to a much lesser extent, a destination and transit country for men, women, and children subjected to sex trafficking and forced labour. A significant number of Filipino men and women who migrate abroad for work are subsequently subjected to conditions of involuntary servitude worldwide. Men, women, and children are subjected to conditions of forced labour in factories, at construction sites, on fishing vessels, on agricultural plantations, and as domestic workers in Asia and increasingly throughout the Middle East. A significant number of Filipino women working in domestic service in foreign countries also face rape, physical violence, and sexual abuse. Skilled Filipino migrant workers, such as engineers and nurses, are also subjected to conditions of forced labour abroad. Women were subjected to sex trafficking in countries such as Malaysia, Singapore, Hong Kong, Republic of Korea, and Japan and in various Middle Eastern countries.

Trafficking of men, women, and children within the country also remains a significant problem in the Philippines. People are trafficked from rural areas to urban centres including Manila, Cebu, the city of Angeles, and increasingly cities in Mindanao, as well as within other urban areas. Men are subjected to forced labour and debt bondage in the agriculture, fishing, and maritime industries. Women and children were trafficked within the country for forced labour as domestic workers and small-scale factory workers, for forced begging, and for exploitation in the commercial sex industry. Hundreds of victims are subjected to forced prostitution each day in well-known and highly visible business establishments that cater to both domestic and foreign demand for commercial sex acts. Filipino migrant workers, both domestically and abroad, who became trafficking victims were often subject to violence, threats, inhumane living conditions, non-payment of salaries, and withholding of travel and identity documents.

The report added that, for example, from January to March 2012, the government repatriated 514 Filipina domestic workers from Syria; over 90% were identified as trafficking victims who had suffered physical, psychological, and verbal abuse from employers in Syria.

From 2003 to 2010, the Inter-Agency Council Against Trafficking (IACAT) received some 976 complaints of trafficking. Some 356 cases were filed in courts for violation of the anti-trafficking law or other penal laws. In 2010, 84 cases were referred to the NBI's Anti-Human

Francis Tom F. Temprosa
Trafficking Division for prosecution.\textsuperscript{358} Since 2005, there have been 73 convictions (88 persons convicted) for trafficking and related offenses.\textsuperscript{359} Many of the trafficking survivors were women. De Dios, Dungo and Herrera of the Miriam College-Women and Gender Institute presented a comprehensive scenario of trafficking in the CARAGA region, including awareness of trafficking incidence in the community, places where trafficking happens, identified perpetrators, frequency, causes, and a feminist and rights-based analysis of causes, among others.\textsuperscript{360}

**Trafficking of Children**

Government and non-governmental organizations estimate that 60,000 to 100,000 children are trafficked annually.\textsuperscript{361} The U.S. Department of State report has established that, indeed, children were also subjects of trafficking in the Philippines. The Human Rights Documentation System (HRDS) of the Philippines confirmed that more than 40% of the survivors of trafficking and prostitution were minors. The youngest person recorded in the system was a 10-year-old girl.\textsuperscript{362}

UNICEF reported that children were also trafficked into major cities in the Philippines from rural areas, and into neighbouring countries of the Philippines in Southeast Asia, particularly Malaysia. They were mostly trafficked into the sex industry.\textsuperscript{363} A survey in 2006 found that six out of 10 children arriving in the Port of Manila from the provinces had “suspicious” answers as to destination and purpose of travel in Metro Manila. About 66% had no work contract upon arrival, and 60% said their fares going to Manila were to be deducted from their salaries.

Also, around 20% were unable to speak Filipino, the national language in the Philippines.\textsuperscript{364}

In 2007, ILO’s *Child trafficking in the Philippines: A situational analysis* said that the extent of child trafficking in the country is not known. Official figures were unavailable, though it was known that 54% of the survivors are 15-17 years old. ILO stated that the 2001 Survey on Children threw light on the possible number of those who were trafficked as paid employees or unpaid family workers—a total of 147,000 (54.7%) working children who lived away from home were engaged in permanent jobs or businesses.\textsuperscript{365}

iii. Forced Prostitution and Other Forms of Sexual Exploitation

Around 60,000 to 100,000 children are involved in the sex industry in the Philippines.\textsuperscript{366} ECPAT International ranked the Philippines as fourth in the world in terms of countries with the highest number of prostituted children.\textsuperscript{367} In 2006 and 2007, the HRDS said, at that time, that the most popular destinations for sexual exploitation of women from the Philippines were Saudi Arabia, Syria, Taiwan, China and the United Arab Emirates. Women were mainly trafficked for prostitution into Cyprus, Hong Kong, China, South Korea, Malaysia and Singapore.\textsuperscript{368}

The Committee on the Rights of the Child noted the special vulnerability of children in the street situation in the Philippines (about 250,000 in number) to sexual and economic exploitation. There was a lack of systematic and comprehensive strategy to address their situation. The round-ups of children in the streets of Manila further concerned the Committee.\textsuperscript{369}

\textsuperscript{358} See, “Updates on Anti-Trafficking Efforts,” Presentation by the Inter-Agency Council Against Trafficking in 2011.


\textsuperscript{360} Aurora de Dios, Nanette Dungo and Miraluna Herrera, *Violence Against Women is Not Inevitable: A Comprehensive Study on Gender-Based Violence in CARAGA Region*.


\textsuperscript{364} Jean Enriquez, *Documenting Cases of Violence Against Women, Particularly Trafficking and Prostitution*.

\textsuperscript{365} International Labour Organization, *Child trafficking in the Philippines: A situational analysis*, 38.


\textsuperscript{368} Jean Enriquez, *Documenting Cases of Violence Against Women, Particularly Trafficking and Prostitution*.

\textsuperscript{369} Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Philippines* (CRC/C/PHL/CO/3-4, 2 October 2009), para. 74.
iv. Forced Labour, Involuntary Servitude and Slavery, including Child Labour

Preliminary results of the 2011 Survey on Children in the Philippines revealed that of the 29 million Filipino children, aged 5 to 17, there were roughly about 5.5 million working children. Almost 3 million of them were in hazardous child labour.370 Previously, the 2001 Survey on Children of the National Statistics Office estimated some 24.9 million working children then aged 5-17, about 4 million are engaged in some form of economic activity.371 The CRC has expressed deep concern over the "high number of child workers between the age of five and 14 in the Philippines" and said many of these children work in hazardous or dangerous conditions and are exposed to various forms of sexual and economic exploitation, including the worst forms of child labour."372

The HRDS of the Philippines said that the most popular destinations for slavery-like conditions of domestic work of trafficked women were Saudi Arabia, Syria, Taiwan, China and the United Arab Emirates.373 A recent survey by the International Textile Garment and Leather Workers’ Federation confirmed the existence of sweatshops in the Philippines, Indonesia and Sri Lanka. Factories in the three countries that were surveyed did not pay the daily minimum wage. In the Philippines, almost one-fourth of workers said that they did not receive additional pay for their overtime and typical working hours were way beyond the maximum prescribed by law.374

In the context of migration, the U.S. State Department report on trafficking noted that a “significant number” of Filipino men and women were subjected to conditions of involuntary servitude. (See section on migration for an expounded discussion.)

v. Other Forms of Exploitation Such as Sale of Children, and Removal of Organs

There is a dearth of statistics on the prevalence of other kinds of exploitation such as sale of children and removal of organs. It is notable however that news reports were written about the large number of foreigners who had regularly visited the Philippines “where poorer Filipinos were willing to sell a kidney for as little as $2,000.” Former Department of Health Secretary Cabral estimated that up to 800 kidneys were being sold annually to foreigners before the organ sale ban was implemented in the Philippines.375 The ban on sale of organs was implemented in 2009.376 Although not as prevalent in top countries where removal of organs happen as identified in reports (Kosovo, Mozambique, Israel/ Palestine, India, Pakistan, Egypt, China and Moldova, ranked in inverse according to prevalence), illegal organ harvesting also happened in the Philippines due to poverty and high profits on organ brokering.377

vi. Some Special Issues related to Exploitation and The Literature on Exploitation

Exploitation of Women and Children who are Indigenous, in Rural Areas, Muslim and Internally Displaced

Arquiza and Santander’s Women and Conflict: Trafficking in Internally Displaced People Camps in Mindanao aimed to document cases of human trafficking among internally displaced women in conflict areas in Central Mindanao, particularly in Cotabato, Maguindanao and Lanao del Norte.378 The report alleged that sporadic information were received by agencies, pointing to trafficking of...
women, mostly girl children, who were in displacement camps; but there was no comprehensive monitoring of these incidents.379

**Disaggregation of Data according to age, Gender and Diversity, and Profiling of Survivors and Perpetrators**

Not much of the information on the prevalence of exploitation was disaggregated according to age, gender and diversity of the survivors. To reiterate, the Committee against Torture lamented the “absence of comprehensive and disaggregated data” on trafficking.380

The ILO study gave an insight into the literature on the general profile of trafficked children and their families,381 and the general profile of traffickers, which may be categorized into three types: those who operate through organized international trafficking networks, through local trafficking rings, or on selected occasions only.382 It also formulated a Child Trafficking Vulnerability Assessment Model wherein regression analysis on the supply of trafficked children was employed.383 A rapid assessment of the child trafficking situation in 9 selected areas in the Philippines validated the findings of the vulnerability assessment model.384

**Means/patterns Employed by Persons Committing and Facilitating Exploitation**

379 Ibid.
382 Ibid, 50-52.
383 Ibid, 81. According to study’s Executive Summary, as the empirical results suggested, the individual and household profile of children living away from home closely mimicked those of actual survivors of child trafficking. Girls made up majority of trafficked children. This supply was tied to the demand for female-dominated occupations and a bias for women in the trafficking trade for sexual exploitation. Household-level determinants were well-documented; e.g., parental education and occupation, household resources, and the number of children are correlated with child trafficking. Most came from families with five or more siblings. The region of origin was also a significant predictor, and it was the lower middle income class (4th class) municipality that was most vulnerable to child trafficking rather than the poorest municipalities as one would have expected.
384 Ibid, Executive Summary. The areas were Quezon City, Pasay City, City of Manila, Camarines Norte, Northern Samar, Iloilo City, Cebu City, Davao City, and Zamboanga del Sur.

The National Police Commission of the Philippines identified the means or patterns employed by people committing or facilitating trafficking and exploitation in or from the Philippines. According to Leones and Caparas, except for those trafficked into South Korea, there were no specific patterns of routes observed. Those trafficked into South Korea often passed through Thailand or Hong Kong before arriving in South Korea. People without documentation were easily trafficked using the “southern backdoor” of the Philippines, i.e., through the often unguarded maritime borders between the small islands of Mindanao and Malaysia. Trafficked people themselves employed the services of human smugglers who often recruited people through false hopes and promises. These people exited the country via small boats and then transferred to larger vessels. Use of false travel documents was commonplace.385

However, as for children, ILO in 2007 cited an earlier study confirming that children from the Philippines were brought to Japan, Costa Rica, USA, Malaysia, Australia, New Zealand, Taiwan, Europe, Middle East, and the Northern Mariana Islands.386 Human rights abuses were committed against trafficked women and children. Aside from deception, as almost all have been deceived with respect to actual work as opposed to what they had been promised, they experienced varied degrees and forms of exploitation in all phases from recruitment to employment in the destination country. More severe forms of exploitation happened in the destination country, sometimes even prior to departure and during transit. Most were promised to become “entertainers”. However, they ended up becoming sexually exploited and forced to work as strippers, night-club/or karaoke hostesses and commercial sex workers.387

Sex trafficking and health care in Metro Manila: Identifying social determinants to inform an effective health system response explained some of the modus operandi of traffickers who often lured women and girl children from home communities to Metro Manila, either through large networks or on solo operations.  

Sectors or Enterprises where Incidences are Particularly High

Reports indicated significant numbers of Filipino economic migrants who were subjected to conditions of involuntary servitude (such as forced labour in factories and construction sites and forced domestic work) in Asia and increasingly throughout the Middle East. These were the sectors or enterprises where incidences of exploitation were particularly high.

Comprehensiveness of data available, consideration of different kinds of exploitation in reports, and issues of underreporting

An analysis of available literature shows that there was not one comprehensive report on exploitation of women and children, including all its forms, in the Philippines. Various reports considered one or more form of exploitation independently from others. Although there were attempts to reconcile information for a more inclusive presentation of the over-all situation, this trend in the literature could be because of pragmatic considerations owing to the enormity of the issues and the varying forms of exploitation.

This was evident in the 2009 report of the Government to the Committee on the Rights of the Child, where recent studies and researches related to the sale of children, children in prostitution and pornography were listed and reviewed. Risk and Protective Factors Related to Child Pornography and Possible Advocacy Strategies against Pornographic Victimization (2007) looked into children's and parents' awareness of the issues of child pornography, behaviours, and attitudes related to child pornography and other related variables. An Investigative Study on Child Pornography in the Philippines (2007) provided an overview of the modus operandi used by perpetrators of child pornography in the Philippines, but with focus on the cases reported to the PNP in some major cities. A Situational Analysis of the Effects of Tourism on Children in Boracay (2005) had the following objectives: to understand the current nature, magnitude and trends of the commercial sexual exploitation of children (CSEC), factors for its proliferation; identify on-going responses and interventions by government and non-government organizations; and recommend possible action plans for the prevention and elimination of CSEC in the island.

Child Pornography in the Philippines brought together information on child pornography and assessed the situation on this problem. One of the contents of the book was an illustration of how advanced technologies contributed to the spread of child pornography. Discussion centred on pornographic websites, email and electronic newsgroup systems, instant messaging, webcam technology and cybersex. The role of internet service providers and video pirates in the problem was highlighted.

Similar to the literature on violence, as seen above, data available were mostly based on reports to authorities or non-governmental organizations. Unreported cases remained unaccounted for. The Permanent Mission of the Republic of the Philippines to the United Nations confirmed in a statement that the number of cases should be higher than as reported. This was because of the highly clandestine nature of exploitation. Banzon added that most survivors were lured by various modus operandi (some constitute exploitation itself) such as mail-order brides, false adoptions, fake movie offers, au pair systems, and camouflaged donation of body organs.


391 Ibid.


393 "Philippine Statement By Marie Yvette Banzon, Third Secretary, Permanent Mission of the Philippines to the UN on DPI/NGO Panel discussion 'The Persistence of Slavery: A Focus on Human Trafficking Presentation', 59th United Nations General Assembly, New York, 4 November 2004," Permanent Mission of the Republic of the Phil-

Francis Tom F. Temprosa
b. Root Causes of Exploitation and Aggravating Practices

**Definition of Exploitation**

Exploitation itself is not defined in Philippine law although it is punished, along with its many forms, under different penal statutes. In a non-exhaustive manner, the table below lists the forms of exploitation dealt with by law. The definition of trafficking in the Philippine legal framework is intertwined with exploitation, forced labour or involuntary servitude, and harvesting of organs.

Table 24: Some of the forms of exploitation defined under Philippine law

<table>
<thead>
<tr>
<th>Form of Exploitation</th>
<th>Definition</th>
</tr>
</thead>
</table>
| Trafficking                                 | The recruitment, transportation, transfer or harbouring, 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 labour or services, slavery, servitude or the removal or sale of organs. Among children, their recruitment, transportation, transfer or receipt for exploitation is also considered trafficking in persons although it does not involve any of the means enumerated in the preceding paragraph.  

**Identification of Root Causes**

The CEDAW Committee identified poverty as the root cause of the prevalence of exploitation of women and girls in Philippine society. Literature on exploitation in the Philippines used case studies and interviews as the chief research methods in identifying the root causes of exploitation. In a review of internal trafficking in children with a focus on the worst forms of child labour, Sta. Maria, Zantua and Chiongsom said that much of the previous research and discussions on trafficking as a phenomenon in the Philippines have concentrated on women. Poverty was seen as a major push factor in trafficking. It was the main reason why children were forced to work and why they must work, abandoning school in the process. The findings of Sta. Maria, et al, were based on interviews with trafficked children, case studies representing different modes of trafficking, and a review of previous research and studies.

**Identification of Aggravating Factors**

i. Exploitation in General, including Trafficking

The Committee on the Rights of the Child expressed concern about the “existing risk factors contributing to trafficking activities”, such as persistent poverty, temporary overseas migration, growing sex tourism, impunity and weak law enforcement in the Philippines. Meanwhile, Vilches explained that, “[t]he pejorative expectations that Filipino society has on women and children are compounded by problems of extreme poverty; massive labour export; globalization; porous borders; aggressive tourism campaigns; negative portrayal of women by mass media; pornography on-line and internet chat-rooms; the practice of mail-order brides; inter-country adoption; and joint military exercises in the country with visiting

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399 Ibid.
400 Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Philippines (CRC/C/PHL/CO/3-4, 2 October 2009), para. 78.

Francis Tom F. Temprosa
forces from abroad. These factors cause women to become easy victims of sex-trafficking and other forms of sexual exploitation either in the Philippines or in countries of destination.”

Sex trafficking and health care in Metro Manila provided insight into the risk factors of sex trafficking at multiple levels of the social environment: individual (e.g., childhood abuse), socio-cultural (e.g., gender inequality and a “culture of migration”), and macro (e.g., profound poverty caused, inter alia, by environmental degradation disrupting traditional forms of labour). The results contained key determinants for sex trafficking. In Metro Manila and surrounding communities, the study yielded a total of 24 individual and group interviews with 51 key informants who included physicians, lawyers, and government officials to social service providers and anti-trafficking advocates at international and community-based nongovernmental organizations.

ILO said that in Southeast Asia in general, including the Philippines, economic considerations, social and cultural factors, and political and geo-political factors contributed to child trafficking. Very few researchers approached child trafficking from the push and pull theory. One that did so was a 2003 paper by Asia ACTS Against Child Trafficking.

ii. Prostitution

The government’s Special Committee for the Protection of Children considered poverty as not the only factor that has pushed children to prostitution because “not all poverty-stricken children end up in prostitution.” Unstable family relationships (some parents have forced their children into prostitution) and peer pressure were also responsible for pushing them to work in the sex industry.

iii. Child Labour

Various studies cited the following as conditions contributing to child labour: (a) poverty-stricken families tend to depend on child work to augment family income; (b) children unable to go to school or dropping out from school due to their parents’ incapacity to support their education find themselves engaged in child labour, (c) dysfunctional households and abusive parents push children to leave home and fend for themselves and are likely to end up in the worst forms of child labour. At the meso and macro analysis, the level of economic development and existing social infrastructure had an inverse relationship with the incidence of child labour.

c. Impact of Exploitation

Physical Impact

The Government said that trafficked children were “exposed to all kinds of abuse and exploitation” and treated like commodities by people who exploit them. This may have included exposure to illnesses such as sexually transmitted infections and HIV/AIDS. ILO validates this and other physical consequences on children. Children in prostitution were also subjected “numerous physical and sexual abuse, are likely exposed to drug and alcohol abuse, and are vulnerable to sexually transmitted diseases including HIV/AIDS.” There were reported cases of children in prostitution who were photographed for use in pornographic materials.

Ong and Rivera conducted a prevalence study on Trichomonas vaginalis infection among female commercial sex workers who attended the Reproductive

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403 Ibid, 136.


405 Ibid, 55.


408 Ibid.


Health and Wellness Center of Angeles City, Pampanga in the Central Luzon region of the Philippines. The overall prevalence in 377 women was 9.55%. Most women subjects were 23-27 years old but the largest proportion of positive cases was found among subjects 18-22 years old (12.84%). They cited several earlier important studies, including one in 2003 which described gonorrhoea as the most common infection among child sex workers, with an incidence of 18.6% among survivors in one survey area. Another cited study in Angeles City showed that a large number of women working in the “entertainment industry” were at considerable risk of sexually transmitted infections. The study said that the high baseline rates of both gonorrhoea and chlamydia for all groups surveyed (from 22% for guest relations officers to 51% for brothel-based sex workers) confirmed findings from previous studies.

The study *Sex trafficking and health care in Metro Manila* revealed that survivors of sex trafficking “reportedly suffer from a number of health-related problems.” Furthermore, according to the report, “[u]nwanted pregnancies and subsequent medical complications resulting from forced and often unsafe abortions were described by a number of respondents.” Although some key informants believed that survivors were vulnerable to and there was a high prevalence of sexually-transmitted infections among them in Metro Manila, documentation of the health status of trafficking survivors remained severely limited and this claim could not thus be verified.

**Psychological and Social Impact**

The Government noted that trafficked children were “powerless to seek help or avail of needed services” as they suffered a multiple violation of rights including separation from their families and communities. This could also be viewed as a contributing factor to societal breakdown.

De Castro, Balanon, Camacho, et al., presented the experiences of academics and child-rights practitioners on a program for abused and exploited children. Most other reports were often based on personal anecdotes of survivors, shrouded with anonymity, relating experiences related to their abuse and the aftermath trauma.

The change in the values and beliefs of communities of origin of trafficked children was a very significant observation of ILO. Trafficked children became “models” upon return. Returnees were said to be able to show improved economic standing in the community, and therefore, changed the perspective of communities toward them.

2. De Jure State Responses

a. Bases of State Responsibility

i. International and Regional Treaties

The general regime of treaty law on human rights which the Philippines has adhered to applies with equal force for the protection of women and children against exploitation. As seen in section B.2.a.(i), foremost among the treaties are the CEDAW and the CRC. In a non-exhaustive manner, commitments relating to anti-exploitation efforts, particularly anti-trafficking, are presented here.

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Table 25: Other Multilateral Treaties Directly or Indirectly Relating to Exploitation

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Date of Accession or Signature or Ratification</th>
<th>Reservations and/or Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation or the Prostitution of Others</td>
<td>20 December 1950 (S) 19 September 1952 (R)</td>
<td></td>
</tr>
<tr>
<td>1951 Convention Relating to the Status of Refugees</td>
<td>22 July 1981 (A)</td>
<td></td>
</tr>
<tr>
<td>1954 Convention relating to the Status of Stateless Persons</td>
<td>22 June 1955 (S) 22 September 2011 (R)</td>
<td></td>
</tr>
<tr>
<td>United Nations Convention Against Corruption</td>
<td>9 December 2003 (S) 8 November 2006 (R)</td>
<td>Note that the Philippines does not consider this treaty as a legal basis for extradition.</td>
</tr>
<tr>
<td>ASEAN Multilateral Legal Assistance Treaty on Criminal Matters</td>
<td>Document is dated Nov. 29, 2004</td>
<td></td>
</tr>
</tbody>
</table>

In addition to the above, the Philippines is also a State party to the following relevant conventions: (1) Slavery Convention; (2) Protocol amending the Slavery Convention; and (3) ILO Convention (No. 105) concerning the Abolition of Forced Labour.

It is noteworthy that, within the regional context, the Philippines participates in the proceedings and processes of the Senior Officials Meeting on Transnational Crime (SOMTC) within the ASEAN framework. SOMTC formalized a working group on trafficking in persons which has been tasked, inter alia, to monitor the implementation of a work plan related to the ASEAN Declaration on Trafficking in Persons, especially Women and Children. The Philippines established a specialist counter-trafficking response unit and cooperated with six other ASEAN Member States in the Asia Regional Trafficking in Persons Project. Moreover, the Philippines is involved in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, which is an intergovernmental regional consultative mechanism on people smuggling that has a cross-regional character and more than 50 participating countries. The Process Steering Group of the Bali Process includes the International Organization for Migration and the United Nations High Commissioner for Refugees. A key objective of the process is the development and strengthening of practical cooperation between regional operational agencies working in areas such as law enforcement and border control in the fight against human trafficking. The Bali Process also engages at the level of foreign ministers for information sharing and to combat trafficking and related transnational crime.

The Philippines also joined other states in condemning organ trafficking in the Declaration of Istanbul or the Declaration on Organ Trafficking and Transplant Tourism. Philippine representatives were part of the international summit in Turkey in 2008. After the conference, a general ban on organ donation to foreigners was implemented. Save for a few exceptions, Department

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419 Association of Southeast Asian Nations (Asia Regional Trafficking in Persons Project), ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, (Jakarta: ASEAN, AusAID, United Nations Office on Drugs and Crime and Cardno Emerging Markets (Australia), 2010), 179.

420 Office of the High Commissioner for Human Rights, Summary of Regional and Sub-Regional Structures and Initiatives to Counter Trafficking in Persons (Based on submissions received from regional mechanisms in response to questionnaire of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, the Special Rapporteur’s 2010 Report to the Human Rights Council and more recent submissions), (Geneva: Office of the High Commissioner for Human Rights, December 2010), 9.

421 Ibid, 21.

422 The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, Participants in the International Summit on Transplant Tourism and Organ Trafficking convened by The Transplantation Society and International Society of Nephrology, Istanbul, Turkey, 30 April - 2 May 2008.
of Health Administrative Order 2010-0018\(^{423}\) ensured at the policy level that donations were both altruistic and voluntary. The Government also expressed adherence to the WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation.\(^{424}\)

ii. Bilateral Treaties

<table>
<thead>
<tr>
<th>Bilateral Treaty Partners(^{425})</th>
<th>Mutual Legal Assistance Treaties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Australia</td>
</tr>
<tr>
<td>PR China</td>
<td>China</td>
</tr>
<tr>
<td>Hong Kong SAR</td>
<td>Hong Kong SAR</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Switzerland</td>
</tr>
<tr>
<td>United States of America</td>
<td>United States of America</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Extradition Treaties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
</tr>
<tr>
<td>Canada</td>
</tr>
<tr>
<td>PR China</td>
</tr>
<tr>
<td>Hong Kong SAR</td>
</tr>
<tr>
<td>Indonesia</td>
</tr>
<tr>
<td>Korea</td>
</tr>
<tr>
<td>Switzerland</td>
</tr>
<tr>
<td>Thailand</td>
</tr>
<tr>
<td>United States of America</td>
</tr>
</tbody>
</table>

iii. Recommendations on the Commitments and Declarations/Reservations

Reports cited the different obligations of the Philippines for the protection of women\(^{426}\) and children\(^{427}\) against exploitation. While the Philippines has ratified the main international conventions related to the trafficking, ECPAT recommended that, “it must properly report on and comply with the recommendations of the governing bodies” of the different conventions.\(^{428}\)

The ASEAN Handbook on International Legal Cooperation in Trafficking in Persons noted that several States in the ASEAN region have negotiated and concluded bilateral extradition treaties with a limited range of States. The longstanding treaty between Indonesia and the Philippines was cited as an example of such a treaty. It covers the extradition of those who are being proceeded against, or who have been charged with, found guilty or convicted of a range of crimes, including several that are relevant to exploitation: rape, indecent assault, unlawful sexual acts with or upon minors, abduction, kidnapping, illegal or arbitrary detention, slavery, servitude, forgery, and perjury.\(^{429}\) Since however the Philippines and Indonesia are both State Parties to the UNCAC, UNTOC and the UN Trafficking Protocol, the treaty is “deemed to extend to” offenses established in accordance with those three treaties.\(^{430}\) Thus, trafficking is now an extraditable offense. According to the handbook, remaining gaps “can only be closed” in the region once all Member States are party to the major multilateral crime conventions.\(^{431}\)

b. National Policies on Exploitation

State policies against exploitation in the Philippines are found in the Constitution, various related legislation, and administrative rules. The policies quoted below may be in addition to policies against violence in general (see B.2.b.), which may include exploitation within its scope and application in the Philippine context. Such policies, as previously enumerated, are not included below. None of the literature reviewed cited the policies according to the objectives of prevention and response, including protection and cure.


\(^{424}\) The revised official guiding principles were contained in EB123/5 noted by the Executive Board of the World Health Organization at its 123\(^{rd}\) session on 26 May 2008, with a requested modification.

\(^{425}\) Association of Southeast Asian Nations (Asia Regional Trafficking in Persons Project), ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, 178-180.


\(^{427}\) Save the Children UK, Philippine Laws related to the Discipline and Punishment of Children, 5-18.


\(^{429}\) Extradition Treaty between the Republic of the Philippines and the Republic of Indonesia, Philippines-Indonesia, 10 February 1976.

\(^{430}\) Association of Southeast Asian Nations (Asia Regional Trafficking in Persons Project), ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, 111.

\(^{431}\) Ibid.
Table 27: Violence against women: National Policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policies related to prevention</td>
<td></td>
</tr>
<tr>
<td>No person shall be imprisoned for debt or non-payment of a poll tax.432</td>
<td>Philippine Constitution</td>
</tr>
<tr>
<td>No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.433</td>
<td>Philippine Constitution</td>
</tr>
<tr>
<td>Penalization of different acts of trafficking in persons,435 acts that promote trafficking,436 use of trafficked persons,437 and qualifying certain acts.438</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>Penalization and incorporation of violence related to exploitation as violence against women.439</td>
<td>Magna Carta of Women</td>
</tr>
<tr>
<td>Penalization of the practice of matching Filipino women for marriage to foreign nationals on a mail order basis and other similar practices440</td>
<td>Anti-Mail Order Bride Law</td>
</tr>
<tr>
<td>The State values the dignity and privacy of every human person and guarantees full respect for human rights. Toward this end, the State shall penalize acts that would destroy the honour, dignity and integrity of a person.441</td>
<td>Anti-Photo and Video Voyeurism Act of 2009</td>
</tr>
<tr>
<td>The State affirms labour as a primary social economic force. It shall protect the rights of workers and promote their welfare.446</td>
<td>Philippine Constitution</td>
</tr>
<tr>
<td>Right to be free from involuntary servitude in any form444</td>
<td>Civil Code of the Philippines</td>
</tr>
<tr>
<td>&quot;The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.&quot;445</td>
<td>Labor Code of the Philippines</td>
</tr>
<tr>
<td>Penalization of immoral doctrines, obscene publications and exhibitions and indecent shows; vagrants and prostitutes; abuses against chastity; slavery; services rendered under compulsion in payment of debt; threats; coercions; seduction; white slave trade.</td>
<td>Revised Penal Code of the Philippines (Act No. 3815)</td>
</tr>
<tr>
<td>Policies related to response, including protection and cure</td>
<td></td>
</tr>
<tr>
<td>The State affirms labour as a primary social economic force. It shall protect the rights of workers and promote their welfare.446</td>
<td>Philippine Constitution</td>
</tr>
<tr>
<td>The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.447</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>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.448</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>Policy</td>
<td>Source</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>&quot;At any stage of the investigation, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the trafficked person and the accused. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public. In cases when prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or information technology to cause publicity of any case of trafficking in persons.&quot;449 (Confidentiality)</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>&quot;Any person who has personal knowledge of the commission of any offense under this Act, the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking&quot;450 (Prosecution)</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>Establishing preventive, protective and rehabilitative programs by different agencies.451</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>&quot;Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.&quot;452</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>Preferential entitlement of trafficked persons under the Witness Protection Program of government453</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>Prescribing mandatory services for trafficked persons to ensure recovery, rehabilitation and reintegration into the mainstream of society454</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>Other services for trafficked persons to be provided as well455</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
</tr>
<tr>
<td>&quot;It is the policy of the State to ensure and guarantee the enjoyment of the people of a decent standard of living. Towards this end, the State shall take measures to protect Filipino women from being exploited in utter disregard of human dignity in their pursuit of economic upliftment.&quot;456</td>
<td>Anti-Mail Order Bride Law</td>
</tr>
<tr>
<td>&quot;It is imperative that the Philippine government takes positive actions to help fight the human trafficking problem to protect and safeguard the status of our legitimate Filipino entertainers&quot;457</td>
<td>Executive Order No. 406</td>
</tr>
<tr>
<td>&quot;The State shall afford protection to labour; promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers.&quot;458</td>
<td>Labor Code of the Philippines</td>
</tr>
<tr>
<td>Extradition upon compliance with certain requirements prescribed by laws and regulations459</td>
<td>Presidential Decree No. 1069 (Philippine Extradition Law)</td>
</tr>
<tr>
<td>Policies specific to the prevention of exploitation of children</td>
<td></td>
</tr>
<tr>
<td>Penalization of child trafficking460 and attempt to commit child trafficking461</td>
<td>Child Abuse Law</td>
</tr>
<tr>
<td>Penalization of exploitation of child labour; corruption of minors</td>
<td>Revised Penal Code of the Philippines (Act No. 3815)</td>
</tr>
</tbody>
</table>
c. Assessment of State Policies

i. In general

There were some good reviews on the policies of the Philippines and its efforts to fight exploitation, particularly trafficking. Most notable was the U.S. Department of State report. The CEDAW Committee appreciated the passage of the Anti-Trafficking in Persons Act of 2003. However, it noted with concern that trafficking in women and girls...
and the exploitation of prostitution continued to thrive in the Philippines, owing to the poverty of women and girls. It also said it was concerned about the low rates of prosecution and conviction of traffickers and those who exploit the prostitution of women.465

The CRC noted the adoption of a law in the Philippines, i.e., the Anti-Trafficking in Persons Act of 2003, which instituted policies to eliminate trafficking in persons, especially women and children, established institutional mechanisms for the protection of and support of trafficked persons, provided penalties for traffickers, and prohibited the recruitment, transport or adoption of a child to engage in armed activities in the Philippines or abroad.466

Penalization of Trafficking within and Outside the Country, and Quasi-universal Jurisdiction

Since the penal laws of the Philippines are essentially territorial in nature, it should be pointed out that acts of trafficking executed beyond its territory—though involving its citizens—are not punishable under its laws. However, this does not deter government from providing services for the prevention of or response to trafficking. The ASEAN Handbook on International Legal Cooperation in Trafficking in Persons took note that, given the international commitments of the Philippines, trafficking has become an extraditable offense in certain cases.467 Nonetheless, Cullen of PREDA Foundation has called for an expansion of jurisdiction of courts in regard to trafficking cases. He reasoned out that it would allow the apprehension and conviction of traffickers found in the Philippines where some openly participate in sex trade.468

Comprehensiveness of the acts punished

The Philippine legal framework punishes a variety of acts which are considered exploitation. The definition of trafficking is comprehensive and incorporates elements of the definition under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. In compliance with the Palermo Protocol, when involving children survivors, the use of threat, force or the like, is not a pre-requisite to be considered trafficking.469

Table 28: Definition of Trafficking: A Comparison

<table>
<thead>
<tr>
<th>Definition of Trafficking: A Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under the Anti-Trafficking in Persons Act of 2003 [Sec. 3(a)]</td>
</tr>
<tr>
<td>The recruitment, transportation, transfer or harbouring, 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 labour or services, slavery, servitude or the removal or sale of organs. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall also be considered as &quot;trafficking in persons&quot; even if it does not involve any of the means set forth in the preceding paragraph.470</td>
</tr>
</tbody>
</table>

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466 Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Philippines (CRC/C/15/Add.259, 21 September 2005), para. 3.
467 Association of Southeast Asian Nations (Asia Regional Trafficking in Persons Project), ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, 111.
469 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 3(a).
470 Ibid.
471 Definition as contained in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplemeniting the United Nations Convention Against Transnational Organized Crime.

Francis Tom F. Temprosa
### Table 29: Some of the Different Acts considered as Exploitation

<table>
<thead>
<tr>
<th>Act</th>
<th>Definition under Philippine law</th>
<th>Aggravating circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual exploitation</td>
<td>Participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim's vulnerability. 472</td>
<td>The penalty may be higher if the act would be considered as a qualified act of trafficking. 473</td>
</tr>
</tbody>
</table>
| Prostitution                     | Any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration. 474  
|                                 | Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. 475 (Child Prostitution and Other Sexual Abuse) | The penalty may be higher if the act would be considered as a qualified act of trafficking. 476  
|                                 |                                                                                                                                                                                                                                                        | There are circumstances which may warrant a higher penalty such as if the offended party is below 12 years of age, and when a person profited from the sexual abuse of the child. 477  
|                                 | Note that attempt to commit child prostitution and other sexual abuse is punished. 478                                                                                                                                                                      | Note that attempt to commit child prostitution and other sexual abuse is punished. 478                                                                                                                                                                      |
| Forced labour or services, or Slavery | Extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception. 479 (Forced Labour and Slavery)  
|                                 | Anyone who shall purchase, sell, kidnap or detain a human being for the purpose of enslaving him. 480 (Slavery)                                                                                                                                               | The penalty may be higher if the act would be considered as a qualified act of trafficking. 481  
|                                 |                                                                                                                                                                                                                                                        | Aggravating circumstances under the Revised Penal Code, which is the general penal law, applies. Penalty shall also be imposed in its maximum period if the act has the purpose of "assigning the offended party to some immoral traffic." 482  |
| Debt bondage                     | Pledging by the debtor of his/her personal services or labour or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt. 483  
|                                 | Any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm labourer. 484 (Services rendered under compulsion in payment of debt)  | The penalty may be higher if the act would be considered as a qualified act of trafficking. 485  
|                                 |                                                                                                                                                                                                                                                        | Aggravating circumstances under the Revised Penal Code, which is the general penal law, applies.                                                                                                                                                                        |
| Removal or sale of organs        | Not defined under the law but punished as trafficking.                                                                                                                                                                                              | The penalty may be higher if the act would be considered as a qualified act of trafficking. 486                                                                                                                                                                                                 |

472 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 3(f).
473 Ibid, Sec. 6.
474 Ibid, Sec. 3(c).
475 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 5.
476 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 6.
477 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 5 (b).
478 Ibid, Sec. 6.
479 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 3(d).
480 Act No. 3815 or Revised Penal Code of the Philippines, 1930, Article 272.
481 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 6.
482 Act No. 3815 or Revised Penal Code of the Philippines, 1930, Article 272.
483 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 3(g).
484 Act No. 3815 or Revised Penal Code of the Philippines, 1930, Article 274.
485 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 6.
486 Ibid.
Children below fifteen (15) years of age shall not be employed except:

1. When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed: Provided, however, That his/her employment neither endangers his/her life, safety, health, and morals, nor impairs his/her normal development: Provided, further, That the parent or legal guardian shall provide the said child with the prescribed primary and/or secondary education; or

2. Where a child’s employment or participation in public entertainment or information through cinema, theatre, radio, television or other forms of media is essential: Provided, That the employment contract is concluded by the child’s parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: Provided, further, That the following requirements in all instances are strictly complied with: (a) The employer shall ensure the protection, health, safety, morals and normal development of the child; (b) The employer shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and (c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

In the above-exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements.

For purposes of this Article, the term 'child' shall apply to all persons under eighteen (18) years of age.”

There are circumstances which shall warrant a higher penalty for the offense, such as when offender had been previously convicted under this law, offender commits the crime as an officer or employee of a juridical entity, relationship to offended party, and when the offender is a public officer or employee.

### Additional Notes:

487 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 12.

488 Ibid, Sec. 12 (D).

489 Act No. 3815 or Revised Penal Code of the Philippines, 1930, Article 273.

490 Ibid, Art. 278.

491 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 31.
**Protection Measures**

According to an assessment of the UN Office on Drugs and Crimes (UNODC), laws establishing specific coordination mechanisms to assist survivors could be found in the Philippines. There are provisions in law on protection measures, including mandatory services to all survivors of trafficking such as emergency shelter or appropriate housing, counselling, free legal services, medical or psychological services, livelihood and skills training, and educational assistance to a trafficked child. The right of the trafficked child to assistance is recognized.

UNODC also specifically mentioned that there were mechanisms to assist exploited children. Indeed, the law on child abuse calls for a comprehensive program to be formulated by the Department of Justice and DSWD. This program is now being rolled out.

The law on trafficking has a provision of “other services” for trafficked Filipinos abroad. Legal assistance may be provided to them; services available to overseas Filipinos may be extended to them; and Philippine embassies shall provide protection to trafficked persons under the “country team approach” or leadership of the concerned ambassador.

**Exploitation of Domestic Workers**

Flores-Oebanda, in a paper presented during an expert group meeting on violence, noted the importance of bringing domestic work under the purview of existing labour legislation or to introduce specific laws for the protection of adult domestic workers, and the prevention of underage worker recruitment. The state of the law right now in the Philippines is that domestic workers, the vast majority of whom are women and girls, are not given the same protections as other workers under labour laws.

It was reported in 2006 that child domestic workers were predominantly (90%) girls. According to Flores-Oebanda, “[m]any child domestics are found in very exploitative, slave-like conditions. These children are highly isolated, due to their invisibility behind closed doors and the failure of existing regulatory mechanisms to protect them.” The special vulnerabilities of girl-child domestic workers were presented using cases studies. She said that there was a strong concern that domestic workers were prone to HIV/AIDS, but few studies have been made in this regard.

Traffic flowed into Forced Labor: Selected Case Studies of Domestic Workers in the Philippines presented several cases of exploitation experienced by domestic workers. Abuse, prolonged hours of work, non-payment of required social welfare insurance for workers, *inter alia*, were documented.

An ILO study on domestic workers estimated their number from 600,000 to 2.5 million in the country. A labour force survey suggested that about 1.5 million household helpers working in private households in the country contribute to 13.73% of the total wage employment in the private sector. Visayan Forum estimated that there were at least 2.5 million people who were domestic workers, and 1 million of them were children.

The following measures were recommended to address the exploitation of domestic workers: (1) Intensify international support for the passage of national laws

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493 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 23.


495 Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law), 1992, Section 4.

496 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 24.


500 Ibid, 3.


502 Ibid, 6.
such as the ‘batas kasambahay’ or domestic workers’ bill in the Philippines; (2) Address trafficking dimensions in domestic work; (3) Implement educational strategies that take into account the unique situation of child domestic labourers; (4) Expand protective services for domestic workers, especially those at risk and those already trapped in exploitation; and (5) Integrate the recommendations of child domestic workers into policy and practice.503

ii. On exploitation of women

Penalization of Prostitution

 Philippine law penalizes prostitution. Vagrants, riffians, and pimps are punished regardless of gender. Prostitutes, defined under Revised Penal Code, are women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.508 Thus, only women could be penalized for prostitution.

The Department of Foreign Affairs (DFA) recently reported the attempted submission of spurious birth certificates by some passport applicants who were abetted by placement agencies. The agencies were in the business of facilitating permits for “exploited” Filipino workers in Sabah.505 The Blas F. Ople Policy Center called on the DFA to conduct an impartial probe into the sale and proliferation of fake documents for Filipinos applying for passports in Sabah.506 A U.S. State Department report in 2009 cited the “growing trend” on the use of budget airline carriers to transport victims out of the country while traffickers use fake travel documents, falsified permits, and altered birth certificates.507

Regulation of Proper Documentation at Birth by Law and Trafficking

The relationship between trafficking and lack of proper documentation is known, but no specific report tackled this in great detail. According to the Williams, et al, in their study of sex trafficking in Metro Manila, survivors were “frequently moved through seaports or international airports, passing through security checkpoints with forged or stolen birth certificates or ostensibly legal documents.”504 This is an area where empirical research could be very helpful in developing adequate policy responses.

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Groups have lobbied for a change in law. The Coalition against Trafficking of Women-Asia Pacific said women survivors have testified “on how law enforcers arrest, ask sexual favours, money or cell phones from the women arrested (in lieu) of jail time.”509 The Philippine Legislators’ Committee on Population and Development Foundation identified amending the law as policy recommendation inasmuch as women in prostitution were “victims of abuse and in most instances are forced into prostitution.” Men who engage women in sex work and people who profit from prostitution may not necessarily be punished.510 Saligan advocated for the passage of a bill providing that women exploited in prostitution should never be treated as criminals; instead, they should be treated as victim-survivors of sexual exploitation.511


508 Act No. 3815 or Revised Penal Code of the Philippines, 1930, Article 202.


Health and Safety Standards and Equal Rights and Conditions of Employment for Women

Keitel and Ledesma laid down the framework for the protection of the health and safety standards for women workers, including equal rights and conditions. Much of the legal environment promotes the welfare of women workers in the same manner that it does for men. It is noteworthy that there are no laws for the protection or regulation of women commercial sex workers as prostitution is expressly outlawed.

At the dawn of the 20th century, the ILO initiated Convention 89 prohibiting night work for women due to harsh working conditions. This was echoed in the Labor Code of the Philippines. Recently, the Philippines passed a law repealing the Labor Code provision and allowing women to work during night time.

Institutionalized Exploitation

A study on the rights of non-regular workers in the Philippines cited Article 135 of the Labor Code of the Philippines as one of the statutory provisions which can be used by both regular and non-regular workers to protect their interests. Article 135 made it unlawful for any employer to discriminate against a woman employee solely on account of her sex.

The UN Food and Agriculture Organization (FAO), in a series of studies on Gender and the Law: Women’s Rights in Agriculture, quoted Article 3 of the Code which provides that the State should ensure equal work opportunities regardless of sex. In addition, Article 136 of the Code declares it unlawful for an employer “to require as a condition of employment or continuation of the Code declares it unlawful for an employer “to require as a condition of employment or continuation of employment and training.

However, in its analysis, FAO remarked that “gender labour differentiation” remained. Women were concentrated in “feminine” occupations. As for agriculture, while men were considered farmers or farm heads, women were usually referred to as farm workers. Gender pay gaps also remained—a considerable number of female agricultural workers (about 50%) were unpaid in a 2000 study. Agriculture was thus a particularly difficult sector; institutional discrimination in other sectors such as service, manufacturing and industry, was considerably less acute.

The expansion of the anti-discrimination provisions under the Code has been advocated by several groups. In 2006, the government said that in response to the Economic, Social and Cultural Rights Committee’s recommendation for Government to address the discriminatory practices relating to male preference in hiring of employees, “various bills were filed before Congress to increase women’s access to training in employment and prohibit discriminatory practices, such as the giving of preference to men in the posting of employment notices.”


513 Ibid, 3.

514 Republic Act No. 10151 or An Act Allowing The Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as the Labor Code of the Philippines, 2010.


517 Ibid, 105.

518 Ibid.


Battad described Philippine commitments towards gender equality in relation to work conditions and some of the policies found in law. With the influence of the CEDAW on substantive equality, gender equality legislation affecting workers in the last decade brought “beneficial effect in terms of achieving equal opportunities” and fair treatment between women and men.” According to him, “[t]he legislative gains are too significant to be ignored; they are milestones in the promotion of gender equality and non-discrimination, particularly in the workplace.” However, responses had pitfalls such as in the design of social services and arrangements which equalize family responsibilities between women and men or help combine home and family responsibilities—either reinforcing discriminatory gender stereotypes or lead to the inequality of results and benefits.

In a regional congress on labour and social security law, several papers on the situation of Filipino women in industries were presented. Trasporte and Pura in Gender Sensitive Employment Relations: An Analysis of Philippine Labor Laws and HR Policies for Women Workers surveyed 15 companies on the implementation of laws dealing with women. Approximately 60% of the Labor Code provisions for working women were not incorporated in human resource policies. Except for provisions on facilities for women and maternity leave benefits, all other provisions were not contained in company policy manuals. About 90% of respondents in human resources departments lacked awareness of some labour laws, especially those for solo parents; about 80% had no plans to adopt the laws in their policies nor have plans to create a special incentives or projects for women employees within the next two years.

iii. On Exploitation of Children

Children in prostitution and pornography

In 2009, the government submitted a comprehensive report to the CRC as regards its implementation of the Optional Protocol related to the sale of children, prostitution and pornography. Information on the prohibition of child pornography and prostitution in local laws were shared, including penal and criminal procedures, protection of the rights of survivors, prevention efforts, international assistance and cooperation, and other legal provisions.

Despite the national policies above and efforts to curb prostitution of children, the Committee on the Rights of the Child was concerned about the vulnerability of a number of groups of children who are vulnerable to commercial sexual exploitation, including: children in the street situation; children involved in “prosti-tuition” or earning for tuition; “call girls / boys” or those who engaged in seasonal prostitution to address emergency needs; and “entertainers” or young overseas Filipino women who are prostituted.

According to Trinidad in Child Pornography in the Philippines, the problem of child pornography in the country is complex and requires concerted efforts of different agencies to solve it. Numerous interrelated issues affect it, and it is often a form of exploitation that relates to others. In assessing state policies or laws on child pornography, Trinidad pointed out gaps in the law and weaknesses in the enforcement of existing laws that protect children.

Use, Procuring or Offering of a Child for Ilicit Activities

There are state policies against the use, procurement and offering of a child for illicit activities. Use of a child for illicit activities generally warrants the imposition of a higher penalty than that ordinarily prescribed by law. Based on literature gathered in this baseline review, this social phenomenon was rarely examined in reports.

522 Ibid, 137.
525 Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Philippines (CRC/C/PHL/CO/3-4, 2 October 2009), para. 76.
527 Ibid, 134-149.
**Trafficking of Drugs in Cebu City: A Rapid Assessment** in 2002 found money as the main motivation for engaging in the drug trade, and income was primarily spent on the daily requirements of the family of the child. Other push factors were dependency on drugs, peer influence and family and sibling’s involvement in the drug trade. Most children involved in the drug trade were drug users themselves—almost half were frequent users. More than three-fourths of the respondents had peers who were involved in the trade; about one-third had parents and siblings who were involved in the drug trade.\(^{528}\)

Based on other reports, ocular inspection and results from the interview guide, Lepiten estimated that there were about 1,300 children engaged in the drug trade in Cebu City,\(^{529}\) most starting between the ages of 14 and 16; some as early as 12 years old.\(^{530}\) The author concluded that, “[c]hildren were preferred by drug leaders to carry out tasks in drug trading and trafficking because they were obedient and were not easily detected. Because of their minority status, they cannot be arrested and if imprisoned, they can easily be released.”\(^{531}\)

Work which, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children

A couple of reports focused on hazardous work as one of the worst forms of child labour. *Measuring hazardous work and identifying risk factors for non-fatal injuries among children working in Philippine agriculture* reviewed injury data on hazardous work. It estimated that 23.8% of all economically active children suffered an injury during one year (a total of 882,440 workplace injuries). Night work, heavy work and exposure to physical hazards each increased workplace injury by 40 per cent. It found that children in agriculture had “a five times greater risk of non-fatal injury in comparison with children working in other industries and that the use of tools in the workplace was the risk factor most often responsible for the injury.”\(^{532}\) A related publication confirmed the incidents in agriculture and the need for more protection of children in this sector.\(^{533}\)

As to the effects of hazardous work on children, ILO cited a series of small studies observing that child scavengers’ learning ability progressively deteriorated with the amount of time working on the garbage dump. One probable cause was exposure to polychlorinated biphenyls, lead or myriad other toxins that were released by the burning of refuse.\(^{534}\)

**Exploitation in Adoption and Children in the Street Situation**

The CRC welcomed a law that authorized DSWD to certify that a child is legally available for adoption. It, however, expressed concern of information that “due to the cost of adoption proceedings, many resort to ‘simulation of birth’ or the fraudulent registration of birth carried out by non-biological parents to avoid the adoption process.”\(^{535}\) The committee was also concerned that, despite an existing regulatory law, there is a lack of information on the framework and conditions for inter-country adoptions as well as disaggregated data on the receiving countries and the gender and age of children adopted.\(^{536}\)

It likewise noted “the lack of a systematic and comprehensive strategy to address the situation and protect children living in the streets.” Furthermore, the Committee was concerned about health risks faced by children in the street situation, including environmental

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529 Ibid, 75.

530 Ibid, 76.

531 Ibid.


536 Ibid.
health risks, such as toxic and hazardous wastes and air pollution. Various news articles reported arrests and detentions of children in the street situation.537

It is also noteworthy that there is no specific law that deals with children in the street situation in the Philippines. An earlier study noted that 75,000 of the 2.5 million children in Manila were living on streets after having run away from home or being abandoned. About 20,000 of children in the street situation were involved in sex work; hence, they also suffered from the risks faced by people in prostitution and must be protected.538

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

i. Description of State Implementing and Monitoring Mechanisms

The Philippines implements and monitors its laws, programs and policies against exploitation of women and children through the general mechanism related to violence against women (see previous discussion). However, specific to trafficking and related forms of exploitation as defined under the law, the Inter-Agency Council Against Trafficking (IACAT) is the lead coordinating and monitoring body in government.

<table>
<thead>
<tr>
<th>Table 30: Powers and Functions of the Inter-Agency Council Against Trafficking</th>
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</thead>
<tbody>
<tr>
<td><strong>Powers and Functions of the Inter-Agency Council Against Trafficking</strong></td>
</tr>
<tr>
<td>• Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;</td>
</tr>
<tr>
<td>• Promulgate rules and regulations as may be necessary for the effective implementation of the Anti-Trafficking in Persons Act;</td>
</tr>
<tr>
<td>• Monitor and oversee the strict implementation of said Act;</td>
</tr>
<tr>
<td>• Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;</td>
</tr>
<tr>
<td>• Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the local government units, concerned agencies, and non-governmental organizations;</td>
</tr>
<tr>
<td>• Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;</td>
</tr>
<tr>
<td>• Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of said Act;</td>
</tr>
<tr>
<td>• Formulate a program for the reintegration of trafficked persons in cooperation with the Department of Labor and Employment, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education, local government units and non-governmental organizations;</td>
</tr>
<tr>
<td>• Secure from any department, bureau, office, agency, or instrumentality of the government or from non-governmental organizations and other civic organizations such assistance as may be needed to effectively implement said Act;</td>
</tr>
<tr>
<td>• Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the &quot;Migrant Workers and Overseas Filipinos Act of 1995&quot; with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;</td>
</tr>
<tr>
<td>• Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;</td>
</tr>
<tr>
<td>• Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;</td>
</tr>
<tr>
<td>• Coordinate with the Department of Transportation and Communications, Department of Trade and Industry, and other NGOs in monitoring the promotion of advertisement of trafficking in the Internet;</td>
</tr>
<tr>
<td>• Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;</td>
</tr>
<tr>
<td>• Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and</td>
</tr>
<tr>
<td>• Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of said Act.</td>
</tr>
</tbody>
</table>


539 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 21.

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In women’s and children’s affairs, the Council for the Welfare of Children and the Philippine Commission on Women play a central role since the body of law on violence against women and children incorporates exploitation as a concern and mandates these agencies to function. Local government units are always involved, as well as the Commission on Human Rights of the Philippines.

Table 31: Composition of the Inter-Agency Council Against Trafficking

<table>
<thead>
<tr>
<th>Composition of the Inter-Agency Council Against Trafficking</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Secretary of the Department of Justice, Chairperson</td>
</tr>
<tr>
<td>• Secretary of the Department of Social Welfare and Development, Co-Chairperson</td>
</tr>
<tr>
<td>• Secretary of the Department of Foreign Affairs, Member</td>
</tr>
<tr>
<td>• Secretary of the Department of Labor and Employment, Member</td>
</tr>
<tr>
<td>• Administrator of the Philippine Overseas Employment Administration, Member</td>
</tr>
<tr>
<td>• Commissioner of the Bureau of Immigration, Member</td>
</tr>
<tr>
<td>• Director-General of the Philippine National Police, Member</td>
</tr>
<tr>
<td>• Chairperson of the National Commission on the Role of Filipino Women (now Philippine Commission on Women or PCW), Member</td>
</tr>
<tr>
<td>• Three representatives from non-governmental organizations, who shall be composed of one representative each from among the sectors representing women, overseas Filipino workers and children, with a proven record of involvement in the prevention and suppression of trafficking in persons (to be appointed by the President of the Philippines upon nomination by the government agency representatives of the Council, each for a term of three years), Members</td>
</tr>
</tbody>
</table>

Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region listed the following agencies as involved in the State response to trafficking: Philippine Women and Children Protection Center, Philippine National Police and the Anti-Human Trafficking Division of the NBI.541

DSWD is operationally involved in the provision of welfare services. The Philippine National Police and/or the NBI provide surveillance and engage in rescue operations. Civil society, non-governmental organizations, and international organizations also participate in several stages of implementation and monitoring. Overseas, survivors of trafficking are provided with assistance and support by embassies and other Foreign Service posts of the Philippines under the “Country-team Approach.” The approach refers to a mode under which Philippine embassies or their personnel would operate in the protection and the promotion of the welfare of Filipino migrant workers, and the approach meant that this should be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service.542 All officers, representatives and personnel of the Philippine government posted abroad, regardless of their mother agencies, act as one country team with a mission under the leadership of the ambassador in a particular country.543

IACAT prepared and adopted a National Strategic Action Plan Against Trafficking in Persons (2004-2010).544 In 2006, the IACAT further concretized the items in the plan through the development of a document with more details on what activities the council planned to undertake to address trafficking.545 It would be of prime importance to review and evaluate the accomplishments of the IACAT vis-à-vis its former strategic action plan. A National Strategic Action Plan Against Trafficking in Persons (2011-2016) is being developed, which will serve as blueprint for all actions of government and non-governmental organizations involved in anti-trafficking efforts.546

540 Ibid, Sec. 20.
541 Association of Southeast Asian Nations (Asia Regional Trafficking in Persons Project), Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region, (Jakarta: ASEAN, AusAID and Cardno Emerging Markets (Australia), 2011), 34.
543 Ibid, para. 91.
544 Inter-Agency Council Against Trafficking, Action Plan Against Trafficking In Persons (Manila: Inter-Agency Council Against Trafficking, October 2006).
545 Ibid.
The national report of the Philippine government for the 2nd cycle of the Universal Periodic Review described recent measures to combat trafficking in persons, priority projects in the campaign to fight trafficking in persons, and lead efforts to combat trafficking in persons at the international level.\(^{548}\)

The ILO noted that while IACAT is the primary coordinating body on issues affecting trafficking in persons, a number of offices and bodies were created before and even after the advent of the Anti-Trafficking Law to address transnational crime in general, “which includes trafficking in persons, and other crimes which are necessarily involved in the commission of trafficking in persons like illegal recruitment and passport irregularities.”\(^{549}\)

Additionally, there is an Office of the Undersecretary for Migrant Workers Affairs (UMW) under the DFA which has a Trafficking Desk that handles all concerns regarding human trafficking and serves as the focal and coordinating office within the DFA on these matters.\(^{551}\) Another is the Sub-Committee on Human Trafficking of the National Law Enforcement Coordinating Committee, which meets regularly for sharing data on human trafficking, briefing on actions being done in the prosecution of cases and adopting measures to strengthen coordinated approach.\(^{552}\) There are Local Councils for the Protection of Children that are at the provincial, city, municipal and barangay levels.\(^{553}\)

<table>
<thead>
<tr>
<th>Vision</th>
<th>Objectives</th>
<th>Key Strategic Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>A just, humane, gender-fair and empowered society that protects its people especially women and children from all forms of exploitation, thus enable them to fully exercise their rights, realize their potentials in the development of the country, and experience a happy and peaceful family life.</td>
<td>1. Promote public awareness of trafficking in persons and sustain collective/coordinated advocacy efforts, 2. Coordinate the maximum effective and efficient implementation of the law, 3. Mobilize and forge partnerships and cooperation among different agencies involved in the areas of prevention, protection, prosecution, rehabilitation and reintegration of victims of trafficking, 4. Establish and institutionalize an effective and efficient referral and tracking system of incidents of trafficking through all the stages of intervention, and 5. Institutionalize a central database and a shared information system on trafficking.</td>
<td>KSA 1: Advocacy and Social Mobilization  KSA 2: Capacity-Building  KSA 3: Data Collection and Management  KSA 4: Alliance-Building and Networking  KSA 5: Research, Policy Studies and Documentation  KSA 6: Institutional Mechanism</td>
</tr>
</tbody>
</table>

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\(^{548}\) Government of the Philippines, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines, para. 74.  
\(^{549}\) International Labour Organization, Child trafficking in the Philippines: A situational analysis, 147.  
\(^{550}\) Ibid, 148-151.  
\(^{551}\) Ibid, 145.  
\(^{552}\) Ibid, 146.  
\(^{553}\) Ibid.
ii. Specialized institutions with mandate to oversee the implementation of laws against exploitation

The IACAT is the specialized body mandated by law to oversee the “strict implementation” of the primary law against exploitation.554

iii. Reports that study mechanisms that monitor the implementation and observance of laws related to exploitation

The passage of the Anti-Trafficking Law and the VAWC Law paved the way for the birth of IACAT and IAC-VAWC—for mechanisms that look into issues and concerns related to the implementation of laws. They develop policies, programs, systems, and procedures to “further strengthen” the implementation of the laws.555

The U.S. State Department constantly reports on the implementation and monitoring mechanisms of the Philippines. In 2010, according to the 2011 U.S. report: “IACAT significantly increased staffing to Manila’s Ninoy Aquino International Airport Task Force Against Trafficking in Persons, which now operates 24 hours per day, seven days per week, is led by three senior airport officials, and includes 11 full-time airport police department officers, 10 Department of Justice prosecutors and staff members, and seven social workers from the Department of Social Welfare and Development.” Also, NBI and four regional anti-trafficking task forces augmented personnel capacities to work on trafficking issues. Personnel support and funding were received from IACAT. The council also launched a 24-hour nationwide anti-trafficking hotline to increase its monitoring and response capacities.556

However, the report contained several recommendations on IACAT, inter alia, the continued funding and strengthening of the IACAT, providing full-time staffing and management for the IACAT Secretariat, increasing funding for anti-trafficking programs within IACAT member agencies, and addressing the significant backlog of trafficking cases by developing mechanisms to track and monitor the status of cases filed with the Department of Justice and those under trial in the courts.557

An ILO study in 2007 aimed to also assess the existing institutional arrangements for combating child trafficking vis-à-vis national and international commitments of the Philippines. According to ILO: “As new as R.A. 9208 and the consequent structures are, it is recognized that there are no coherent and comprehensive programs against child trafficking that are brought down to the community level, where they are needed the most.”558

b. Complaints Process

Description of the State’s Complaint Process

Exploitation in general is a public offense in the Philippines. Thus, it is not only the survivor who may initiate a complaint for exploitation. As explained by Vilches, any person with actual knowledge of trafficking may initiate a complaint in the court where the crime was committed or where the survivor resides. The offended party may decide to file a separate action for damages resulting from the act of trafficking. He or she has a period of 10 years within which to commence a criminal complaint. If the trafficking was carried out by a syndicate or when done in large scale, the period to prosecute is 20 years from the time that he or she was released from the conditions of bondage.559 There are special procedures that apply if the survivor is a woman or a child. Such procedures, as discussed in the section on violence, also apply here.

The Criminal Investigation Manual of the Philippine National Police has described their complaints process for trafficking and related offenses punished under the Anti-Trafficking in Persons Act of 2003.

554 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 21(c).
557 Ibid.
558 International Labour Organization, Child trafficking in the Philippines: A situational analysis, Executive Summary.
According to the Philippine National Police, the complaints process described under section b.3.b. for child abuse cases applies also to all cases of exploitation (other than trafficking) which involve children.

The *Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases*, approved and adopted by the IACAT in 2008, outlines the role of the police once a survivor approaches them or once information of a trafficking incident reaches them. It contains a discussion on filing of complaints and the proceedings before a prosecutor. The prosecutor plays a crucial role in either the inquest or preliminary investigation related to trafficking cases.

| Table 34: Exploitation Complaints Process

<table>
<thead>
<tr>
<th>Trafficking and related forms of exploitation, including illegal recruitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Desk Officer (of the Philippine National Police) shall entertain all walk-in complainant/s for Illegal Recruitment and Trafficking cases.</td>
</tr>
<tr>
<td>• The Desk Officer, after a brief interview with the complainant/s, shall record the incident in the Police Blotter and refer them to the duty investigator.</td>
</tr>
<tr>
<td>• The duty investigator shall require the complainant/s to fill up the complaint sheet provided for detailing the nature of their complaint.</td>
</tr>
<tr>
<td>• The duty investigator, after examining the accomplished complaint sheet, shall take the sworn statements of the complainant/s and asked for any receipt or essential documents relative to their complaint.</td>
</tr>
<tr>
<td>• The duty investigator shall request in writing information from POEA whether or not the recruitment agency subject of the complaint is duly licensed. If not licensed, get a certificate to this effect. If registered, get a certified copy of the POEA license.</td>
</tr>
<tr>
<td>• If the recruitment agency is licensed to operate but has certain violations under R.A No-8042, or the person/s subject of the complaints is nowhere to be found, the investigator shall bring the case before the prosecutors’ office for regular filing.</td>
</tr>
<tr>
<td>• However, if not registered, and the employment agency continuously accepts applicants for overseas work and still negotiates with the complainant, the same shall be referred to the nearest CIDG Office for entrapment operations pursuant to EO 759 dated October 23, 2008.</td>
</tr>
<tr>
<td>• In preparation to the entrapment operation, the operatives shall conduct an investigation/surveillance about the subject employment agency to determine the veracity of the complaint, and thereafter prepare a summary of information (SOI) as requirement to PRE-OPERATION CLEARANCE.</td>
</tr>
<tr>
<td>• The investigator shall prepare a request to the PNP Crime Laboratory for Ultra Violet Powder for “Dusting” of marked money to be used in the entrapment operation.</td>
</tr>
<tr>
<td>• The team leader shall coordinate personally with the concerned territorial Police Office within whose jurisdiction the operation will be conducted using the prescribed Coordination Form prior to the launching of the operation.</td>
</tr>
<tr>
<td>• The arresting team must be equipped of camera/video to be used during the actual police operation.</td>
</tr>
<tr>
<td>• Upon arrest of the suspect/s, apprise them of their Constitutional Rights as provided in RA 7438. Subject arrested person/s shall undergo an Ultra Violet Powder Examination and Physical/Medical Examination at the PNP Crime Laboratory.</td>
</tr>
<tr>
<td>• The investigator shall prepare documentation and identification, fingerprinting (booking sheets) and the standard front, side view, whole body and back view photographs of the arrested suspect/s.</td>
</tr>
<tr>
<td>• The officer-on-case shall prepare the letter of transmittal to the prosecutor having jurisdiction over the case. To be attached as annexes are: a) Sworn statement taken, b) Certificate from the POEA, c) Booking sheets /Photographs, d) Affidavit of Arresting Officers, e) Receipts of payment&amp; documents made by applicants, f) Request and Result of Ultra Violet Powder from PNP Crime Laboratory, g) Request and Result of Physical/Medical Examination of the PNP Crime Laboratory, h) Others to be presented later, i) After inquest, bring subjects to jail for temporary confinement until they are turned over to the city jail or local or provincial jails. This should be done immediately.</td>
</tr>
</tbody>
</table>


562 Inter-Agency Council Against Trafficking, *Manual on Law Enforce-

Department of Justice Circular No. 18, series of 2005, requires that the following be observed in the investigation and prosecution stages of trafficking: (1) all cases involving violations of the Anti-trafficking Law shall be given preferential attention, and therefore, should be investigated and resolved within the periods indicated in the Revised Rules of Criminal Procedure; (2) cases shall not be dismissed on the mere account of an Affidavit of Desistance executed by either the victim/s or their parents of legal guardians, especially when there are other evidence to establish probable cause; and (3) no bail shall be recommended for cases involving acts of trafficking and qualified trafficking.

Francis Tom F. Temprosa
Assessment of the State’s Complaint Process

Cruz, et al, in the Social Welfare and Development Journal, conducted an analysis of the issues and constraints to the effective implementation in Oriental Mindoro of the Anti-Trafficking Law. Results showed that, at the community level, “a large number of human trafficking cases have existed mainly due to the lack of knowledge” of the Anti-Trafficking Law. Survivors did not resort to the complaint process mainly due to ignorance of the law and their rights, and the fear of stigmatization as victims of trafficking.564

Cruz, et al, also noted several issues regarding the current justice system that made it difficult for cases to prosper. Among others, slow legal procedures and “forced” settlements (practice of settling the case in exchange for money) were identified.565

A research by the Ateneo Human Rights Center in Zambasulta566 said it was “common” for women and children survivors to either refuse to file charges or desist from pursuing the case after they have filed the complaint. Some law enforcers and social workers who handled trafficking cases also complained about the lack of legal protection against harassment suits filed against them.567

c. Protection and Rehabilitation

Description of the State’s Protection and Rehabilitation Program

The National Strategic Action Plan (2004-2010) of the IACAT contains three components that cut across all key results areas of the plan. The components relate to prevention, protection, and recovery and reintegration, which are briefly described below. To note, each agency which forms part of the IACAT and all local government units were mandated by law to establish and implement some preventive, protective and rehabilitative programs on trafficking.568

Table 35 : Components of the National Strategic Action Plan of IACAT (2004-2010)569

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention</td>
<td>Create increased, awareness, knowledge &amp; commitment by stakeholders to trafficking in persons to facilitate wide support &amp; participation in the implementation of the “Anti-Trafficking in Persons Act of 2003”</td>
</tr>
<tr>
<td>Protection</td>
<td>Create an environment where trafficked persons especially women and children are protected and ensure that institutional mechanisms for their protection are in place and operational</td>
</tr>
<tr>
<td>Recovery and Reintegration</td>
<td>Ensure the recovery and reintegration of trafficked persons especially women and children into their respective families &amp; communities</td>
</tr>
</tbody>
</table>

Table 36: Strategic Activities on Protection and Rehabilitation in the National Strategic Action Plan of IACAT (2004-2010)570

<table>
<thead>
<tr>
<th>Component</th>
<th>Strategic Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection (includes law enforcement and prosecution)</td>
<td>Expanding community protection networks</td>
</tr>
<tr>
<td></td>
<td>Enhancing capacities of frontline workers to address TIP</td>
</tr>
<tr>
<td></td>
<td>Developing manuals and protocols</td>
</tr>
<tr>
<td></td>
<td>Setting-up special units and task forces</td>
</tr>
<tr>
<td></td>
<td>Establishing hotlines and quick response teams</td>
</tr>
<tr>
<td></td>
<td>Strengthening inter-agency coordination</td>
</tr>
<tr>
<td></td>
<td>Institutionalizing child-friendly and gender-sensitive criminal justice system</td>
</tr>
<tr>
<td></td>
<td>Increasing bilateral cooperation with other countries</td>
</tr>
<tr>
<td>Recovery and Reintegration</td>
<td>Developing local programs for recovery and reintegration</td>
</tr>
<tr>
<td></td>
<td>Increasing access to employment opportunities</td>
</tr>
<tr>
<td></td>
<td>Strengthening/expanding halfway houses and shelters</td>
</tr>
<tr>
<td></td>
<td>Preparing families and communities</td>
</tr>
</tbody>
</table>


565 Ibid.

566 Zamboanga, Sulu and Tawi-Tawi in Mindanao


568 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 16.


570 Resolution No. 1 (Series of 2004), Adopting the National Strategic Plan of Action Against Trafficking in Persons (2004-2010), Inter-Agency Council Against Trafficking.

571 This includes the development of memoranda of understanding (e.g., with Kuwait for the protection of Filipinos), creation of a task force to address the issue of trafficking in Japan and continuous consultation with countries with large numbers of Filipinos.
In January 2009, IACAT adopted the *Referral System for the Recovery and Reintegration of Trafficked Persons* that contains guidelines in conformity with the Anti-Trafficking Law and their action plan.572 Elements for the protection and rehabilitation of survivor—such as the provision of some mandatory services, legal assistance, and preference for witness protection—are also in the Anti-Trafficking Law itself.573

**Assessment of the State's Rehabilitation and Protection Program**

The U.S. Department of State report noted DSWD as the most active government agency in the area of protection and rehabilitation of survivors, operating 42 temporary shelters and making referrals to private short- and long-term care facilities. With regard to addressing trafficking outside the Philippines (but involving Filipino citizens), the Department of Labor and Employment and the Philippine Overseas Employment Authority provide emergency shelter, medical care, and legal assistance to trafficked Filipinos. Local non-governmental organizations are active in protecting and rehabilitating survivors.574

However, according to the Joint Civil Society Report for the 2nd cycle of the Universal Periodic Review: “Protection and rehabilitation of rescued women are jeopardized by lack of resources of frontline agencies such as the social welfare department and police and by lack of shelters in provinces, especially in ARMM. These problems persist despite the $550,000 Congress allocation to the Inter-agency Council Against Trafficking (IACAT).”575 Citing the Coalition Against Trafficking in Women - Asia-Pacific, the civil society report said that almost everyday, at least one call for help comes from a trafficked woman arrested and detained, especially in Malaysia. But before they could be repatriated, women suffered months of lack of food, cruel treatment, and delays in processing travel documents “due to corruption in embassies”.576

**d. Prevention Strategy**

**Description of the State’s Prevention Program**

The law entrusted IACAT with the function of formulating a comprehensive and integrated program to prevent and suppress trafficking.577 Accordingly, prevention is a component of the plan of IACAT.

<table>
<thead>
<tr>
<th>Component</th>
<th>Strategic Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention</td>
<td>Developing and disseminating IEC materials</td>
</tr>
<tr>
<td></td>
<td>Initiating and sustaining public information</td>
</tr>
<tr>
<td></td>
<td>Organizing and/or strengthening community networks</td>
</tr>
<tr>
<td></td>
<td>Establishing reporting and referral system</td>
</tr>
<tr>
<td></td>
<td>Document fraud examination acquisition</td>
</tr>
<tr>
<td></td>
<td>Continually conducts pre-departure marriage counselling</td>
</tr>
</tbody>
</table>

As a measure to prevent trafficking, the law also provides that the Department of the Interior and Local Government should institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons.579

**Assessment of the State's Prevention Program**

When analysed, the prevention strategy of the State is mainly anchored on awareness-raising, knowledge-building, and commitment drives against trafficking.580 The source of the money for information campaigns is

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573 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Sections 15, 17-19 and 24-25.


576 Ibid.

577 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 21(a).

578 Resolution No. 1 (Series of 2004), Adopting the National Strategic Plan of Action Against Trafficking in Persons (2004-2010), Inter-Agency Council Against Trafficking.

579 Republic Act No. 9208 or the Anti-Trafficking in Persons Act (Anti-Trafficking Law), 2003, Section 16(i).

580 Under Section 16 of the Anti-Trafficking Law, local government units have been charged to undertake information campaigns against trafficking in coordination with the DILG, Philippine Information Agency, Commission on Filipinos Overseas, non-governmental organizations and other concerned agencies.
the IACAT trust fund. As part of training and public awareness efforts on trafficking, the Philippine Overseas Employment Agency (POEA) conducts pre-deployment seminars for outbound Filipinos. POEA, DOLE and DFA also hold seminars towards this end.

The other main action involves the actual interception of “would-be victims” in ports of call, which is usually done in cooperation with the Regional IACAT, the Sea-Based Anti-Trafficking Task Force and nongovernmental organizations such as the Visayan Forum. IACAT increased its presence in ports through the posting of dedicated personnel and office space. NBI has agents who focus on trafficking cases. However, the U.S. Department of State reports that the national budget to prevent and respond to trafficking cases continues to decline.

According to the Ateneo Human Rights Center: “Aside from problems with convictions, prevention efforts by the government which are directed at people who intend to go abroad to work have had to compete with the reality that there are no employment opportunities in the country.” This was particularly true in conflict-affected areas and insecure locations. Furthermore, since some lacked awareness of the dangers of trafficking (including halaws or deportees), this facilitated irregular movements and trafficking between the borders of Malaysia and the Philippines. Thus, preventive and protective strategies must be reviewed and assessed “in order to be able to lay down the framework for an effective formula in combating human trafficking.”

4. Role of Non-State Actors

a. Assistance to Survivors, Protection and Prevention Programs

As mentioned earlier, the CEDAW Committee and the Committee on the Rights of the Child welcomed the collaboration between the Philippine government and a high number of organizations on efforts against trafficking. Reports of the Department of Justice, Bernabe, and ASIA ACTs, et al. contained some of the contributions of civil society to anti-trafficking efforts; but there is no comprehensive study identifying or detailing all the assistance and protection efforts of non-state actors.

The National Report of the Philippines for the second cycle of the Universal Periodic Review acknowledged this collaboration. For instance, it mentioned that A Memorandum of Agreement among the DILG, Blas Ople Policy Center and Training Institute, Visayan Forum, Association of Child Caring Agencies of the Philippines, and the Philippine Center for Islam and Democracy was signed in 2010 to better coordinate anti-trafficking efforts of government with civil society and private groups. DSWD coordinates with a network of such organizations when cases of trafficking or exploitation require intervention. Business groups and trans-national organizations, as non-state actors, also played some role in anti-trafficking efforts.

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581 See, for example, Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Philippines (CRC/C/15/Add.259, 21 September 2005), para. 28.
586 For example, Visayan Forum is active in surveillance and rescue of trafficked persons. It coordinates with state agencies during interception operations.
587 For example, ECPAT Philippines with Body Shop launched an Anti-Child Trafficking Campaign in 2009.
b. Monitoring and Cooperation

An active civil society is also involved in the monitoring of compliance of the Philippines with its international obligations as regards exploitation and trafficking of women. Numerous shadow reports by non-governmental organizations were shared with the CEDAW and CRC, detailing government response or being critical about it.

A commitment drive was launched by the IACAT and certain non-governmental organizations like the Multi-Sectoral Network Against Trafficking for diverse leaders from different sectors and fields to commit to providing immediate and appropriate response mechanisms and address human trafficking in the areas of prevention, protection, healing and reintegration. The Department of the Interior and Local Government also named certain civil society organizations as allies in its mandate that relates to trafficking.

Collaboration with other non-state Actors in and Beyond the ASEAN Region

Some organizations working on the issue of exploitation formed alliances with other similar actors in Asia and the Pacific. For instance, the Academy for Educational Development has a listing of such groups.

5. Progress Indicators and Challenges

Availability and accessibility of progress reports

Progress reports on trafficking are available and accessible. Most should, however, be more widely circulated to ensure adequate public information.

Effectiveness of policies and measures, and assessment of success indicators

Over the years, the U.S. Department of State report has been measuring the effectiveness of the policies and measures taken by the Philippines on human trafficking. Recent reports noted that some progress had been made.

A region-wide initiative, Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region, measured the progress against human trafficking in the ASEAN region around seven key components of an effective criminal justice response to trafficking: (1) Strong and comprehensive legal frameworks; (2) Specialist investigative capacity to investigate TIP; (3) Front line capacity to identify and respond to TIP; (4) Prosecutorial and judicial capacity with regard to TIP cases; (5) Victim identification, protection and support; (6) Provision of support to victims as witnesses; and (7) International legal cooperation. “Quality standards” for each component were described. The report was drawn from a number of sources. Research strengths and limitations were also presented.

According to the report, a range of trafficking-related offenses are separately and fully criminalized in the Philippines, providing additional or alternative basis for prosecuting trafficking-related crimes. This has been commendable progress. However, there is no legal provision for the extra-territorial application of trafficking offenses. Furthermore, the Philippines does not have and maintain a mutual legal assistance theory with some countries in the ASEAN, particularly Cambodia and Laos.

In ECPAT’s Their Protection is in our Hands: The State of Global Child Trafficking for Sexual Purposes, some 42 countries were surveyed on three key goals, with each goal containing four specific indicators.

598 United States Department of State, Trafficking in Persons Report 2011, 11.
599 Association of Southeast Asian Nations (Asia Regional Trafficking in Persons Project), Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region, 6.
600 Ibid, 3.
601 Ibid, 4.
602 Ibid, 15.
603 Ibid, 17.
604 Ibid, 18.
trafficking of children and young people, ECPAT’s Country Progress Card for the Philippines evaluated the situation of child trafficking vis-à-vis key measures implemented by government to address the problem. Overall, the Philippines was among the 53% of countries which have made some progress to stop sex trafficking of children and young people. Policies and key national legislation to combat trafficking in children were put in place, but the government “must now urgently focus on improving law enforcement, sustaining awareness raising campaigns, and ensuring that all child victims of trafficking have access to appropriate and specialized psychosocial recovery services.”

Data was collected through various sources but mainly focusing on information from ECPAT’s monitoring system. Limitations arose in the process, including non-uniformity in data collection, and similar to the ASEAN project, availability of information and differences in definition of some critical terms.

6. Recommendations for Further Study

Summary of What is and is not Known

Exploitation of women and children was discussed extensively in literature that dealt with trafficking as a phenomenon in the country and the law against trafficking. The Philippine law on trafficking refers to exploitation and penalizes several acts largely considered as exploitation of women and children. Much of the body of literature analysed policies and laws, but there was little on the actual prevalence of specific types of exploitation (e.g., harvesting of body organs, sale of children), especially those which happened not in the context of migration. Mostly, information on human trafficking and other exploitative acts were confined to reported cases. Underreporting is known, yet estimates of their prevalence are rarely given. There was an assessment on the progress to curb child trafficking, using baseline data and indicators; no such similar report on women was found.

According to David, recent literature has focused on collecting data on women and children trafficked for sexual exploitation. Thus, other forms of exploitation largely remained uncovered. Some factors that impact on the capacity of the various agencies and national governments to produce data included a basic lack of resources, challenges of decentralization (where information from the regions is not shared with central agencies), lack of capacity with regard to information systems and information management, lack of clarity and precision in the use of terminology, and gaps in communication and coordination within and across agencies.

Identification of Areas of Controversy in Reports

Similar to the literature on violence against women and children, reports grappled with conflicting figures on the prevalence of exploitation. The definitional framework and monitoring mechanisms—as the Philippines is an archipelago with some personal and group informants present in some islands and not in others—definitely accounted for the difference in statistics cited. While various studies agreed with the results of the U.S. State Department’s assessment of the progress of the Philippines with regard to anti-trafficking efforts, they invariably used different barometers by which to gauge such progress.

Some Recommended Areas for data Collection and Further Research

606 Levels of action were considered as notable (adequate specialized policy or services for child survivors); with some progress (usually, some level of activity to prevent trafficking in persons in general with limited focus on children as a specific target group, or services that are not adequately protecting child survivors); or with low level of progress (inexistent or largely inadequate policy or services for child survivors. ECPAT, Country Progress Card: Philippines (Manila: ECPAT, 2010), 3.

607 Ibid, 6.

608 Ibid, 18.

Table 38: Research Recommendations on Exploitation Against Women and Children

<table>
<thead>
<tr>
<th>Area</th>
<th>Research recommendations</th>
</tr>
</thead>
</table>
| Prevalence of exploitation among women and children | • Focus on the prevalence of exploitation among women and children not in the context of migration  
• Prevalence of certain types of exploitation (other than trafficking) in the country, especially harvesting of organs and sale of women and children  
• National survey on the nature and extent of child labour  
• Disaggregated information on prevalence according to age, gender and diversity  
• Analysis of underreporting of exploitation, including estimates  
• Review of data collection mechanisms and the need to improve them  
• More comprehensive researches on the use of children in illicit activities  
• More comprehensive researches on exploitation in adoption  
• More researches on child/forced marriage and their interplay with culture |
| De jure state responses             | • In the context of cross-border exploitation, study on the policies and laws of other relevant countries and access to justice for survivors before the judicial and quasi-judicial bodies of such countries  
• Analysis of the non-applicability of the principle of quasi-universal jurisdiction in the issue of trafficking and its consequences  
• More researches on institutionalized discrimination against women which relates to exploitation (e.g., only women can be penalized for prostitution under the law)  
• More researches on access to justice of survivors of different forms of exploitation, including success in the prosecution and conviction of perpetrators |
| Progress indicators and challenges | • Progress and challenges in efforts against other forms of exploitation (other than human trafficking) in women and children  
• Specific progress report on trafficking of women  
• Progress in combating child labour  
• Research on cultural and sociological constraints/challenges in curbing exploitation of women and children, including indigenous and Islamic beliefs and practices in some areas |

D. ABUSE AND DISCRIMINATION IN MIGRATION

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration

A Preliminary Note

At the onset of this discussion, a few observations have to be pointed out for a better understanding of the current state of this kind of literature in the Philippine context. First, statistically, the Philippines is an out-migration country. It was considered the largest labour exporting country in Asia. As seen in the introductory table of this report, more or less 10% of the population work and live abroad. This population outflow affected Philippine society as a whole and the literature on migration, which mainly focused on the experiences of overseas Filipinos and not of migrants in the Philippines. Second, the discourse of the literature on exploitation was intertwined with migration-related abuses and discrimination. Much of the literature discussed in the previous sections should thus be considered as integral parts of this review on migration.

i. Prevalence of abuse and discrimination in migration against women

In General

The Migrant Workers Committee (MWC) and the CESCR noted with concern that women were most often employed in gender-specific industries such as care givers, entertainers and domestic workers where they were vulnerable to physical, sexual, and verbal abuse, unpaid/delayed/underpaid wages, and may face inequitable working conditions.

The MWC expressed concern over other issues relating to abuse of Filipino workers abroad. According to the


611 Fiona David, ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons, (Geneva: International Organization for Migration, 2007), 64-66. The country study on the Philippines was written by based on reports researched and written by Vince Acosta Umali, Elma Laguna, Emerson Bañez, Mark Javelosa.


614 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/PHL/CO/1, 22 May 2009), para. 27.
Committee, despite the Philippines’ efforts to protect their rights, abuse and exploitation, especially of women migrants, continued, and were underreported.615 Moreover, large numbers of Filipino workers overstayed their visas and the continuing existence of irregular and undocumented Filipino migrants abroad (mostly women domestic workers) may have made them more vulnerable to abuses.616

The CESCR noted with great concern the situation of overseas Filipino workers (OFWs), especially women, "who often face hardship and humiliation." Significant problems of family disintegration and juvenile delinquency could accompany such massive exploitation of labour, the Committee added.617

The National Statistics Office's Survey on Overseas Filipinos 2009: A Report on the Overseas Filipino Workers estimated the number of OFWs who worked abroad during the period of April to September 2009 at 1.9 million. Although it is to be pointed out that several authors referred to a feminization of labour migration, this report indicates that there were more male OFWs than female OFWs in 2009.618 However, a news report in 2011 stated that, according to records of the Department of Labor and Employment, around 70% of Filipino workers abroad are women.619 Female OFWs were generally younger than male OFWs, with half of the female OFWs belonging to the ages of 25 to 34.620

Government data showed that North America had the largest share of Filipino emigrants at 3,517,352. Meanwhile, the Middle East alone was host to 2,415,896 million Filipinos as of December 2009.621 An important trend in international labour migration in the 1990s was the flow of labour to the growth centres in the neighbouring countries of the Philippines in Asia such as Singapore, Malaysia and Japan. This was confirmed in earlier studies.622

Sayres of the International Labour Organization reported that personal anecdotes, surveys and focus group discussions confirmed “widespread” incidences of abuse in the domestic work sector.623 In 2010, a news report quoted Migrante-Middle East reporting that 7 to 10 OFWs were maltreated or abused everyday on average in the Middle East.624

Asis described the particular vulnerability of women as follows: “Migrant women face particular vulnerabilities. Aside from the usual problems that plague migrants, their jobs in domestic work and entertainment usually mean long working hours, surveillance and control by employers, and abusive conditions, including violence and sexual harassment. Given the ‘private’ context in which they work, the problems encountered by migrant women in these sectors go unnoticed.”625

Based on available literature, there were few available statistics on the abuse or discrimination that Filipinos abroad experience, much less an estimate thereof. IBON Foundation stated that millions were underpaid especially by standards of their host countries and worked in difficult conditions (compared with locals). They had limited basic labour protection and social services as they were non-nationals in the workplace. IBON added that millions of undocumented workers were “worst off with employers brutally exploiting their illegal status and desperation” and tens of thousands of Filipino women were abused in...

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615 Ibid, para. 31.
616 Ibid, para. 39.
621 This “Stock Estimate of Overseas Filipinos” represents harmonized data from the following agencies of government: Department of

Francis Tom F. Temprosa
isolated households and in the sex industry.626

While no accurate information or statistics on the prevalence of abuse committed against Filipino migrants was available, reports indeed showed the connection between migration and violence (including abuse and exploitation). For instance, Arquiza and Santander presented the welfare cases627 of migrant workers from the ARMM.628

**Prevalence According to Whether the State Concerned is the Country of Origin, Transit or Destination**

There were studies on the prevalence of abuse against Filipino migrants abroad in different individual country contexts. A report on the situation of Filipino workers in Saudi Arabia by the Committee on Overseas Workers' Affairs of the House of Representatives of the Philippines showed the following reasons for the distress of overseas Filipino workers (OFWs): maltreatment and verbal abuse (15%), overwork (14%) sexual harassment and rape (4%), contract substitution (5%), court/police cases (4%), unpaid salary (26%) personal/health problems/other (27%), and mother/child repatriation (5%).629 There were also similar but earlier studies on the condition of OFWs in Hong Kong and Singapore.

**ii. Prevalence of abuse and discrimination in migration against children**

**In General**

The CRC expressed concern about “the lack of practical measures to ensure the full enjoyment of the rights recognized” in the Convention on the Rights of the Child by certain categories of children. These included girl children, disabled children, children of mixed marriages, children of overseas workers, working children, and children affected by armed conflicts.630

**Prevalence According to Whether the State Concerned is the Country of Origin, Transit or Destination**

Similar to the literature on women, some studies on the prevalence of abuse against Filipino migrant children were conducted on individual country contexts. A Committee on Overseas Workers' Affairs (COWA) report said that a big emerging problem in Saudi Arabia was the growing numbers of undocumented children born of parents, both or one of whom is/are Filipino. The report estimated the number to be between 2,000 and 3,000 children.631 They were unable to leave Saudi Arabia owing to the absence of an exit visa. Also, they grew up with little or no access to education and other services that citizens or documented residents have rights to, such as access to hospitals and employment.632 If born to illicit relationships, some of the children were taken away by the Saudi government and parental custody was lost.

In a mission by Refugees International to Sabah in Malaysia, children of Filipino descent and children with orang asing in their birth certificates were found to be unable to go to government schools. Many separated and unaccompanied children of Filipino deportees ended up living and working on the street at a very young age, often in fish markets.633 This happened alongside the crackdown against irregular migration to Malaysia and neighbouring countries. DSWD noted incidents of abuse, trafficking and illegal recruitment committed among the deportees.634
Prevalence of Abuse and Discrimination of Children Who Migrate on their Own

This review has not come across literature on abuse or discrimination against children who migrate on their own in the Philippine context. It cannot be denied that migrating children are often accompanied by adults and travel in groups, but some children travel alone.635

iii. Other Issues

Women and Children Affected by Armed Conflict and Internal Displacement

Arquiza and Santander’s Women and Conflict stated that illegal recruitment of persons became pervasive in areas where there were large concentrations of people for a longer period of time, such as displacement camps or evacuation centres in Mindanao. Dense “human foliage” covered its tracks from authorities.636 It investigated a subject long suspected but relatively unexplored in literature.637

Means/patterns employed by persons committing and facilitating abuse of migrant women and children, and the human rights violations committed on them

The literature on migration deals with the means and patterns of abuse or discrimination and recorded human rights violations against women and children migrants. Life Histories of Filipino Deportees from Malaysia: Changes in the Dimension of Life attempted to capture the life experiences of men, women and children deportees from Malaysia.638 This dissertation stated that, while in Malaysia, Filipino deportees experienced human rights violations, inter alia, the destruction of dwellings and demolition of homes; exclusion from social and health services on the basis of the inability to present legal papers; and bar from registration at birth and education of children born in Malaysia of undocumented parents.639

Furthermore, while in detention centres, men, women and children experienced torture in many forms—mauling, beating, exposure to the sun the whole day, being kicked forcefully—and verbal abuse. Threats and brutality like caning occurred as well.640

In Halaw: The Travails of Filipino Deportees from Malaysia, Cabaraban and Fernandez claimed that, “through the years, as many as claimed as many as 400,000” undocumented Filipinos in Malaysia have been in prison camps in Sabah and Sarawak or have been in hiding.641 They wrote that human rights violations and violations of sexual and reproductive rights were committed against deportees. These inter alia included maltreatment; physical abuse and torture; deprivation of water and food; non-registration of children of undocumented parents, their lack of access to education and forced separation from parents; child labour; exploitation; sexual harassment; and limited or lack of access to education and health services by irregular Filipino migrants.642

Hilsdon’s Migration and Human Rights: The Case of Filipino Muslim Women in Sabah, Malaysia depicted Filipino Muslim women in Sabah as experiencing physical, economic, and social violence. It added that those who did not have formal citizenship faced reduced mobility and access to state services. Working conditions cannot be contested as well. As a result, structural poverty which drew them from the Philippines was re-imposed in Malaysia. In addition, it noted that, in the transnational context, they were subjected to cultural conventions such as clothing restrictions, societal attitude towards family planning, and forced marriage.643

Disaggregation of Data According to Age, Gender and Diversity;Profiling of Survivors and Perpetrators

While there was no disaggregation of the overall data on the prevalence of abuse in the migratory context, some studies attempted to somehow disaggregate information according to various categories of age and sex. The

635 International Labour Organization, Child trafficking in the Philippines: A situational analysis, 52.
636 Arquiza and Santander, Women and Conflict, 47.
637 Arquiza and Santander, Women and Conflict, iii.
638 Bagain Alyssa A. Acmad-Abdkurim, “Life Histories of Filipino Deportees from Malaysia: Changes in the Dimension of Life” (Doctoral dissertation, Xavier University-Ateneo de Cagayan (XU), March 2010), 44.
639 Ibid, 131.
640 Ibid, 132.
642 Ibid, 96.
following excerpt from the study of Acmad-Abdulkarim is an example:

The accounts of the deportees indicated differential treatment at the detention centre between males and females. Women and children were not spared of police brutality due to violation of house rules in jail, however, men especially those who violated detention policies (quarrelling and smoking) were meted with harsher punishment than women. Men were handcuffed while the women and children were not when they are outside of the detention cell. The male deportees were also handcuffed upon arrest to the police station and when being transported from the detention children to the boat at the Sandakan port. Men were detained separately from women and children.

Looking back at the life experiences while in detention, men deportees experienced longer (74 days) incarceration than the female (66 days).644

A differentiation between the experiences of men and women is also found in the book of Cabaraban and Fernandez.645

Comprehensiveness of Data Available and Issues of Underreporting

Several government agencies (e.g., Commission on Filipinos Overseas, National Statistics Office and Philippine Overseas Employment Administration) collected and produced data related to emigration from the Philippines. Nonetheless, some reports discussed that other than the total count of overseas Filipinos, basic demographic details such as distribution by gender or age were not available and, oftentimes, when data was compared with data on the Filipino population in host countries, the data did not match. Hence, a report concluded that “inconsistencies, overlaps and gaps” still existed. Foremost was information on return migration.646 The actual number of irregular workers from the Philippines was also difficult to track and ascertain because of the very nature of irregular migration.647

Also, in the course of this review, there was no comprehensive information on the incidents of abuse and discrimination experienced by migrants from and in the Philippines. According to the MWC, in spite of efforts to protect the rights of women OFWs, abuse and exploitation continued, and these cases remained underreported.648

Connection between Migration and Violence, Abuse, and Exploitation because of the Increased Vulnerability of Migrants

In We Are Your Children, Too, the Development Action for Women Network (DAWN) presented Japanese-Filipino children (JFC) as “products of migration.”649 The book featured the visual autobiographies of some JFC, their stories, several issues with regard to rights, and a glimpse into theatre as art therapy for them. DAWN wrote that there was no actual count as to the number of JFC residing in the Philippines although some estimated their number from 100,000 to 200,000. DAWN added that several studies were conducted on the situation of Filipino women entertainers in Japan, and lately, the studies extended to their children.650

Cabaraban and Fernandez said that Filipino migrants in Malaysia, in general, became vulnerable to exploitation and discrimination when they have irregular migration status. Women workers experienced sexual harassment, which occurred mostly at workplaces such as karaoke bars, restaurants, and bakeries.651

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648 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/PHL/CO/1, 22 May 2009), para. 31.
650 Ibid.
b. Root Causes of Violence and Aggravating Practices

Definition of Abuse and Discrimination in the Context of Migration

The legal and policy framework of the Philippines does not especially define abuse or discrimination in the context of migration. All the concepts related to abuse and discrimination, as discussed in other sections of this review, thus find application to the situation of migrants as the laws and policies of the Philippines do not them differentiate in situations of migration.

Identification of Root Causes

The House of Representatives of the Philippines, in its report on Saudi Arabia, said that abuse can be encouraged by the fact that a segment of the Filipino labour force was not covered or protected by the law of the destination country. A similar article seemed to have confirmed this observation as it opines that it is “one thing to have a job but another thing how to be treated on that job.”

Taiwan, Saudi Arabia, United Arab Emirates, Qatar and Kuwait do not cover domestic workers, caregivers and stay-in caretakers under their laws on labour standards. As reason for abuses against an increasingly feminized migrant force from the Philippines, Sana and Abano gave the non-recognition of domestic work as an occupation. Hence, domestic workers were not covered by the labour and social laws of many countries.

Identification of Aggravating Factors

Several cultural attitudes and practices were considered as aggravating an underlying cause of abuse or discrimination. According to the COWA report on Saudi Arabia: “The strict sexual segregation, one member of the House team speculated, must create tremendous pent-up sexual pressure, so when the opportunity for sexual satisfaction appears, it explodes. Another said that the sexual abuse of domestics was an extension of the strict subordination to males and institutionalized repression of Saudi women.”

A report said that as a country with the highest number of women working overseas (about 500,000 leave the country each year as economic migrants), “migration-related violence” has become an important issue. The vulnerabilities women suffered were compounded in a setting where they were seen as temporary workers in occupations socially considered as “inferior” for nationals. The “numerous cases of abuse” of domestic helpers in the Middle East and Asia reflected this, and where there were no mechanism and infrastructure for relief and assistance to victims, they were “simply left to suffer their fate.”

The European External Action Service referred to the illegal practices of both authorized and unauthorized recruitment agencies (over 1,000 licensed agencies for land-based workers and 300 for seafarers) which put migrants and their families in “very vulnerable situations” amidst a culture of large-scale emigration where Filipinos have become “used to” mobility. Studies showed that more than 30% of the population was considering leaving another country.

In an earlier article published in the Harvard Women’s Law Review, Gatmaytan provided the following as root causes for violence against Filipina domestic workers abroad: (a) failure to investigate and address domestic violence adequately; (b) devaluation of female labour in the third world; (c) gender division in the Philippines; and (d) an aggregate effect of the sexual and international divisions of labour together with the other factors above. Other contributing factors could

655 House of Representatives of the Philippines Committee on Overseas Workers’ Affairs, Report on the Situation of Filipino workers in Saudi Arabia, 16.


659 Ibid, 246.

660 Ibid, 247.
be the employment of women OFWs to mostly “gender-specific industries” where they were vulnerable to abuse and inequitable working conditions.661 Another could be the overstaying of visas and irregular migration.662 In Malaysia, some regular Filipino women and children migrants were more vulnerable to “arrests as illegals” as they do not hold legal documents such as work permits; but the men do.663

c. Impact of Abuse and Discrimination in Migration

i. On Women

Physical Impact

Abuse and discrimination in migration could have a myriad of negative effects on the abused or maltreated migrant. Certainly, in acute cases, these effects have included violent deaths, sexual abuse, torture, and unjustified detention.664 Country-specific studies seemed to confirm this. Acmad-Abdulkarim asserted that the long-standing threat of expulsion, coercive manner of rounding up, inhumane treatment, congestion, and unhygienic condition in the immigration detention jail in Malaysia “exacerbated the health risks of deportees especially women and children.”665

Psychological and Social Impact

Mental breakdown, family separation and abandonment, and youth delinquency among migrants and their families were recorded as effects of heightened cases of abuse and discrimination.666 An earlier ILO report on the situation of migrants in Japan, who are mostly women, talked about the psychological impact of abuse against them. Deportation also carried consequences on the socio-economic, cultural and psychosocial dimensions of a deportees’ life.667 The CEDAW Committee said that the Philippines should “ensure that its economic policy does not lead to marginalization and exploitation so that women are encouraged to seek overseas employment to the detriment of society.”668

ii. On Children

Physical Impact

In a literature review, Migration and Filipino Children Left-Behind, Reyes discovered that the vulnerability of children to abuse and violence was one of the “worrying aspects of parental absence.” Most common forms were verbal abuse, intimidation and hurting children. Male children, who were vulnerable to touching in sensitive areas, reported more abuse than female children.669 Acmad-Abdulkarim noted some negative effects on the health of the child in the context of deportation. Such was the case of one unaccompanied male minor who was crippled because he was physically abused by a jail guard.670 The observation of a health official that most of the children of deportees appeared to be malnourished and in poor health, and looked older than their real age, was also quoted.671 The death of a baby and a three-year-old child who passed away a few days after deportation due to complicated ailments exacerbated by detention and travel was documented.672

661 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/PHL/CO/1, 22 May 2009), para. 27.
662 Ibid, 39.
671 Ibid, 97.
672 Ibid, 98.
Psychological and Social Impact

The number of children affected by migration was estimated to be very high in the Philippines. Around 3 to 6 million (10-20%) children were left behind, and the effect of migration itself on them varied. Several studies demonstrated that migration could be heart-breaking for them. On the other hand, whether migrants went through the legal or illegal process, children migrants generally experienced difficulties in coping with a new environment. The following were some of the effects on children: (a) lost identity or culture gap; fear of xenophobia; and (c) challenge in the access to education system. As noted above, abuse in the course of deportation carried profound effects on the socio-economic, cultural and psychosocial dimensions of a child's life.

2. De Jure State Responses

a. Bases of State Responsibility

i. International and Regional Treaties

Core Human Rights Treaties and their Protocols

As seen in section B.2.a.(i), the general regime of treaty law on human rights which the Philippines has adhered to applies with equal force for the protection of migrant women and children against abuse and discrimination.


674 Ibid, 4-5. According to Tobin, studies found that they long for parental care. When children are left behind, the burden of girl children in performing the "caring" work becomes more pronounced; confusion over gender boundaries and reversal of gender roles occur; they develop a consumerist attitude; and children, especially boys, are more vulnerable to abuses. These effects of migration on them are largely influenced by their level of cognitive development. See, also, Eva Jesperson, "Migration and Children: A need to fill information gaps in order to guide policy responses," accessed 7 July 2012, http://www.un.org/esa/population/migration/turin/Turin_Statements/JESPERSEN.pdf.

675 Ibid, 8.

676 Ibid, 9.


The primary treaty involved is the Migrant Workers Convention. The Philippines ratified all core treaties relating to migrant workers rights. Additionally, it is party to 35 international labour conventions (33 conventions in force).

Table 39: Other Multilateral Treaties Directly or Indirectly Relating to Abuse and Discrimination in the Context of Migration

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Date of Accession or Signature or Ratification</th>
<th>Reservations and/or Declarations</th>
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<tbody>
<tr>
<td>1951 Convention Relating to the Status of Refugees</td>
<td>22 July 1981 (A)</td>
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<tr>
<td>1967 Protocol Relating to the Status of Refugees</td>
<td>22 July 1981(A)</td>
<td>-</td>
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<tr>
<td>1954 Convention relating to the Status of Stateless Persons</td>
<td>22 June 1955 (S) 22 September 2011 (R)</td>
<td>-</td>
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<tr>
<td>Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime</td>
<td>14 December 2000 (S)</td>
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<tr>
<td>14 December 2000 (S) 28 May 2002 (R)</td>
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<tr>
<td>ASEAN Multilateral Legal Assistance Treaty on Criminal Matters</td>
<td>Document is dated Nov. 29, 2004</td>
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<tr>
<td>ILO Migration for Employment Convention (Revised), 1949 (No. 97)</td>
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<tr>
<td>Migrant Workers Convention (Supplementary Provisions), 1975 (No. 143)</td>
<td></td>
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<tr>
<td>No.</td>
<td>Convention Description</td>
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<tr>
<td>C. 17</td>
<td>Workmen's Compensation (Accidents) Convention, 1925 (No. 17)</td>
<td>17.11.1960</td>
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<td>C. 19</td>
<td>Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)</td>
<td>26.04.1994</td>
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<td>C. 23</td>
<td>Repatriation of Seamen Convention, 1926 (No. 23)</td>
<td>17.11.1960</td>
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<td>C. 29</td>
<td>Forced Labour Convention, 1930 (No. 29)</td>
<td>15.07.2005</td>
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<td>C. 53</td>
<td>Officers' Competency Certificates Convention, 1936 (No. 53)</td>
<td>17.11.1960</td>
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<td>C. 77</td>
<td>Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)</td>
<td>17.11.1960</td>
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<td>C. 87</td>
<td>Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)</td>
<td>29.12.1953</td>
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<td>Employment Service Convention, 1948 (No. 88)</td>
<td>29.12.1953</td>
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<td>Night Work (Women) Convention (Revised), 1948 (No. 89)</td>
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<td>Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)</td>
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<td>C. 93</td>
<td>Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)</td>
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<td>C. 94</td>
<td>Labour Clauses (Public Contracts) Convention, 1949 (No. 94)</td>
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<td>Protection of Wages Convention, 1949 (No. 95)</td>
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<td>Migration for Employment Convention (Revised), 1949 (No. 97)</td>
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<td>Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</td>
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<td>Equal Remuneration Convention, 1951 (No. 100)</td>
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<td>Abolition of Forced Labour Convention, 1957 (No. 105)</td>
<td>17.11.1960</td>
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<td>C. 110</td>
<td>Plantations Convention, 1958 (No. 110)</td>
<td>10.10.1968</td>
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<td>Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</td>
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<td>Employment Policy Convention, 1964 (No. 122)</td>
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<td>Minimum Age Convention, 1973 (No. 138)</td>
<td>4.06.1998</td>
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<td>C. 141</td>
<td>Rural Workers' Organisations Convention, 1975 (No. 141)</td>
<td>18.06.1979</td>
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<td>C. 143</td>
<td>Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)</td>
<td>14.09.2006</td>
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<td>C. 144</td>
<td>Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)</td>
<td>10.06.1991</td>
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<td>C. 149</td>
<td>Nursing Personnel Convention, 1977 (No. 149)</td>
<td>18.06.1979</td>
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<td>C. 159</td>
<td>Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)</td>
<td>23.08.1991</td>
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<td>C. 165</td>
<td>Social Security (Seafarers) Convention (Revised), 1987 (No. 165)</td>
<td>9.11.2004</td>
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<td>C. 176</td>
<td>Safety and Health in Mines Convention, 1995 (No. 176)</td>
<td>27.02.1998</td>
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<td>Recruitment and Placement of Seafarers Convention, 1996 (No. 179)</td>
<td>13.03.1998</td>
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<td>C. 185</td>
<td>Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)</td>
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Denunciation (as a result of the ratification of Convention No. 138)

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<td>C. 59</td>
<td>Minimum Age (Industry) Convention (Revised), 1937 (No. 59)</td>
<td>17.11.1960</td>
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680 Ibid.
### ii. Bilateral Treaties and Agreements

Table 41: Bilateral Labour Agreements and International Instruments Signed and Ratified by the Philippine Government

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<th>Country</th>
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<th>Date</th>
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<tr>
<td>BAHRAIN</td>
<td>Memorandum of Agreement Between the Republic of the Philippines and the Kingdom of Bahrain on Health Services Cooperation</td>
<td>April 24, 2007</td>
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<tr>
<td>CANADA</td>
<td>Alberta, Memorandum of Agreement Between the Republic of the Philippines (DOLE) and The Ministry of Employment and Immigration of Alberta (E&amp;I) Concerning Cooperation in Human Resource Development</td>
<td>October 1, 2008</td>
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<td>Manitoba, Memorandum of Understanding Between The Department of Labour and Employment of the Government of the Republic of the Philippines (DOLE) and The Department of Labour and Immigration of the Government of Manitoba, Canada (LIM) Concerning: Co-Operation in Human Resource Development</td>
<td>February 8, 2008</td>
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<td>Manitoba, Memorandum of Understanding Between The Department of Labour and Employment of the Republic of the Philippines (DOLE) and The Department of Labour and Immigration of the Government of Manitoba, Canada Concerning: Co-Operation in Human Resource Development</td>
<td>September 21, 2010</td>
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<td>Manitoba, Guidelines for the Implementation of the Memorandum of Understanding Between The Department of Labour and Employment of the Republic of the Philippines (DOLE) and The Department of Labour and Immigration of the Government of Manitoba, Canada Concerning: Co-Operation in Human Resource Development</td>
<td>September 21, 2010</td>
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<tr>
<td></td>
<td>Saskatchewan, Memorandum of Understanding Between the Republic of the Philippines (DOLE) and Her Majesty The Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment (AEE) Concerning Cooperation in the Fields of Labour, Employment and Human Resource Development</td>
<td>December 18, 2006</td>
</tr>
<tr>
<td>CNMI</td>
<td>Memorandum of Understanding Between the Republic of the Philippines (DOLE) and The Commonwealth of the Northern Mariana Islands (CNMI)</td>
<td>September 14, 1994</td>
</tr>
<tr>
<td>INDONESIA</td>
<td>Memorandum of Understanding Between the Republic of the Philippines (DOLE) and the Department of Manpower and Transmigration of the Republic of Indonesia Concerning Migrant Workers</td>
<td>January 18, 2003</td>
</tr>
<tr>
<td>IRAQ</td>
<td>Memorandum of Agreement Relating to Mobilization of Manpower Between the Republic of the Philippines and the Republic of Iraq</td>
<td>November 25, 1982</td>
</tr>
<tr>
<td>JAPAN</td>
<td>Memorandum of Understanding Between the Philippine Overseas Employment Administration and the Japan International Cooperation of Welfare Services on the Deployment and Acceptance of Filipino Candidates (JPEPA)</td>
<td>January 12, 2009</td>
</tr>
<tr>
<td>JORDAN</td>
<td>Memorandum of Understanding Between the Minister of Labour of the Republic of the Philippines and the Minister of Labour of the Hashemite Kingdom of Jordan</td>
<td>December 5, 1981</td>
</tr>
<tr>
<td></td>
<td>Agreement on Manpower Between the Government of the Republic of the Philippines and the Government of the Hashemite Kingdom of Jordan</td>
<td>December 3, 1988</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Country</th>
<th>Title / Subject</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>KOREA</td>
<td>Memorandum of Understanding Between the Department of Labour of the Philippines and the Ministry of Labour of the Republic of Korea on the Sending of Workers to the Republic of Korea</td>
<td>April 23, 2004</td>
</tr>
<tr>
<td>KOREA</td>
<td>Memorandum of Agreement Between the Republic of the Philippines and the Republic of Korea</td>
<td>December 15, 2005</td>
</tr>
<tr>
<td>KOREA</td>
<td>Memorandum of Understanding Between the Department of Labour and Employment of the Philippines and the Ministry of Labour of the Republic of Korea on the Sending and Receiving of Workers to the Republic of Korea under the Employment Permit System</td>
<td>October 20, 2006</td>
</tr>
<tr>
<td>KOREA</td>
<td>Memorandum of Understanding between the Ministry of Labour, Republic of Korea and the Department of Labour and Employment, Republic of the Philippines on Cooperation in the Field of Labour and Manpower Development</td>
<td>May 30, 2009</td>
</tr>
<tr>
<td>KUWAIT</td>
<td>Memorandum of Understanding on Labour and Manpower Development Between the Government of the Republic of the Philippines and the Government of the State of Kuwait</td>
<td>September 14, 1997</td>
</tr>
<tr>
<td>LIBYA</td>
<td>Agenda for Cooperation in the Field of Labour, Employment and Manpower Development Between the Philippines and Libya</td>
<td>October 18, 1979</td>
</tr>
<tr>
<td>LIBYA</td>
<td>Memorandum of Understanding Between the Philippines and Libya (with Arabic Version)</td>
<td>July 17, 2006</td>
</tr>
<tr>
<td>NORWAY</td>
<td>Agreement Between POEA and the Directorate of Labour Norway on Transnational Cooperation for Recruiting Professionals from the Health Sector to Positions in Norway</td>
<td>June 26, 2001</td>
</tr>
<tr>
<td>PAPUA NEW GUINEA</td>
<td>Memorandum of Understanding Between the Philippines and Papua New Guinea</td>
<td>March 14, 1979</td>
</tr>
<tr>
<td>QATAR</td>
<td>Agreement Between the Government of the Republic of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar</td>
<td>May 10, 1997</td>
</tr>
<tr>
<td>SPAIN</td>
<td>Memorandum of Understanding on Cooperation for the Management of the Migration Flows Between the Ministry of Labour and Social Affairs of the Kingdom of Spain and the Ministry of Labour and Employment of the Republic of the Philippines (English Version)</td>
<td>June 29, 2006</td>
</tr>
<tr>
<td></td>
<td>Memorandum of Understanding on Cooperation for the Management of the Migration Flows Between the Ministry of Labour and Social Affairs of the Kingdom of Spain and the Ministry of Labour and Employment of the Republic of the Philippines (Spanish Version)</td>
<td></td>
</tr>
<tr>
<td>TAIWAN</td>
<td>Memorandum of Understanding between the Manila Economic and Cultural Office (MECO) in Taipei and the Taipei Economic and Cultural Office (TECO) in the Philippines regarding the Special Hiring Workers</td>
<td>September 3, 1999</td>
</tr>
<tr>
<td></td>
<td>Memorandum of Understanding on Special Hiring Program for Taiwan Between the Manila Economic and Cultural Office in Taipei (MECO) and the Taipei Economic and Cultural Office (TECO) in the Philippines</td>
<td>January 12, 2001</td>
</tr>
</tbody>
</table>
Bilateral social security agreements have the following salient features: *equality of treatment* (a covered national of either country, including his dependents and survivors, are eligible for social security benefits under the same conditions as the national of the other country); *export of benefits* (a person shall continue to receive his benefits wherever he decides to reside); *totalization* (contribution/creditable periods in both countries shall be added to determine qualification for benefits); *payment of benefits* (each country shall pay a fraction of the benefit due from their respective systems, in proportion to the actual contributions/creditable periods); and *mutual administrative assistance* (covered members or beneficiaries may file their claims with the designated liaison agencies of either country, which shall accordingly extend assistance to facilitate processing of claims).682

iii. Recommendations on the commitments and declarations/reservations

In a study by Reyes, among sending countries, the Philippines was said to be the most advanced in forging bilateral agreements. It also provided support mechanisms and policies to assist overseas migrants and their families, knowing their “vast contribution” to the Philippine economy.683 The MWC hailed the Philippines as one of the few states to have ratified all the treaties relating to migrant workers’ rights. It thus became a matter of implementation and fulfilment of commitments.684

b. National Policies on Abuse and Discrimination of Migrants

All the policies enumerated in the other sections of this report apply insofar as the protection of the woman or child from abuse or discrimination within the Philippine territory is concerned. Certain policies, particular to labour migration, have been incorporated in the Philippine Constitution as laid out below.

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684 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/PHL/CO/1, 22 May 2009)*, para. 4.
Table 42: Some National Policies on Abuse and Discrimination of Migrants

<table>
<thead>
<tr>
<th>Policy</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional policies related to prevention</td>
<td></td>
</tr>
<tr>
<td>The liberty of abode and changing the same within the limits prescribed</td>
<td>Philippine Constitution</td>
</tr>
<tr>
<td>by the law shall not be impaired except upon lawful order of the court.</td>
<td></td>
</tr>
<tr>
<td>Neither shall the right to travel be impaired except in the interest</td>
<td></td>
</tr>
<tr>
<td>of national security, public safety or public health, as may be provided</td>
<td></td>
</tr>
<tr>
<td>by the law.(^685)</td>
<td></td>
</tr>
<tr>
<td>Constitutional policies related to response, including protection and</td>
<td></td>
</tr>
<tr>
<td>care</td>
<td></td>
</tr>
<tr>
<td>The State affirms labour as a primary social economic force. It shall</td>
<td>Philippine Constitution</td>
</tr>
<tr>
<td>protect the rights of workers and promote their welfare.(^686)</td>
<td></td>
</tr>
<tr>
<td>The State shall afford full protection to labour, local and overseas,</td>
<td>Philippine Constitution</td>
</tr>
<tr>
<td>organized and unorganized, and promote full employment and equality of</td>
<td></td>
</tr>
<tr>
<td>employment opportunities for all.</td>
<td></td>
</tr>
<tr>
<td>It shall guarantee the rights of all workers to self-organization,</td>
<td></td>
</tr>
<tr>
<td>collective bargaining and negotiations, and peaceful concerted</td>
<td></td>
</tr>
<tr>
<td>activities, including the right to strike in accordance with law. They</td>
<td></td>
</tr>
<tr>
<td>shall be entitled to security of tenure, humane conditions of work,</td>
<td></td>
</tr>
<tr>
<td>and a living wage. They shall also participate in policy and</td>
<td></td>
</tr>
<tr>
<td>decision-making processes affecting their rights and benefits as may</td>
<td></td>
</tr>
<tr>
<td>be provided by law.</td>
<td></td>
</tr>
<tr>
<td>The State shall promote the principle of shared responsibility between</td>
<td></td>
</tr>
<tr>
<td>workers and employers and the preferential use of voluntary modes in</td>
<td></td>
</tr>
<tr>
<td>settling disputes, including conciliation, and shall enforce their</td>
<td></td>
</tr>
<tr>
<td>mutual compliance therewith to foster industrial peace.</td>
<td></td>
</tr>
<tr>
<td>The State shall regulate the relations between workers and employers,</td>
<td></td>
</tr>
<tr>
<td>recognizing the right of labour to its just share in the fruits of</td>
<td></td>
</tr>
<tr>
<td>production and the right of enterprises to reasonable returns to</td>
<td></td>
</tr>
<tr>
<td>investments, and to expansion and growth.(^687)</td>
<td></td>
</tr>
</tbody>
</table>

Statutory Policies with Regard to Overseas Filipinos

Table 43: Summary of Philippine Laws on Overseas Employment\(^688\)

<table>
<thead>
<tr>
<th>Number</th>
<th>Full Name</th>
<th>Salient Features/Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presidential Decree (PD) No.</td>
<td>The 1974 Labor Code of the Philippines</td>
<td>This PD institutionalized the participation of the government in overseas employment. It created the Overseas Employment Development Board (OSDB) and the National Seamen Board (NSB). The two (2) Boards were mandated to undertake a systematic program for overseas employment - focusing on market development, recruitment and placement of Filipino workers.</td>
</tr>
<tr>
<td>422 Year Signed: 1974</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Letter of Instruction No. 537</td>
<td>The Welfare Fund for Overseas Workers (Welfare Fund).</td>
<td>The Welfare Fund was established to provide social and welfare services to Filipino overseas workers, to provide skills and career development services to Filipino overseas workers, to undertake studies and researches for enhancement of their social, economic and cultural well-being, and to develop support and finance specific projects for the benefit of Filipino overseas workers.</td>
</tr>
<tr>
<td>(1977)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PD 1412 (1978)</td>
<td>Further amending certain provisions of Book I, Presidential Decree No.442</td>
<td>Renewed the participation of the private sector in the recruitment activities.</td>
</tr>
<tr>
<td>Executive Order No. 797 (1982)</td>
<td>Executive Order Creating the Philippine Overseas Employment Administration (POEA)</td>
<td>The POEA took over the functions of the OESDB and NSB. It was also given jurisdiction to take cognizance and resolve cases involving overseas contract workers.</td>
</tr>
</tbody>
</table>

\(^685\) The 1987 Constitution of the Republic of the Philippines, Article III, Section 6.

\(^686\) Ibid, Art. II, Sec. 18.

\(^687\) Ibid, Art. XIII, Sec. 3.

\(^688\) Julyn Ambito and Melissa Suzette L. Banzon, Review of Philippine Migration Laws, 32-34.
<table>
<thead>
<tr>
<th>Act/Constitution</th>
<th>Law/Description</th>
<th>Policy/Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>EO 857 (1982)</td>
<td>Governing the Remittance to the Philippines of Foreign Exchange Earnings of Filipino Workers abroad and for other purposes.</td>
<td>EO 857B made mandatory the requirement for overseas workers to remit part of their earnings to their families in the Philippines and to ensure that these remittances passed through the official financial institutions.</td>
</tr>
<tr>
<td>1987 Philippine Constitution (replacing 1973 Constitution)</td>
<td>The 1987 Constitution of the Philippines</td>
<td>Philippine labour policy was clearly defined in the 1987 Constitution. Article XIII states that “The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.”</td>
</tr>
<tr>
<td>Republic Act 7111 (1991)</td>
<td>Overseas Investment Fund Act</td>
<td>This law created the Overseas Workers’ Investment Fund Board to encourage remittance of earnings of Overseas Filipino Workers and to safeguard / oversee the participation of said workers’ remittances and savings in the Government’s debt reduction efforts and other productive undertakings. Incentives such as scholarship grants, housing program, credit assistance and other programs were also provided.</td>
</tr>
<tr>
<td>Republic Act 8042 (1995)</td>
<td>The Migrant Workers’ Act of 1995</td>
<td>The act was considered the first concrete measure and public commitment of the Philippine Government to protect the rights and promote the welfare of the Overseas Filipino Workers (OFWs).</td>
</tr>
<tr>
<td>Republic Act 9189 (2003)</td>
<td>Overseas Absentee Voting Act of 2003</td>
<td>This law paved the way for overseas Filipinos to participate in Philippine national elections. Thus, in May 2004 some overseas Filipinos exercised their right of suffrage.</td>
</tr>
<tr>
<td>Republic Act 9208 (2003)</td>
<td>Anti-Trafficking in Persons Act of 2003</td>
<td>This law was regarded as one of the most comprehensive and progressive anti-trafficking laws passed. This act adopted the UN definition of trafficking in person.</td>
</tr>
<tr>
<td>RA 9422</td>
<td>Strengthening the Regulatory Functions of the POEA (amending RA 8042)</td>
<td>It amended Section 23 (par.b.1) of RA 8042. Under the amendatory law, the POEA shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It also repealed Section 29, 30 of the same law (RA 8042)</td>
</tr>
<tr>
<td>RA 9225 (2003)</td>
<td>Citizenship Retention and Re-acquisition Act of 2003 (Dual Citizenship Law)</td>
<td>By virtue of this law, natural-born Filipinos who became naturalized citizens of other countries are deemed not to have lost their Philippine citizenship. They can re-acquire their Filipino citizenship, while at the same time not losing their other citizenship. To date, more than 6,000 former Filipinos have reacquired their citizenship after the implementation of the law.</td>
</tr>
<tr>
<td>RA 10022</td>
<td>An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995. As Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes.</td>
<td>This law has introduced the following significant reforms: (1) mandating the government to monitor international conventions and ratify those that ensure protection of Filipino workers abroad as well as forge bilateral agreements with receiving countries. (2) members of the governing board of the POEA are now made accountable in the deployment of migrant workers. (3) state officials who facilitate the deployment of OFWs to countries that do not guarantee or follow international labor standards face dismissal from public service or disqualification from government appointments for five years.</td>
</tr>
</tbody>
</table>

Notably, none of the reports reviewed classified policies of the Philippines on violence against women and children according to the objectives of prevention and response, including protection and cure. None also comprehensively identified policies according to whether the Philippines is the country of origin, transit or destination. All programs and services under the Migrant Workers and Overseas Filipinos Act of 1995, the primary law on migration, are anchored on the guidelines enumerated below.\(^\text{689}\)

The dignity of Filipino migrant workers, whether in the country or overseas and Filipino migrant workers, in particular, shall at all times be upheld. Filipino migrant workers shall be provided with adequate and timely social, economic and legal services. Overseas employment shall not be promoted as a means to sustain economic growth and to achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated. An effective mechanism shall be instituted to ensure that the rights and interests of distressed overseas Filipino migrant workers in particular, documented or undocumented, are adequately protected and safeguarded.

With regard to the prevention of abuse and discrimination in women and children migrants, two policies in the law on migrant workers, as recently amended, need to be pointed out. First, the deployment of migrant workers is only allowed in countries or places where the rights of Filipino migrant workers are protected. The parameters of protection are defined under the law. Second, upon discovery or being informed of the presence of migrant workers whose ages fall below the minimum age requirement for overseas deployment, the responsible officers in the Foreign Service should without delay repatriate said workers and advise the Department of Foreign Affairs through the fastest means of communication available of such discovery and other relevant information.

**c. Assessment of State Policies**

The Philippine government considers overseas employment as a "development strategy," and this had been reflective of continuing efforts to increase foreign exchange earnings. The Migrant Workers and Overseas Filipinos Act of 1995690 mirrors this policy.695 The European Union noted that overseas employment continued to be regarded as a solution to the limited job opportunities in the country and a means to poverty alleviation.696

In 2006, the CEDAW Committee commended the conclusion of bilateral agreements and the memorandums of understanding on migrant workers’ rights with some countries and regions, and the program of pre-departure and support services for overseas Filipino workers. However, there were concerns for the continued feminization of migration, and agreements did not exist with all countries and regions to which Filipino women migrate. This continued to make them vulnerable to violence and exploitation when migrating through lateral arrangement or arrangement with the government on the protection of the rights of overseas Filipino Workers: Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof. In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination of the migrant workers, no permit for deployment shall be issued by the Philippine Overseas Employment Administration (POEA)."

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**Table 44: Policy Guidelines in the Migrant Workers and Overseas Filipinos Act of 1995**

<table>
<thead>
<tr>
<th>Policy Guidelines in the Migrant Workers and Overseas Filipinos Act of 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The dignity of Filipino migrant workers, whether in the country or overseas and Filipino migrant workers, in particular, shall at all times be upheld</td>
</tr>
<tr>
<td>• Filipino migrant workers shall be provided with adequate and timely social, economic and legal services</td>
</tr>
<tr>
<td>• Overseas employment shall not be promoted as a means to sustain economic growth and to achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated</td>
</tr>
<tr>
<td>• An effective mechanism shall be instituted to ensure that the rights and interests of distressed overseas Filipino migrant workers in particular, documented or undocumented, are adequately protected and safeguarded</td>
</tr>
</tbody>
</table>

---

690 Ibid.

691 Ibid, para. 87.

692 Ibid, para. 88.

693 Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act, 1995, as amended, Section 4. Section 3 of this law in part provides that, "The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers: (a) It has existing labor and social laws protecting the rights of workers, including migrant workers; (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and (c) It has concluded a bi-


informal channels.697 The Committee urged the Philippines to create, among others, safe and protected jobs for women as viable economic alternative to migration.698

Comprehensiveness of Acts Punished as Abuse and Discrimination of Migrant Women and Children; Illegal Recruitment

For the protection of women and children internal migrants and immigrants in the Philippines, there were acts—discussed in the previous parts of this report—which were considered unlawful and punished when committed in Philippine territory. For the protection of migrant workers abroad, the Migrant Workers and Overseas Filipinos Act of 1995 defined the crime of illegal recruitment and provided stiff penalties therefor. 699

Review of Philippine Migration Laws: Gains, Gaps and Prospects looked into the concept of illegal recruitment, and the definitions of recruitment and placement.700

<table>
<thead>
<tr>
<th>Table 45: Some Acts of Illegal Recruitment701</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Some Acts of Illegal Recruitment</strong></td>
</tr>
<tr>
<td>“(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;”</td>
</tr>
<tr>
<td>“(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;”</td>
</tr>
<tr>
<td>“(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;”</td>
</tr>
<tr>
<td>“(d) To include or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;”</td>
</tr>
<tr>
<td>“(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;”</td>
</tr>
<tr>
<td>“(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;”</td>
</tr>
<tr>
<td>“(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;”</td>
</tr>
<tr>
<td>“(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;”</td>
</tr>
<tr>
<td>“(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of travel agency;”</td>
</tr>
<tr>
<td>“(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations;”</td>
</tr>
<tr>
<td>“(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;”</td>
</tr>
<tr>
<td>“(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker’s fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage; and”</td>
</tr>
<tr>
<td>“(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.</td>
</tr>
</tbody>
</table>

---

698 Ibid, para. 22.
701 Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act, 1995, as amended, Section 5.
There are also other prohibited acts enumerated in the law.\textsuperscript{702} Illegal recruitment constitutes a crime of economic sabotage when committed by a syndicate (if carried out by a group of three or more persons conspiring or confederating with one another) or in a large scale (if committed against three or more persons individually or as a group). In both cases, the penalty imposed is life imprisonment.\textsuperscript{703}

Some Specific Aspects of Abuse and Discrimination Against Women and Children Considered in Reports

Table 46: Some Aspects of Abuse and Discrimination against Women and Children considered in Report

<table>
<thead>
<tr>
<th>Area of study</th>
<th>Assessment of reports</th>
</tr>
</thead>
</table>
| Do the laws provide safe migration and protection of rights of children and women migrant workers? | • Greater protection afforded to migrant workers in general when Republic Act No. 10022 amended the Migrant Workers and Overseas Filipinos Act of 1995\textsuperscript{704}  
• Services available to OFWs also made available to trafficked persons regardless of their immigration status in the host country\textsuperscript{705}  
• Systematic and organized transport, within and beyond Philippine borders, of women and children for the purpose of sex for profit or forced labour had been sought to be mitigated\textsuperscript{706} |
| Do the laws ensure that migrant workers enjoy treatment not less favourable than that which applies to nationals of the State in respect of remuneration and other conditions of work, e.g., overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship? | • There seemed to be no particular interest or no systematic efforts to monitor the return of Filipinos to the country "up until now" (2009)\textsuperscript{710}  
• Establishment of the recent National Reintegration Center for OFWs could provide a good opportunity to develop approaches to this area\textsuperscript{711} |
| Do the laws/ state policies protect freedom of movement of women migrant workers, e.g., disallow confinement of travel documents by employers and forced seclusion or locking in homes? | • When they are being victimized due to exploitation in the context of migration (i.e., trafficking), such persons who present forged passports in obedience to the trafficker are not liable under the Philippine Passport Act\textsuperscript{707}  
• Internal trafficking, which may also result in confiscation of travel documents or forced seclusion, had been sought to be mitigated\textsuperscript{708}  
• Connection between vulnerability of migrants and exploitation established inter alia through case studies and legal analysis |

\textsuperscript{702} Ibid.

\textsuperscript{703} Ibid, Sections 5- 6.


\textsuperscript{705} Ibid.

\textsuperscript{706} Myrna S. Feliciano, Protection of Victims, Particularly Women and Children Against Domestic Violence, Sexual Offenses and Human Trafficking - Philippine Experience, 6, Paper presented at the 9th General Assembly of the ASEAN Law Association, Bangkok, 22-26 November 2006.

\textsuperscript{707} Nina Patricia Sison-Arroyo, “Responsive Law-Enforcement Approach to Combating Child Trafficking,” 850.


\textsuperscript{711} Ibid.


\textsuperscript{713} Ibid, para. 76.

\textsuperscript{714} Ibid, para. 75.
<table>
<thead>
<tr>
<th>Area of study</th>
<th>Assessment of reports</th>
</tr>
</thead>
</table>
| Do the laws and policies ensure that migrant women workers and migrant children are given equality before the law as regards legal remedies? | • According to a Joint Country Gender Assessment Report, access to legal remedies and social assistance has improved with the passage of the YAWC Law, establishment of women and children desks in police stations and barangay offices, and presence of NGOs that assist women in crisis.715  
• Legal assistance and mandatory services provided716 |
| Do the laws and policies ensure that the core principles of the CRC are also applied to migrant children and not only its nationals? | • No specific report found in this review which examines if the laws and policies ensure that the core principles of the CRC are applied to migrant children  
• Rights of the child observed in the prosecution of cases of abuse and discrimination, mandated by the Rule on Examination of a Child Witness.717 |
| Does the State grant children of migrant workers and migrant children access to education, emergency medical care, social services, on the basis of equality of treatment with nationals of the State concerned? | • In reply to issues raised by the MWC, Government said it has been policy to afford quality education at all levels to citizens, and the State provides all children born to migrant workers with birth registration and access to basic education and health care.718  
• Also, social security is provided to all residents of the Philippines who meet qualifications of the law on social security, citizens and non-citizens alike, without discrimination.719 |
| Do the reports identify structural vulnerabilities or gaps in legal framework as regards women and children migrants, e.g., when a migrant woman marries a national, in the process losing her nationality, and later on loses the nationality of her spouse when she is divorced by him? | • Threats and violence against government agencies and officials involved in measures to counter abuse, discrimination and exploitation against Filipinos abroad were cited.720  
• Also, corruption and hesitance of survivors to denounce alleged perpetrators for fears of reprisals against them or their families, and a prolonged judicial process.721 |


718 Government of the Philippines, Written replies by the Government of the Philippines concerning the List of Issues (CMW/C/PHL/Q/1) received by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families relating to the Consideration of the Initial Report of the Philippines (CMW/C/PHL/1) (CMW/C/PHL/Q/1/Add.1, 6 March 2009), paras. 85-86.


721 Ibid.
3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

i. Description of State Implementing and Monitoring Mechanisms

Table 47: Role of Government Agencies in Migration

<table>
<thead>
<tr>
<th>Agency</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Foreign Affairs (DFA)</td>
<td>• Take priority action or make representation with the foreign authority concerned to protect the rights of migrant workers and other overseas Filipinos and extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos</td>
</tr>
<tr>
<td>Department of Labor and Employment (DOLE)</td>
<td>• See to it that labour and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and the referral to proper medical centers or hospitals</td>
</tr>
<tr>
<td>Philippine Overseas Employment Administration (POEA)</td>
<td>• Regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system • Also, formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements • Responsible for the regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers • In appropriate cases, allow the lifting of suspension of erring recruitment/manning agencies upon the payment of fine of Fifty thousand pesos (P50,000.00) for every month of suspension. • Inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights • Responsible for the implementation, in partnership with other law-enforcement agencies, of an intensified program against illegal recruitment activities [for this purpose, provide comprehensive Pre-Employment Orientation Seminars (PEOS) that will discuss topics such as prevention of illegal recruitment and gender-sensitivity] • Engage in the recruitment and placement of overseas workers on a government-to-government arrangement only • In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, deploy only to countries where the Philippine has concluded bilateral labour agreements or arrangements; such countries guarantee to protect the rights of Filipino migrant workers; and such countries observe and/or comply with the international laws and standards for migrant workers</td>
</tr>
<tr>
<td>Overseas Workers Welfare Administration (OWWA)</td>
<td>• The Welfare officer or in his absence, the coordinating officer, provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals • In the function of the welfare officer above, he or she makes representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the compliance or problems brought to his attention • Likewise formulate and implement welfare programs for overseas Filipino workers and their families while they are abroad and upon their return • Ensure the awareness by the overseas Filipino workers and their families of these programs and other related governmental programs • In the repatriation of workers to be undertaken by OWWA, OWWA is authorized to pay repatriation-related expenses, such as fines or penalties, subject to such guidelines as the OWWA Board of Trustees may prescribe</td>
</tr>
<tr>
<td>Department of Health (DOH)</td>
<td>• Regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations on Filipino migrant workers as requirement for their overseas employment</td>
</tr>
<tr>
<td>Local Government Units (LGUs)</td>
<td>• In the fight against illegal recruitment, in partnership with the POEA, other concerned government agencies, and non-government organizations advocating the rights and welfare of OFWs, take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment</td>
</tr>
</tbody>
</table>

722 Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act, 1995, as amended, Sections 14-16 and 23.
In addition to the above, a Shared Government Information System for Migration participated in by an inter-agency committee\textsuperscript{723} was established to implement a shared government information system for migration. The inter-agency committee makes available to itself the information contained in existing data bases/files and involves linkages of computer facilities in order to allow free-flow data exchanges and sharing among concerned agencies.\textsuperscript{724}

The Anti-Ilegal Recruitment Coordinating Councils (AIRCCs) are inter-agency groups concerned with illegal recruitment. These serve as a venue at the grassroots level for consultation and sharing of experiences and mapping out strategies to improve the anti-illegal recruitment program of government.\textsuperscript{725} Agencies on transnational crimes such as SETC, PCTC, PAIRTF and TFPI also play respective roles in the fight against illegal recruitment.

The framework of agencies involved in the protection of women and children in general are also involved in the protection of migrants and internally displaced persons in the Philippines against abuse and discrimination. When it comes to forced migration, including movement of refugees, the Department of Justice and its attached agencies and the Department of Foreign Affairs specially work for their protection. For instance, as highlighted in a report, the Philippines has become a transit country for at risk refugees on their way to resettlement under a transit arrangement among the Department of Foreign Affairs, UNHCR and the International Organization for Migration.\textsuperscript{726}

ii. Specialized institution with mandate to oversee the implementation of laws against abuse and discrimination of migrant women and children

The approach adopted by the Philippines in addressing abuse and discrimination against migrants was a collaboration of different agencies mentioned in the preceding sub-section. As explained in a report, during the years, an extensive institutional framework was established to govern mainly the labour migration and protection aspects of migration in the Philippines.\textsuperscript{727}

iii. Reports that study mechanisms that monitor the implementation and observance of laws related to abuse and discrimination against women and children migrants

The Filipino migration model was touted as a successful approach.\textsuperscript{728} Nonetheless, the UN Committee on the Protection of All Migrant Workers and Members of Their Families recommended that Government “review its labour migration policy in order to give primary importance to the human rights of migrant workers.”\textsuperscript{729} The Committee also noted a “multitude of initiatives and programmes” in response to the challenges faced by the country with regard to migration, but expressed concern that “implementation, follow-up, and evaluation of these programs were insufficient.”\textsuperscript{730}

\textit{Monitoring of the Systems in Place, especially those Relating to Illegal Recruitment}

A review by Reyes revealed that compared to other countries of origin, the Philippines was considered to be “quite progressive in terms of having established institutions and mechanisms to curb irregular migration at the source.” Despite this, many unlicensed agencies or recruiters escaped regulation. One factor was the lack of legal identity which made them to monitor. Unless migrants themselves reported incidents of abuse or victimization, illegal recruitment would “fade into oblivion and may be repeated.”\textsuperscript{731}

\textsuperscript{723} This committee is composed of the Department of Foreign Affairs and its attached agency, the Commission on Filipinos Overseas, the Department of Labor and Employment and its attached concerned agencies, the Department of Tourism, the Department of Justice the Bureau of Immigration, the NBI, the Department of the Interior and Local Government, the National Telecommunications Commission, the Commission on Information and Communications Technology, the National Computer Center, the National Statistical and Coordination Board, the National Statistics Office, and other government agencies concerned with overseas employment.

\textsuperscript{724} Ibi, Section 20.

\textsuperscript{725} International Labour Organization, \textit{Child trafficking in the Philippines: A situational analysis}, 146.


\textsuperscript{727} Ibid.

\textsuperscript{728} Ellene Sana and Rhodora Alcantara Abano, “Labor Migration in Southeast Asia,” 62.

\textsuperscript{729} Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, \textit{Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families} (CMW/C/PHL/CO/1, 22 May 2009), para. 16.

\textsuperscript{730} Ibi, para. 13.

\textsuperscript{731} Melanie M. Reyes, \textit{Migration and Filipino Children Left-Behind}, 19.
Monitoring of Nationals in The Destination Countries by State Agencies

Sana and Abano in Labor Migration in Southeast Asia cited data from the Commission on Audit (COA) of the Philippines that Government had 88 offices protecting foreign workers abroad, which were “meagrely staffed and lack the resources to serve the country’s millions of migrants.” Furthermore, a “mismatch” or “rati odor-tion” between Government personnel (onsite) on the one hand and the number of and needs of OFWs upon the other was discussed by Ambito and Banzon in Review of Philippine Migration Laws.

b. Complaints Process

Description of the State’s Complaint Process

The DFA was mandated to make an assessment of the “rights and avenues of redress” that are available to Filipino migrant workers who were survivors of abuse and violation and, as far as practicable, pursue the same on behalf of the victim if it was legally impossible to file individual complaints. In its report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Government noted that provisions of the Migrant Workers Convention could be invoked “before and directly enforced by Philippine courts, other tribunals or administrative authorities” since it was ratified by Government and is, therefore, binding upon it.

Complaints for violation of the provisions of the Convention may be filed before the proper civil judicial authorities, prosecutor’s office, regional trial courts, municipal circuit trial courts, and the municipal trial courts. Where persons complained are government workers, the complaint may be filed with the Office of the Ombudsman. Where persons complained are members of the AFP or the Philippine National Police (PNP), the complaint may be filed directly with the AFP and the PNP, respectively.

In filing cases for illegal recruitment, the law provides that the DOLE Secretary, the POEA Administrator or their duly authorized representatives, or any aggrieved person, may initiate the corresponding criminal action. The affidavits and testimonies of operatives or personnel from DOLE, POEA and other law enforcement agencies who witnessed the acts constituting the offense are sufficient to prosecute the accused.

For acts amounting to violence against women and children, and exploitation, as described in previous sections of this report, the complaint processes as respectively outlined therein applies.

Assessment of the Complaints Process

In An Analysis of the Situation of Filipino Domestic Workers, Sayres presented a critique on the complaints process under the law: “Overseas domestic helpers typically go to the Philippine Embassy to report abuses, based on the general approach recommended during the pre-departure orientation seminars. Although this mechanism appears straightforward, the internal process for handling a problem case is quite complex, with an array of government agencies and actors involved.” Furthermore, there were reasons why the process has some gaps and inadequacies. Few reported cases were prosecuted because of the “complex, bureaucratic, and lengthy process.” In some countries, foreign domestic helpers were not permitted to work while seeking redress. Because many OFWs were supporting families back home, they need to have income often outweighed the cause of pursuing a case. Still in some cases, Sayres said it was difficult for the domestic worker to visit the embassy for several reasons, including work obligations, lack of a day-off, and inability to leave the work premises. Workers may have the option to seek redress through the local laws of the host country or with the intervention of recruitment agencies, but this may not be the best option available.

735 Ibid., para. 77.
736 Ibid., para. 78.
737 Ibid., para. 79.
738 Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act, 1995, as amended, Sections 5-6.
739 Nicole J. Sayres, An Analysis of the Situation of Filipino Domestic Workers, 26.
740 Ibid.
Empowering Filipino Migrant Workers: Policy Issues and Challenges said that in Japan, some NGO volunteers were more visible than the embassy, which was also active, in providing legal and paralegal assistance that include cell visitations and financial help to OFWs arrested for criminal or immigration offenses. Meanwhile, in Hong Kong, there was a time when redress of grievances was often also preferred outside the country. This was because special labour courts to handle cases involving foreign domestic helpers were abolished.

One key aspect of recent reform was the enforcement of joint liability between the local recruitment agency and its foreign principal. According to Ang, under this policy, a worker who feels provisions in his work contract were violated by his employer has the legal option to seek redress in Philippine courts against his recruitment agency.

c. Protection and Rehabilitation

Description of the State’s Protection and Rehabilitation Program

Sto. Tomas in Protecting Migrant Workers: A Shared Responsibility outlined the framework for the protection of migrant workers. This framework has three major components: (1) a regulatory system for intermediaries and other actors in the overseas employment program; b) the provision of institutional structures and mechanisms for workers’ protection; and c) a re-integration program for returning workers.

Table 48: Framework for the Protection of Migrant Workers

<table>
<thead>
<tr>
<th>Component</th>
<th>Specifics</th>
</tr>
</thead>
</table>
| Regulatory Framework for Contract Migration | • Philosophy Behind the Deployment of Filipino Workers  
• Licensing of Private Recruitment Agencies  
• Rules and Standards on Recruitment and Placement of Workers  
• Verification and registration or accreditation of foreign employers/principals  
  » Foreign Employer’s/Principal’s Compliance with Employment Standards  
  » Advertisement of Overseas Jobs  
  » Skills Testing and Medical Examination of Workers  
  » Documentation of Selected and Hired Workers  
  » Placement and Other Fees  
• Sanctions for Non-Compliance with Recruitment Rules and Standards  
• Protecting Workers from Illegal Recruitment Activities |
| Protective Structures and Mechanisms | • Regulating the Recruitment and Placement of Migrant Workers  
• Delivery of Welfare Programs and Services  
• Adjudication of Worker-Employer Conflicts  
• On-Site Protection Program  
• Other Offices Involved in Migrant Workers Protection  
• Bilateral Labor Agreements, Regional Agreements, Multi-lateral Agreements and International Protocols |
| Re-integration Program for Returning Migrant Workers | • Welfare Office’s Reintegration Program  
• National Reintegration Center for OFWs |

Reyes wrote that since labour migration has remained “an attractive option (or the only option) to many workers in the Philippines” despite various problems they might face in countries of destination (i.e., nonpayment of salaries, contract violations, illegal detention, physical and sexual abuse, and psychological distress), the government has initiated programs for the protection of migrant workers.

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742 Ibid, 62.


745 Ibid, 3-19.
Table 49: Some of the Programs of Government for the Protection of Migrant Workers

<table>
<thead>
<tr>
<th>Some of the Programs of Government for the Protection of Migrant Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A pre-departure orientation program especially for women in domestic employment who are vulnerable to maltreatment, abuse and other forms of violence. Included in the syllabus are the modules on health and sexuality, HIV/AIDS, self-defence techniques, etc.</td>
</tr>
<tr>
<td>• A comprehensive orientation program for overseas performing artists or entertainers regarding their rights, health, illegal recruitment, trafficking, self-development, and better career options</td>
</tr>
<tr>
<td>• Presence of female Philippine Overseas Labor Officers and female welfare officers in countries where there are large populations of Filipino women workers</td>
</tr>
<tr>
<td>• Setting up of welfare centres, bilateral negotiations with receiving countries, and lobbying for policy reform and programs for migrant workers at international fora</td>
</tr>
<tr>
<td>• Passage of the Anti-Trafficking in Persons Act, Anti-Mail Order Bride Law, and the Migrant Workers and Overseas Filipinos Act</td>
</tr>
<tr>
<td>• Ratification of the UN Convention on Transnational Organized Crime, Optional Protocol on Anti-Trafficking, and the Optional Protocol against Smuggling of Migrants by Land</td>
</tr>
<tr>
<td>• Reinforcing the integrity of the Philippine passport as implemented under the Philippine Passport Act, Philippine Labor Code and certain provisions of the Immigration Act</td>
</tr>
<tr>
<td>• The Office of the Undersecretary for Migrant Workers Affairs is at the forefront on matters related to assistance to Filipinos in distress overseas, created by virtue of the Migrant Workers and Overseas Filipinos Act</td>
</tr>
</tbody>
</table>

The position of Undersecretary for Migrant Workers Affairs was created to be primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress. His or her functions and responsibilities include, among others, the issuance of guidelines, procedures and criteria for the provisions of legal assistance services to Filipino migrant workers, and the tapping of assistance of reputable law firms and bar associations to complement efforts to provide legal assistance to migrant workers.

Assessment of the State’s Rehabilitation and Protection Program

Implementing programs to protect migrants include the creation of a shared government information system, issuance of travel advisories and listing of legitimate recruitment agencies, provision of legal assistance for migrant workers, operationalization of the country-team approach, and streamlining of procedures. Some issues which the program “failed to effectively address” were the unenforceability of the Migrant Workers and Overseas Filipinos Act overseas, ineffective pre-departure orientation, and the inefficient administration of the OWWA welfare fund.

Agunias and Ruiz in *Protecting Overseas Workers: Lessons and Cautions from the Philippines* examined the OWWA welfare fund, the world’s largest migrant welfare fund, which is crucial inter alia for the immediate repatriation of distressed and physically ill contract workers, and the remains of those who have died working abroad. The Government’s “main protection vehicle” has been the OWWA, and the Philippine experience showed that there were some real challenges in making a welfare fund work—finding the right balance of services, creating meaningful partnerships, building strong state capacity, and actively involving destination countries.

In order to assess the effectiveness of policies that uphold the rights of child migrants against discrimination, particularly as regards education, Reyes looked into European law and the country specific policies of Italy, Japan, Finland, France, Cambodia, Spain, and the United States. Treatment of children varied from one State to another.
Meanwhile, Battistella and Asis in *Protecting Filipino Transnational Domestic Workers: Government Regulations and Their Outcomes* wrote that domestic work still entailed risks and vulnerabilities to women migrant workers. For instance, they said that bans were never proven effective—instead driving migrants to emigrate underground; mechanisms “lacked teeth” in enforcement and monitoring; and the approach of “deploy and protect” is fraught with difficulties. The study sought to examine the impact of Government regulations on the status of Filipino domestic workers.

The legal deployment process, as observed by Battistella and Asis, was the same for male and female migrants, although in the case of the latter, additional protective mechanisms or requirements were set in place. As an example, there is a minimum age requirement for departing domestic workers – 23 years old. All workers must also attend the PDOS. For those leaving as domestic workers, it is handled by accredited non-governmental organizations. The Household Service Workers Reforms were said to be introduced by POEA in 2006 as a response to chronic cases of abuse and exploitation against domestic workers.

### d. Prevention Strategy

**Description of the State’s Prevention Program**

As seen above, the prevention strategy of Government is a part of the over-all protection regime for migrant workers. The law addresses the risks of international migration by regulating the recruitment and deployment of overseas Filipino contract workers in order to prevent abuses and curb illegal recruitment. To prepare migrants and provide them with information about living and working abroad, departing migrants were required to attend a Pre-Departure Orientation Seminar (PDOS). This was supplemented by the optional Pre-Employment Orientation Seminar (PEOS). Every year, however, thousands are employed through informal channels.

Rajan and Mishra’s *Managing Migration in the Philippines: Lessons for India* drew several lessons from the Philippines in order to organize systematic flows of emigration from India. One of these was the prevention of all practices of breach of contract by the recruiter and foreign employers. While the Government opened official access to foreign labour markets, it also tried to prevent unregulated migration channels.

Orbeta, Abrigo and Cabalfin in *Institutions Serving Philippine International Labor Migrants* described the institutions involved in managing international migration in the Philippines. The regulatory framework for deployment employed by the POEA could be summarized into three elements: (a) limiting entry to qualified actors; (b) rules and regulations on fees and standard contracts; and (c) ensuring compliance through monitoring and adjudication machinery. According to them, all aspects of migration were covered from pre-deployment, deployment, on-site services to eventual return. Limiting the entry to qualified actors (recruiters, employers and workers) was expected to lower the probability of problems occurring.

Orbeta, Abrigo and Cabalfin explained the rules on fees and standard contract, which required certain minimum provisions in order to avoid exploitation.

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757 Ibid, 9.


759 Ibid, 119.


761 Ibid, 8.

Assessment of the State’s prevention program, including state education and awareness programs, programs to raise community awareness, and accessibility of information

In the assessment of Faggio and Asis, providing a good legal framework and establishing different state agencies were “not good enough.” They added that the problem of implementation and enforcement inexorably affects international migration; coordination has to be improved as well. A comparative study of the regulatory frameworks of Pakistan, Philippines and Sri Lanka revealed that too complicated rules may breed corruption and abuse in the Philippine setting. Enforcement of rules, monitoring, and specification of rules on resolving conflict were likewise emphasized.

COA gave a mixed rating to the overseas workers program from 2005 to 2006 during a Sectoral Performance Audit. The constitutional commission lauded the adjudication of cases against illegal recruiters but pointed out that fines may be too low to encourage compliance of stakeholders with rules and deter abuses. Other results of the assessment are as follows: agencies that had several violations of migrants’ rights and should have been suspended continue to operate; surveillance operations declined in number and the record of inspections is not maintained; selective deployment to countries where rights are recognized and protected by law or by bilateral agreements as required by law was not strictly observed; coordination between the POEA and the Philippine Overseas Labor Offices (POLOs) was found insufficient; and no assurance that those who have gone through the Pre-Departure Orientation Seminar (PDOS) are indeed ready for deployment because no monitoring and evaluation was done.

Another report argued that the lapses may not be entirely the fault of agencies. The agencies lacked the manpower and resources to serve the demands of the regulatory framework on migration. The nature of migration also presented natural barriers to implementation of

Table 50: Minimum Provisions in Standard Employment Contracts Prescribed by the Philippine Overseas Employment Administration (POEA)

<table>
<thead>
<tr>
<th>Provision</th>
<th>1985</th>
<th>1991</th>
<th>2002 Land-based Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guaranteed wages and overtime pay, as necessary</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Free transportation to and from worksite</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Free emergency medical and dental treatment/facilities</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Just/authorized causes for termination</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Workmen’s compensation and war hazard protection</td>
<td>X</td>
<td>X</td>
<td>***</td>
</tr>
<tr>
<td>Repatriation of workers’ remains/properties in cases of death to the point of hire</td>
<td>X</td>
<td>X</td>
<td>***</td>
</tr>
<tr>
<td>Assistance in the Remittance of worker’s salaries, allowances or allotments to his/her beneficiaries</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Adequate board and lodging facilities</td>
<td>X</td>
<td>X**</td>
<td>X**</td>
</tr>
<tr>
<td>Grievance machinery for workers</td>
<td>X</td>
<td>***</td>
<td>***</td>
</tr>
</tbody>
</table>

Source: POEA Rules and Regulations governing Overseas Employment, various years
* Included in the verified undertaking of recruitment and manning agencies
** Free; Or compensatory benefits
*** Guaranteed by the POEA through other mechanisms set by the administration even if not specified in the employment contract

763 Ibid, 8.
766 Ibid, 57-59.
768 Ibid.
769 Ibid, 67.
programs: cooperation between the origin and host countries becomes crucial.\textsuperscript{771}

Faggio and Asis believed that the PDOS and PEOS (orientations given to departing migrants) should be assessed and re-formatted according to the needs of migrants and aspiring migrants.\textsuperscript{772} As mentioned, the audit report said that there was no assurance that those who have gone through the PDOS were indeed ready for deployment because no monitoring and evaluation was done.\textsuperscript{773} During the PDOS, according to Government, workers are oriented and informed \textit{inter alia} about on-site realities such as country profile, cultural and tradition climate; common problems encountered by OFWs and coping mechanisms; institutional support system; obligations based on the Code of Discipline for OFWs; and their rights and obligations in the employment contract.\textsuperscript{774}

However, based on a survey of domestic workers prior to migration, many departing workers were not aware of basic work rights and government regulations, particularly those concerning the household service workers reform package. More than half were ever-migrants.\textsuperscript{775} Almost half of the respondents (49.3\%) claimed their agency explained their work contract to them while the other half (50.7\%) said no such explanation was provided to them. About 57\% read their contract while 43\% did not read their contract, including a few who read only certain portions.\textsuperscript{776} A sizable percentage showed some tendency to let their employers make decisions about their work conditions, in part because of lack of information about decent work conditions.\textsuperscript{777}

Related information is accessible through PDOS and PEOS providers, including the POEA, OWWA and some non-governmental organizations.\textsuperscript{778} In addition to embassy/consular websites, Foreign Service officers render consular services and provide information through postings in the consular section and frequent interactions with the Filipino community, outreach programs and occasional appearances on community radio stations (in cities where they exist).\textsuperscript{779}

The ESCR once said that the Government could not control the emigration of OFWs, but more “can and should be done” to inform and educate existing and potential workers about the difficulties they might face abroad and about their rights.\textsuperscript{780} The CEDAW Committee also said agencies that provide information and support services to women before they depart for overseas work, as well as in receiving countries in cases of need, should be strengthened.\textsuperscript{781}

\section*{4. Role of Non-State Actors}

\subsection*{a. Assistance to Survivors and Protection; Prevention Programs}

Some NGOs and community based organizations working on general migration issues were enumerated in the report of Reyes. Their activities related to a lot of interventions, which included advocacy, direct support to survivors, legal assistance, and livelihood programs.\textsuperscript{782} Feliciano noted organizations collaborating in helping internal migrant child domestic workers.\textsuperscript{783} In an analysis, the European External Action Service concluded that there was a “large number” of associations for Overseas

\begin{thebibliography}{99}
\bibitem{772} Fabio Baggio, “The Migration-Development Disconnect in the Philippines,” 118.
\bibitem{774} Government of the Philippines, Written replies by the Government of the Philippines concerning the List of Issues (CMW/C/PHL/Q/1) received by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families relating to the Consideration of the Initial Report of the Philippines (CMW/C/PHL/1), 89.
\bibitem{775} Graziano Battistella and Maruja M.B. Asis, \textit{Protecting Filipino Transnational Domestic Workers}, 37.
\bibitem{776} \textit{Ibid}, 25.
\bibitem{777} \textit{Ibid}, 37.
\end{thebibliography}

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Filipinos or the so-called “diaspora organizations”. Migrants themselves formed organizations. For instance, in times of disaster, migrants associations mobilized resources for relief efforts. Others in their private capacity supported humanitarian initiatives on their own.784

Institutions Serving Philippine International Labor Migrants said government has long recognized the role of non-state actors. It is state policy to consider them as partners in pursuing migrant concerns. The study classified non-state actors into four main types: (1) non-profit, non-stock non-governmental organizations; (2) membership-based organizations and networks of current and former migrants, and their families, including sector-specific organizations; (3) church-based organizations, notably those within the Catholic Church;785 and (4) alliances and networks among various organizations within and without the migrant sector.786

Furthermore, programs for migrant workers and their dependents combined different types of services, which included some or all of the following areas: legal and paralegal, economic, psychosocial, and other auxiliary services. Actors did not merely respond to labour-related concerns, but also to economic, psycho-social and even health issues brought by migration.787 The aspects of protection of and assistance to survivors, and prevention of incidents were incorporated into these services.

b. Monitoring and Cooperation

Different mechanisms are in place for the participation of non-state actors in monitoring and cooperation efforts. Feliciano observed that civil society groups and non-governmental organizations have set up multi-sectoral watch groups which are engaged in the delivery of services to migrants. Such groups undertook regular training program on human rights, developed documentation system on violence against women, especially trafficking, and have organized community-based programs.788

According to Reyes, organizations working with children of migrants conducted policy interventions such as (1) use of radio, television, schools, magazines, pre-departure seminars to share advice and information on the care of children of migrants, (2) use of teachers to monitor children of migrants; (3) workshops with children and caregivers; and (3) individual counselling.789

5. Progress Indicators and Challenges

Availability and Accessibility of Progress Reports

Progress reports on efforts against abuse and discrimination of women in the context of migration are available and accessible. Most should however be more widely circulated to ensure adequate public information.

Effectiveness of Policies and Measures, and Assessment of Success Indicators

A comprehensive audit of the Government’s Overseas Workers’ Welfare Program by the COA, an independent constitutional body which performs the key function of auditing government,790 concluded that, “[g]overnment may not be considered effective in regulating overseas recruitment agencies and providing responsive services to OFWs in view of a number of ineffective policies and lapses in the implementation of the program.”791 The audit (2007) looked into selected programs and services implemented in 2005 and 2006 by the Department of Labor and Employment and its attached agencies dealing with migration (POEA, OWWA and the National Labor Relations Commission) as well as the Department of Foreign Affairs.792
Effective Regulation of Recruitment Agencies

Policies and programs for regulating recruitment agencies are in place to curtail illegal recruitment and employment activities

- The existing policy of lifting suspension upon payment of fines ranging from P20,000 to P190,000 in lieu of serving suspension from 2 to 19 months may not be effective in deterring commission of recruitment violations as such amounts could easily be recovered from prospective applicants. This is manifested in the recorded commission of violations. Under this condition, the OFWs were not fully protected.\textsuperscript{795}

- While the required P1 million escrow deposit was no longer sufficient to address the claims of OFWs, processing of transactions of several recruitment agencies with expired/suspended/cancelled licenses or de-listed due to non-compliance with escrow and capitalization requirements were nonetheless allowed under the pipeline account scheme. Thus, approved claims of OFWs remained unsatisfied. Claims of 452 OFWs from 49 recruitment agencies approved from January 2006 to June 2007 alone ranging from P2,501.49 to as much as P5,343,454.33 were unsatisfied due to insufficient escrow deposit balances.\textsuperscript{796}

- Actions for illegal recruitment activities may not be considered adequate. While reported cases in CY 2005 increased by 95% in CY 2006, the number of surveillance operations conducted decreased from 215 in CY 2005 to 78 in CY 2006. This is way below the targeted accomplishment of 300 surveillance operations yearly. Reported entrapment cases however increased in CY 2006. From the reported 4 persons entrapped in CY 2005, 50 persons were reported entrapped in CY 2006 which is equivalent to 417% of the targeted accomplishment of 12 persons.\textsuperscript{797}

- The Inspection Division was not maintaining a database of recruitment agencies subjected to inspection. Thus, while the number of agencies inspected reportedly exceeded the target, recruitment agencies not inspected and examined for quite a time could not readily be ascertained and their violations not at once detected.\textsuperscript{798}

- The provisions of RA 8042 and RA 9422 were not strictly enforced. OFWs hired as domestic workers were deployed even in countries where their rights were not protected by law or any bilateral labour agreement. This contributed in the reported problems by the OFWs which included contract violations, excessive work, non-payment of salaries, and physical, verbal and sexual abuses, and in growing repatriation cases.\textsuperscript{799}

- Coordination between POLOs (Philippine Overseas Labor Offices) and POEA is weak. The POLOs were not providing POEA with reports on documents verified at the Posts to guide the latter in processing OFWs for deployment despite requirement under DOLE Order No. 17-02 dated February 1, 2002. Likewise, POLOs were not furnished by POEA of reports on OFWs deployed in their respective jurisdiction. As the POLOs were likewise not maintaining Index Profile of Employers verified, they could not at once monitor deployed OFWs and verify compliance by foreign principals/employers on the provisions of employment contracts.\textsuperscript{800}

- Despite requirements under existing regulations, OWWA was not maintaining complete records on repatriation. Thus, while OWWA advanced P111.391 million from 1995 to 2006 for airfare expenses and only P18.487 million were reimbursed from concerned recruitment agencies and foreign principals, only P12.755 million were reflected in the financial statement as receivables. The status of airfare expenses amounting to P80.149 million could therefore not be determined. This allows unscrupulous recruitment agencies to continue their operations. Moreover, even agencies with outstanding obligations to OWWA continuously operate as reflected in the POEA records.\textsuperscript{801}
<table>
<thead>
<tr>
<th>Performance Indicators&lt;sup&gt;99&lt;/sup&gt;</th>
<th>Evaluation Criteria&lt;sup&gt;100&lt;/sup&gt;</th>
<th>Audit Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deployment Readiness of OFWs</td>
<td>Programs developed and conducted were effective in preparing successful candidates to cope with or adopt to changes in environment at jobsites</td>
<td>• The effectiveness of PDOS in providing necessary educational information to ensure the readiness of OFWs for deployment was not assessed. Thus, there is no assurance that OFWs deployed were ready to handle problems associated with working overseas. This could have contributed in recurring problems being experienced by OFWs.&lt;sup&gt;102&lt;/sup&gt;</td>
</tr>
<tr>
<td>Timely Disposition of Cases</td>
<td>Time standards for the disposition of cases are set and observed</td>
<td>• Out of 745 dispositions issued by POEA from January 2005 to May 2007 cancelling licenses of 48 agencies, 670 or 90% were issued only after 233 days on the average, way beyond the prescribed period of 90 days. Moreover, 35 other agencies considered in good standing have 3 to 17 cases pending for as long as 864 days as of May 31, 2007. The delayed disposition of cases provided an opportunity to recruitment agencies to continue their operations without serving penalties at the expense of OFWs.&lt;sup&gt;103&lt;/sup&gt;</td>
</tr>
<tr>
<td>Accessible and Responsive Welfare Assistance to OFWs</td>
<td>On-site services provided by concerned labour personnel are timely and consistent with OFWs’ needs</td>
<td>• The absence of standard ratio on POLO/OWWA personnel assigned at foreign posts to OFWs affected the ability of the Posts to provide efficient onsite services. In CY 2006, there were 11,424 to 5410,000 OFWs to be served and 2454 to 13,048 cases to be attended to in 20 posts with 2 to 6 personnel. This is equivalent to a POLO/OWWA personnel to OFW ratio of 1:5,712 to 1:100,000 and POLO/OWWA personnel to cases of 1:84 to 1:6,524. The disparity in ratios may have adversely affected the resolution of welfare cases and provision of onsite services. In countries with relatively high ratios, there were significant numbers of pending cases as of December 2006. As of February 2007, 455 runaway OFWs were housed in 9 Migrant and Overseas Filipino Workers Resource Centers (FWRCs), a number of whom were awaiting resolution of their respective cases for about 100 to 607 days as of the same date.&lt;sup&gt;104&lt;/sup&gt; • Statistical Reports on the number of pending cases and OFWs still housed at FWRCs as reflected in the POLO reports were inaccurate. Reported number of pending cases differs with computed number of cases by 18 to 12,067. The same could therefore not be relied upon as basis for preparing responsive services.&lt;sup&gt;105&lt;/sup&gt; • OWWA was yet to establish time frames for processing various claims of OFWs. From October to December 2006, life and total or partial disability insurance benefit claims of OFWs were processed only after an average of 44 days. The long period of processing of claims in effect delayed the enjoyment of benefits by the OFWs.&lt;sup&gt;106&lt;/sup&gt; • The POEA and NLRC have no formal mechanism to immediately inform OFWs of the amount of claims garnished from recruitment agencies. Thus, out of the total garnished amounts of P23,009,799.45 from January 2006 to June 2007, only P12,273,719 were so far released to 489 OFWs and only after an average of 140 days for POEA and 21 days for NLRC-NCR. This resulted in delayed enjoyment of benefits by the OFWs.&lt;sup&gt;107&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

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802 Ibid, 67.
803 Ibid, 74.
804 Ibid, 83.
805 Ibid, 89.
806 Ibid, 90.
807 Ibid, 95.
Several other reports provided assessments. Among them was a European Union report which opined that the existing programs of government focus on financial literacy activities by providing OFWs and their families necessary information to make sound decisions on the use of their remittances. However, the risks and threats to development that accompany migration were not given much attention, among others. On a related note, another report said that an assessment of the migration-development nexus in the Philippines did not depict an unqualified positive scenario. While the development potential of migration clearly appeared at different levels, there was an “evident disconnect” between policies on migration and development. A call for revision of policies on the basis of empirical studies and interdisciplinary assessments was made; the process has to be inclusive and with the cooperation of stakeholders.

Moreover, the report said that the participation of women in migration, especially mothers, “has been met with much more alarm than male migration.” Two primary reasons were given. First, the concentration of women in domestic work and the ‘entertainment’ industry brought about concerns about their safety and well-being. Secondly, concerns about families left behind, especially young children, triggered discussion on neglected children.

A case study of the Philippines by Sana and Abano painted a picture of gradual improvement of institutions and structures to protect migrants in general despite “limited political will and implementation on the part of governments.” In addition, hosts such as the Arab states of the Gulf also initiated reforms to protect the rights of their foreign workers, especially those in the domestic service. Sana and Abano added that as Southeast Asia coped with the negative impact of foreign labour in times of recent economic slowdown, the plight of migrant labour was given greater attention.

Many reports presented the challenges that adversely affected the progress of the Philippines in this regard. Although not also directly focused on women and children, the constraints were summarized by Sto. Tomas in an article. According to her, the Philippines had some measure of success in migrant protection, but much remained to be done.

Table 52: Constraints to Migrant Workers’ Protection: A Summary

<table>
<thead>
<tr>
<th>Area</th>
<th>Some Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers’ Education</td>
<td>Labor migration is difficult enough but when a worker leaves with incomplete or fraudulent documentation, he or she becomes prone to abuse and/or exploitation... In fact, majority of those who got subjected to exploitation are those who choose to take their chances outside of the official system. It is true that processes can sometimes be cumbersome but this is to ensure maximum protection. Thus, other than the regulatory and protective mechanisms in place, it is important that departing migrant workers are properly informed of the processes and of the rules governing overseas employment as well as of the working conditions in the destination country including its customs and practices.</td>
</tr>
<tr>
<td>Narrowing the Development Gap</td>
<td>The Philippines, like other developing countries, is confronted with problems of unemployment, underemployment and low level of pay which is often not sufficient to provide for the needs of the family. Given these and the fact that many have seen how the families of their OFW neighbours and friends have improved... the enticement of labour migration has become stronger over the years. There is nothing wrong with this except that others have used the enticement and attractiveness of overseas employment for their own selfish interest. Thus, problems like illegal recruitment by unscrupulous unlicensed individuals out to make money from poor, unsuspecting and naive applicants as well recruitment activities committed by licensed recruitment agencies in cahoots with their collateral partners like trade testing centres and the medical clinics.</td>
</tr>
<tr>
<td>The Cultural Divide</td>
<td>Migrant problems may also be a function of cultural practice... While some of these transgressions (mentioned by Sto. Tomas in her report as culturally assigned) may be inadvertent or unintentional, they also extend to employer-employee relationship. For instances, domestic helpers in the Philippines expect to work no longer than 10 hours and expect a day off once a week. These practices are not recognized in some societies.</td>
</tr>
</tbody>
</table>


813 Ibid., 19-20.

814 Ibid., 20-21.

815 Ibid., 21.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

6. Recommendations for Further Study

Summary of what is and is not known

The literature on abuse in the context of migration focused on the emigration of economic migrants from the Philippines (labour migration). Several aspects were considered such as illegal recruitment, programs of government to protect migrants, institutions engaged in this area of governance, laws and policies in place, and abuses experienced by migrants in some (not all) countries where a sizable number of Filipinos were residing. Most studies reviewed did not solely discuss the concerns of women and children. Their situation was tackled within the spectrum of migration analysis as a whole.

Despite this, some information remained unknown. In this critical review of literature the following gaps or shortcomings have been identified:

There was a dearth of information in literature on immigration to the Philippines and internal migration. One reason is that, in the context of the Philippines, movement had mostly been outward migration. Nonetheless, it is to be pointed out that a significant portion of the population moved from the rural areas to the urban centres.

As well, while abuses and discrimination against women in several countries were reported on, a comprehensive survey on women (much less on children) was wanting.

Information on survivors had to be disaggregated according to age and gender, and profiles of survivors and perpetrators determined.

The impact of migration as a whole on children was dealt with, but rarely on the specific impact of abuse and discrimination on children migrants themselves.

Abuse and discrimination of children who migrate on their own were not tackled in the literature reviewed.

The extent of the underreporting of cases of abuse among migrants remained unexplored.

<table>
<thead>
<tr>
<th>Area</th>
<th>Some Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Absence of Counterpart Protective Mechanism in Receiving Countries</td>
<td>These violations of the migrant workers’ rights and dignity often remain unattended for long periods and in some cases for the entire duration of their stay abroad. If action is eventually done, these are upon the intercession of the embassy staff after the embassy is informed by the migrant workers’ families in the Philippines of the predicament faced by their family members in the destination country. The process is cumbersome and risky at times on the part of the migrant workers who have to surreptitiously send letters back home or request returning OFWs to inform their families about their problems. This kind of situation is happening because of the absence of counterpart protective mechanisms in receiving countries which migrant workers can take advantage of… This, coupled by the migrant worker’s feeling of isolation and of being a stranger in a foreign land can make them more susceptible to abuse and exploitation. 816</td>
</tr>
<tr>
<td>Difficulty in Getting Bilateral Agreements (BLAs)</td>
<td>The constraint mentioned above could best be addressed by bilateral agreements between the labour-sending and labour-receiving countries. Through a bilateral agreement, the parties can define the protocols for migrant workers’ protection and provide for the specific systems and procedures that maybe put in place to achieve it. From experience though, bilateral agreements are not that easily concluded. This is because the agreement can entail commitments that Labour-receiving countries may, for some reasons, be reluctant to agree to. 817</td>
</tr>
<tr>
<td>Absence of Binding International Protocols</td>
<td>Other than bilateral agreements, one other instrument which labour-sending countries can take advantage of to ensure migrant workers protection is an international protocol or agreement. But except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Assembly Resolution 45/158 of 18 December 1990 which entered into force only on July 1, 2003) there appears to be no other substantive international protocol on migrant workers protection. Yet, even the convention itself, while comprehensive in its enumeration of the rights of migrant workers, is not binding with non-signatories as to compel strict adherence to its provisions… It must be pointed out that most of the receiving states are non-signatories. 818</td>
</tr>
</tbody>
</table>
Identification of Areas of Controversy in Reports

As with all reports which dealt with statistics and rounded figures, controversies have arisen as to the prevalence of abuse and discrimination against OFWs. These areas of controversy could be addressed with a comprehensive and inclusive survey with the participation of all relevant key stakeholders. Different reports also assessed differently, and used varied lenses in the examination of the policies and their effectiveness in curbing abuse. There was however an agreement in all reports surveyed that significant progress has been made for the protection of migrants in the Philippine context.

Some Recommended Areas for Data Collection and Further Research

Table 53: Research Recommendations on Abuse and Discrimination against Women and Children in the Context of Migration

<table>
<thead>
<tr>
<th>Area</th>
<th>Research recommendations</th>
</tr>
</thead>
</table>
| Prevalence of abuse and discrimination of women and children migrants | • Prevalence among migrants in the Philippines, including irregular migrants, deportees, refugees, stateless persons, and deportees  
• Prevalence in internal migration  
• Prevalence in children who migrate on their own  
• Comprehensive study as to country of origin, transit country, and host country  
• Profile of survivors and perpetrators; disaggregated as to age, gender and diversity  
• Analysis of underreporting of abuse and discrimination of women and children migrants, including estimates  
• Specific impact on women and children migrants and other studies focusing on women and children migrants  
• Evidence-based study on unemployment and underemployment in the country and their relationship with abuse and discrimination of migrant women and children  
• Information about the situation of refugee children, including children asylum seekers819 |
| De jure state responses | • Study on the policies and laws of receiving countries and access to justice for survivors before the judicial and quasi-judicial bodies of receiving countries820  
• Review of policies for immigrants, including those for irregular migrants, deportees, refugees, stateless persons, and deportees  
• Review for policies for internal migrants; urban-rural migration  
• Evidence-based study on the effectiveness of the PDOS and other prevention strategies |
| Progress indicators and challenges | • Update on the government’s overseas workers’ welfare program  
• Progress on the protection of immigrants  
• Progress on the protection of internal migrants |

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Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study


Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study


Journals


Francis Tom F. Temprosa


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**Reports and Submissions**


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Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

Francis Tom F. Temprosa


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Papers


Statistics and Research Portals


Others


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Singapore

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

by

Delphia Lim
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### Acronyms

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<th>Description</th>
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<tbody>
<tr>
<td>AGC</td>
<td>Attorney-General’s Chambers, Singapore</td>
</tr>
<tr>
<td>AWARE</td>
<td>Association of Women for Action and Research</td>
</tr>
<tr>
<td>BSS</td>
<td>Beyond Social Services</td>
</tr>
<tr>
<td>CABCY</td>
<td>Coalition Against Bullying for Children and Youth</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of Discrimination Against Women</td>
</tr>
<tr>
<td>CPO</td>
<td>Child Protection Order / Care and Protection Order</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CSEC</td>
<td>Commercial sexual exploitation of children</td>
</tr>
<tr>
<td>CYPA</td>
<td>Children and Young Persons Act</td>
</tr>
<tr>
<td>ECPAT</td>
<td>End Child Prostitution, Child Pornography &amp; Trafficking of Children for Sexual Purposes (civil society group)</td>
</tr>
<tr>
<td>FDW</td>
<td>Foreign domestic worker</td>
</tr>
<tr>
<td>HOME</td>
<td>Humanitarian Organization for Migration Economics</td>
</tr>
<tr>
<td>ICA</td>
<td>Immigration and Checkpoints Authority, Singapore</td>
</tr>
<tr>
<td>IMC</td>
<td>Inter-Ministry Committee</td>
</tr>
<tr>
<td>MCYS</td>
<td>Ministry of Community Development, Youth and Sports, Singapore</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs, Singapore</td>
</tr>
<tr>
<td>MHA</td>
<td>Ministry of Home Affairs, Singapore</td>
</tr>
<tr>
<td>MND</td>
<td>Ministry of National Development, Singapore</td>
</tr>
<tr>
<td>MICA</td>
<td>Ministry of Information, Communication and the Arts, Singapore</td>
</tr>
<tr>
<td>MOE</td>
<td>Ministry of Education, Singapore</td>
</tr>
<tr>
<td>MOH</td>
<td>Ministry of Health, Singapore</td>
</tr>
<tr>
<td>MOM</td>
<td>Ministry of Manpower, Singapore</td>
</tr>
<tr>
<td>MUIS</td>
<td>Majlis Ugama Islam Singapura (Islamic Religious Council of Singapore)</td>
</tr>
<tr>
<td>NCSS</td>
<td>National Council of Social Service</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>PPO</td>
<td>Personal Protection Order</td>
</tr>
<tr>
<td>SAFV</td>
<td>Society Against Family Violence</td>
</tr>
<tr>
<td>SCS</td>
<td>Singapore Children’s Society</td>
</tr>
<tr>
<td>SCWO</td>
<td>Singapore Council of Women’s Organisations</td>
</tr>
<tr>
<td>SPF</td>
<td>Singapore Police Force</td>
</tr>
<tr>
<td>TWC2</td>
<td>Transient Workers Count Too</td>
</tr>
<tr>
<td>UN Women</td>
<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
</tr>
<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
</tr>
<tr>
<td>VWO</td>
<td>Voluntary Welfare Organization</td>
</tr>
</tbody>
</table>

### Abbreviations

- **AWARE’s Shadow Report**
  - AWARE’s 2011 CEDAW shadow report
- **CRC Committee**
  - Committee on the Rights of the Child
- **CEDAW Committee**
  - Committee on the Elimination of Discrimination Against Women
- **ECPAT’s CSEC Report**
  - ECPAT International’s 2010 research report on CSEC
- **MinLaw**
  - Ministry of Law
- **SCWO’s Shadow Report**
  - SCWO’s 2011 CEDAW shadow report
### Formal Name: Republic of Singapore

**Capital City:** Singapore is a city-state

| Population<sup>1</sup> | Male: 2,308,964  
Female: 2,431,773  
Both sexes: 5,353,494 (July 2012) |
|------------------------|--------------------------------------------------|
| **Life expectancy<sup>2</sup>** | Male: 81.47  
Female: 86.2  
Both sexes: 83.75 (2012) |
| **Age structure<sup>3</sup>** | 0-14 years: 13.8% (male 338,419/female 314,704)  
15-64 years: 77% (male 1,774,444/female 1,874,985)  
65 and over: 9.2% (male 196,101/female 242,084) (2011 est.) |
| **Sex ratio<sup>4</sup>** | At birth: 1.07 male(s)/female  
Under 15: 1.05 male(s)/female  
15-64 years: 0.96 male(s)/female  
65-over: 0.82 male(s)/female  
Total: 0.96 male(s)/female (2012 est.) |
| **Religions<sup>5</sup>** | Buddhist 42.5%, Muslim 14.9%, Taoist 8.5%, Hindu 4%, Catholic 4.8%, Christian 9.8%, other 0.7%, none 14.8% (2000 census) |
| **Ethnic groups<sup>6</sup>** | Chinese 76.8%, Malay 13.9%, Indian 7.9%, others 1.4% (2000 census) |
| **Functional literacy rate<sup>7</sup>** | Male: 96.6%  
Female: 88.6%  
Both sexes: 92.5% |
| **National poverty line<sup>8</sup>** | No information available |
| **Percentage of population living below the national poverty line<sup>9</sup>** | No information available |
| **Gross Domestic Product per capita<sup>10</sup>** | S$63,050/ US $50,123 (2011) |

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2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.
| Net enrolment ratio in post-secondary schools | Intake for Institute of Technical Education (2010): Females: 37.8%; Males: 62.2%  
Intake for polytechnics (2010): Females: 49.3%; Males: 50.7%  
Intake for universities (2010): Females: 49.9%; Males: 50.1% |
| Migration rate | 15.62 migrant(s)/1,000 population (2012) |
| Number of citizens working overseas | 150,000 (2008) |
| Number of low-skilled or semi-skilled foreign workers in country | 856,000 (December 2009)  
206,000 FDWs (2011) |
| Percentage of female-headed households | 21.6% (2010) |
| Labour force participation rate | Male: 75.6%  
Female: 57% (June 2011) |
| Unemployment rate | Male: 9.9%  
Female: 16.6% (2009) |
| Maternal mortality rate | 3 deaths/100,000 live births (2010) |
| Infant mortality rate | 2.65 deaths/1,000 live births |
| Legal definition of ‘child’ | The Children and Young Persons Act defines a ‘child’ as a person who is below the age of 14 years. A ‘young person’ is defined as a person who is 14 years of age or above and below the age of 16 years.  
Under the Employment Act, a ‘child’ is a person who has not completed his 15th year of age. A ‘young person’ is a person who has completed his 15th year of age but who has not completed his 16th year of age. |
| Marriageable age | 18  
With consent of parents or guardians: between 18-21  
With Special Marriage Licence from the Ministry of Community Development: below 18 |
| Age of consent | 16 years of age |
| Age of criminal responsibility | 7 |
| Minimum age of employment | The minimum age of employment of children is 13 years.  
While a child, who is above 13 years of age but has not completed his 15th year (young person), is allowed to work under the law, Singapore’s labour legislation restricts the type of work and maximum hours the child or young person may be employed. |
| Minimum age for military recruitment and participation | Under the the Enlistment Act (Cap. 93), the minimum age for compulsory enlistment for national service in the armed forces is 18 years.  
The Singapore Armed Forces (Volunteers) Regulations provides for the minimum age for voluntary enlistment in the armed forces as 16 years and 6 months.
A. OVERVIEW

For Singapore, 2011 and 2012 saw a number of significant legal and policy developments relevant to the protection of women and children. In late 2011, the Singapore parliament decided to repeal a provision in the Evidence Act that allowed the use of the sexual history of sexual assault survivors to discredit them in court.\(^{30}\) In early 2012, parliamentarians discussed a proposal to completely criminalise marital rape, which is presently only criminalised in limited circumstances.\(^{31}\) In the second quarter of 2012, news broke of the prosecution of 48 men for having sex with an underaged call girl.\(^{32}\) The news triggered public controversy and debate over local laws that make having commercial sex with a minor an offence even where the offender mistakenly believed the minor was of legal age.

Sex and labour trafficking have also been in the spotlight. In March 2012, the government rolled out its National Plan of Action against trafficking in persons. This came after the 2010 and 2011 US State Department's Trafficking in Persons reports made local headlines for placing Singapore on the Tier 2 Watchlist.

The abuse of foreign women, particularly foreign wives and FDWs, has been another hot topic. Scathing reports on the dire situations faced by some foreign wives and FDWs have been released by local NGOs and other organizations such as Human Rights Watch. In March 2012, the government established a new immigration policy, in the form of a special long term visit pass for foreign spouses, that has the potential to reduce the financial dependence of foreign wives on their husbands. In May 2012, the government announced that the Employment of Foreign Manpower Act was under review, and that the review was open to public consultation. One of the government’s proposals was to impose stiffer penalties on employers who receive kickbacks or bribes from foreign workers to get employed.\(^{33}\)
These developments must be seen within the current political and human rights contexts in Singapore. In 2011, Singapore’s periodic reviews for CEDAW, CRC and the UPR were conducted, and Singapore was put in the hot seat at an international level. Notably, the CEDAW and CRC are the only human rights treaties ratified by Singapore. The year 2011 was also when a watershed general election took place. Political participation by Singaporeans reached new highs during this election, which saw the most number of opposition members elected to Parliament in independent Singapore’s history.

Local NGOs played a role in these developments. The government’s decision to repeal the evidentiary provision allowing the use of the sexual history of sexual assault victims was a direct response to a request by local NGO, AWARE. Local NGOs have also been active in pushing for reforms, through publishing advocacy reports, and submitting shadow reports in respect of the CEDAW, CRC and UPR.

Momentum has been generated from the slew of policy reforms and debates. With government policies being placed under a greater level of scrutiny, and the government displaying an openness to instituting reforms, this stock-taking exercise of Singapore’s situation relating to violence, exploitation and migration affecting women and children is timely.

**SUMMARY OF KEY FINDINGS**

**a. Violence**

The following table gives an overview of key data available in relation to issues of violence affecting women and children in Singapore. More detailed findings, such as profiling studies, are set out further below in this report.

<table>
<thead>
<tr>
<th>Data</th>
<th>Source</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore has the lowest rate of lifetime violence against women aged 18 to 69 years old (9.2%) among 12 participating countries.</td>
<td>2010 International Violence Against Women household survey, which assessed physical and sexual violence</td>
<td>-</td>
</tr>
<tr>
<td>2,971 PPO applications were made in 2009. PPOs are court orders protecting persons from family violence.</td>
<td>Statistics disclosed by the Subordinate Courts</td>
<td>More recent data is unavailable. PPOs are not gender-specific. A 2004 MCYS study showed that 82% of victims in PPO applications are women. Information solely on PPOs is insufficient to identify trends in family violence against women and children over the years.</td>
</tr>
<tr>
<td>The number of rape cases, including statutory rape, has increased yearly from 118 in 2006 to 202 in 2009.</td>
<td>Statistics disclosed by the government in its 2011 response to issues raised at its fourth CEDAW periodic review</td>
<td>Reasons for the increase are not known, save that the increase is attributable to an increase in cases involving culprits whom victims know.</td>
</tr>
<tr>
<td>The number of child abuse cases has increased yearly from 100 in 2007 to 193 in 2010.</td>
<td>MCYS statistics, which appear to record only intra-familial child abuse cases</td>
<td>Reasons for the increase are not known.</td>
</tr>
</tbody>
</table>

34 The other 11 countries were Australia, Costa Rica, Czech Republic, Denmark, Greece, Hong Kong, Italy, Mozambique, Philippines, Poland and Switzerland.

<table>
<thead>
<tr>
<th>Data</th>
<th>Source</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>The number of sexual offences involving victims less than 18 years old decreased from 631 in 2007 to 543 in 2009. However, statutory rape cases increased in number from 77 in 2007 to 101 in 2009. The numbers then decreased to about 50 cases in 2010.</td>
<td>Statistics disclosed by the government in its 2011 response to issues raised during the second and third CRC periodic reviews</td>
<td>Reasons for the trends are unknown.</td>
</tr>
<tr>
<td>The number of outrage of modesty cases increased by 11% from 1,273 cases in 2009 to 1,414 cases in 2010. The number dropped slightly to 1,396 in 2011.</td>
<td>Statistics disclosed by the SPF in its annual report</td>
<td>Outrage of modesty is not a gender-specific offence. The statistics disclosed were not disaggregated by age or gender. Percentage of cases involving workplace sexual harassment is unknown. Reasons for the general increase are unknown.</td>
</tr>
<tr>
<td>Between January and March 2011, 31 cases of outrage of modesty and 2 cases of insulting the modesty of a woman in the workplace were recorded.</td>
<td>Statistics disclosed by the government in its 2011 response to issues raised at its fourth CEDAW periodic review</td>
<td>The data is isolated. Larger trends relating to workplace sexual harassment are unknown.</td>
</tr>
<tr>
<td>214 of 500 male and female respondents were women who had experienced sexual harassment in the workplace.</td>
<td>2008 informal survey by AWARE</td>
<td>The study was aimed at raising awareness, and was not an attempt to examine prevalence rates.</td>
</tr>
<tr>
<td>Around 25% of schoolchildren experience bullying.</td>
<td>Formal medium to large-scale surveys conducted by the SCS in 2006, 2007 and 2010</td>
<td>The surveys have been criticised by the Minister of Education for representing a wide spectrum of bullying behaviours, including ‘teasing.’</td>
</tr>
</tbody>
</table>

The following observations can be made. First, in view of the available data on cases of rape and outrage of modesty, sexual violence against women is cause for concern. The existence of sexual harassment in the workplace has received particular attention from local NGO, AWARE. However, no reliable data on its prevalence is available.

Second, also of concern is the increase in child abuse cases and the sexual exploitation of minors. Reportedly on the increase are cases of peer-to-peer online sexual exploitation (posting of sex pictures of youth online by their peers), and of Singaporean teenagers exchanging sexual services for prized gadgets or luxury items or for extra pocket money, using the Internet or mobile phones to advertise or sell sex services. This phenomenon is also known as ‘compensated dating.’

Third, as shown by the data in relation to PPO applications and outrage of modesty cases, there is an unavailability of updated and sufficiently disaggregated data to enable the analysis of emerging trends in relation to violence against women. This was noted in AWARE’s Shadow Report.

Fourth, currently available information on violence affecting children is more comprehensive and updated than that on violence affecting women. In contrast to the data on violence against women, statistics on intra-familial child abuse from 2007 to 2011 are available, and appear to be published annually by MCYS.

In the course of the research process, the piecemeal availability of data was a source of difficulty. Although the SPF keeps data on all reported criminal cases, including sex-disaggregated data, and in particular, data on offences committed against women and children (including age, sex

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36 Disaggregation of data by type of offence can be found below at Figure 3 - MCYS data on types of child abuse prevalent from 2007 to 2010.


38 Ibid, paras. 95-97.

39 Ibid, 22-23.

40 Ibid, para. 19.7.

41 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report, (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 52.

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and relationship of perpetrator to victim). Such data is not regularly published. Only selected types of data relating to sexual offences against women and children were disclosed by the government during the 2011 CEDAW and CRC reviews. The reasons for the selective disclosure are unclear. When asked by the press for overall data on child sex abuse cases, the SPF declined to disclose the numbers given the ‘sensitive nature of the information.’

Another data gap is the absence of nationality profiling from all publicly available government data. It is not known if the government in fact collects data on nationality. The lack of such data renders the assessment of the prevalence of violence against foreign women difficult. This is particularly significant given that violence against foreign wives from low-income backgrounds is a ‘hot-button’ issue.

Recent independent studies are the International Violence Against Women Survey, funded by the National University of Singapore, and surveys by the SCS and CABCY on child abuse and bullying of schoolchildren, including cyber-bullying. Also notable is a 2008 SAFV assessment of gaps in the areas of direct service provision, processes and supportive institutions in the management of family violence.

Save for the few NGO research reports above, there is a dearth of empirical research by NGOs on the problem of violence against women and children. The SCWO has emphasized that NGOs lack resources and expertise to conduct the necessary empirical studies, and rely on the government to do so.

Government bodies such as MCYS and the Subordinate Courts have conducted prevalence and profiling studies. These were mainly in relation to family violence and intra-familial child abuse, and are rather dated, having been conducted in 2004 and 2005. MCYS has acknowledged the lack of research overall, albeit in relation to family violence specifically.

Finally, due to resource limitations, this research study did not canvass local medical journals. Such journals may contain data on prevalence of violence cases, and medical studies may have examined the impact of violence against women and children. Also, VWOs providing counselling and case management services may also publish data on, for example, family violence cases in their annual reports.

Piecing together such data is outside the scope of this study.

b. Exploitation

With regard to trafficking in persons, convictions have increased from 0 convictions in 2007 and 2 convictions in 2008 and 2009 respectively, to 13 convictions in 2010. Eighty-one trafficked victims were reported by the authorities in 2010, of whom 23 were children in prostitution; of these children 1 was Singaporean. In all official cases of trafficking for sexual exploitation, the victims were female.

Controversy has surrounded the significant differences in the numbers of trafficking cases reported by non-State actors, such as foreign embassies, and the numbers reported by the government. The difference has been attributed to circumstances causing foreign victims to be reluctant to report to local authorities, and the adoption by authorities of a narrower definition of trafficking that may ignore situations of coercion and deception. The government has in 2010 and 2011 reported higher numbers of potential trafficking cases.

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44 These were undertaken by the SCS and CABCY.
50 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 52.
Non-State actors and the government have also taken different positions on the scope and definition of Singapore's various different legal provisions against trafficking, such as whether they cover cases of debt bondage, deception and coercion. The reports do not appear to have looked into judicial interpretations of the relevant provisions. Some legal provisions may remain untested before the courts, as prosecutors may bring charges under other provisions. Enacting a consolidated anti-human trafficking law provides an opportunity to resolve the matter, but plans to do so are uncertain.

Local empirical research on trafficking is scant. The only field level research study done on sex trafficking in Singapore is ECPAT's CSEC report. The study involved 111 Filipina, Chinese, Indonesian and Bangladeshi sex workers, who ranged from under 18 years of age to above 24 years of age. Profiling was conducted, and the victims' recruitment, movement, exploitation and exit and post-exist trajectories were investigated.

With regard to other forms of sexual exploitation of women, information on prevalence is lacking. Information on the prevalence of sexual exploitation of children is available, but piecemeal. There were 5, 20 and 15 victims of sexual exploitation (not necessarily involving monetary compensation) under 16 years of age in 2007, 2008 and 2009 respectively. In 2008, there was 1 conviction under a new 2008 law penalizing the commercial sexual exploitation of a minor under 18 years of age. This number will certainly increase in the wake of a high profile scandal in 2012 involving one underageed callgirl and 48 men charged with paying her for sex, a number of whom pleaded guilty. Such data is particularly significant given the highlighted trend of increasing numbers of Singaporean teenagers prostituting themselves for access to material goods and more pocket money.

With regard to labour exploitation and trafficking, prevalence is less clear. Pinning down what constitutes labour exploitation poses difficulties, as various factors such as withholding of passports, contract substitution and coercion need to be taken together on a case-by-case basis to determine the existence of labour exploitation and trafficking.

In this regard, there were 8 labour trafficking convictions in 2010, mainly relating to 'shell companies and the persistent withholding of passports by employment agents,' according to the government in response to the 2011 US State Department's Trafficking in Persons report. HOME and TWC2, which provide services to foreign workers, have included in their shadow reports information relating to numbers of Employment Act contraventions and unpaid wage cases occurring among their shelter residents. One small-scale survey was conducted on residents at a shelter run by HOME, which collected information on indicators of exploitation.

### c. Abuse and Discrimination in Migration

This study focuses on FDWs, as most of the literature on issues affecting foreign female workers in Singapore pertain to FDWs.

Abuses of FDWs are relatively well-documented. The government reported 59 cases of substantiated abuse against FDWs in 2005, 42 in 2006, 68 in 2007, 53 in 2008 and 60 in 2009. Independent research has been conducted on FDWs.

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51 For example, Section 140 of the Women’s Charter has been interpreted by the US Department of State in its 2011 TIP report as not prohibiting non-physical forms of coercion, such as debt bondage or threat of abuse of the legal process. The Inter-agency Task Force on Trafficking in Persons has disagreed with this interpretation, taking the position that section 140 covers a wide variety of situations, including where there is no threat of physical injury. Ministry of Foreign Affairs, Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report, press release, 1 August 2011, http://app.mfa.gov.sg/2006/lowRes/press/view_press.asp?post_id=7160, para. 23. Separately, local NGO, TWC2, together with the Global Alliance against Traffic in Women, have in their 2011 CEDAW Shadow Report taken the view that section 140(c)(iii) of the Women’s Charter does appear to offer an avenue for prosecuting those who trap women into sex work by using their indebtedness. The said NGOs note, however, that the provision seems little used.

52 Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), 32, Table 15.


56 ‘Fact sheet: Foreign Domestic Workers in Singapore (Complaints and...’

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abuse, including one small-scale survey conducted on residents at a shelter run by HOME, and a 2005 Human Rights Watch research report. Anecdotal information on FDW abuse was provided in the 2011 CEDAW and UPR shadow reports of HOME, TWC2 and Solidarity for Migrant Workers (a coalition comprising HOME, TWC2 and Migrant Voices), which also relied on media reports on FDW abuse.

Empirical investigations into the causes of abuse of FDWs do not appear to have been conducted. It has been surmised that abuse stems from perceptions that abusive behaviour towards FDWs is acceptable, and FDWs are regarded as the ‘subservient other’ in the home, and the ‘inferior other’ in the public sphere. Racial, ethnic and religious discrimination have also been cited as reasons.

State policies discriminating against FDWs were identified in the advocacy reports of HOME, TWC2 and Solidarity for Migrant Workers. These policies are:

a) Prohibition of becoming pregnant or delivering any child in Singapore during and after the validity period of the work permit,

b) Prohibition of marrying a Singapore citizen or permanent resident (whether or not the marriage takes place in Singapore), during and after the validity period of work permit, without prior approval, and

c) Mandatory initial and 6-monthly medical examinations. Positive diagnosis for infectious diseases, namely tuberculosis, malaria, syphilis and/or HIV, will lead to repatriation.

These prohibitions are reported to have led to FDWs self-administering unsafe abortions or to undergoing illegal ones, leading to serious injury, the separation of FDWs from their children, and greater vulnerability to trafficking. These policies stem from the government’s strict stance that restrictions on immigration are necessary to keep the population size manageable. Singapore is said to regard FDWs as a transient workforce that can be repatriated during periods of economic slowdown.

NGOs have also taken issue with the exclusion of FDWs from the Employment Act and the Work Injury Compensation Act. The government’s position is that for domestic workers, such regulation is not practical given that they work in a home environment and domestic arrangements vary in different households.

Migrant child labour does not appear to be an issue in Singapore. According to the government, there were no cases of migrant workers under 18 years of age from 2007 to 2009. This appears to exclude migrant sex workers, who usually enter Singapore on visit passes, not work permits.

61 Solidarity for Migrant Workers, A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review, May 2011, ANNEX J.

62 Ibid, ANNEX I.

63 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/4/Add.1, 18 May 2011), 24.


65 Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 11.47.

66 Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), para. 156.
Recommended Areas of Research

Violence

Table 2 – Recommended Areas of Research (Violence)

<table>
<thead>
<tr>
<th>Recommended areas of research</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Sexual harassment of women; workplace sexual harassment</td>
<td>These were issues of concern identified by NGOs. There is however a lack of evidence substantiating the extent of these forms of violence.</td>
</tr>
<tr>
<td>• Abuse of elderly women, including financial abuse</td>
<td></td>
</tr>
<tr>
<td>• Abuse of foreign wives</td>
<td></td>
</tr>
<tr>
<td>• Impact of committal on juveniles aged 16 to 18 years old</td>
<td></td>
</tr>
</tbody>
</table>

Reasons for:
• the rise in rape cases                                                                     | These are trends are of concern, but their underlying reasons are unknown. |
• the rise in outrage of modesty cases                                                        |                                                                         |
• the rise in child abuse cases                                                               |                                                                         |

The prevalence of and types of gender stereotypes, and whether they are related to violence against women in Singapore | NGOs have argued that a gender-mainstreaming approach is lacking. Such research could help substantiate whether such an approach is needed. |

The effectiveness of the various aspects of the management of family violence. One specific area is assessing the grant of PPOs, including Domestic Exclusion Orders, especially in view of the purported government response to family violence of requiring the perpetrator and victim to remain in the same home.67 | Evaluative research on the family violence management system was identified by both MCYS and the SAFV as needed.68 |

Exploitation

Table 3 - Recommended Areas of Research (Exploitation)

<table>
<thead>
<tr>
<th>Recommended areas of research</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>The phenomenon of ‘compensated dating’, i.e. Singaporean teenagers prostituting themselves for access to material goods and more pocket money.</td>
<td>Such cases appear on the increase. No empirical research appears to have been conducted on the issue.</td>
</tr>
</tbody>
</table>

Monitoring law enforcement responses to trafficking and sex exploitation                       | Trenchant criticisms have been levelled against victim identification procedures in law enforcement.69 Reports indicate that law enforcement officers are responsive, not proactive, in identifying victims, and undocumented sex workers are by default regarded as immigration offenders. |

Assessment of safeguards adopted against exploitation of FDWs, such as accreditation of employment agencies, standard contracts, and education of FDWs upon arrival. | Exploitation of FDWs is difficult to monitor. It is therefore crucial to ensure the effectiveness of existing preventive measures. |

67 SCWO, CEDAW Shadow Report, June 2011, para. 191. The report did not give details substantiating the nature of this reported Government response.


Abuse and Discrimination in Migration

Table 4 – Recommended Areas of Research (Abuse and Discrimination in Migration)

<table>
<thead>
<tr>
<th>Recommended areas of research</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature and extent of the impact of State policies purportedly discriminatory against FDWs,</td>
<td>This was an issue of concern identified by NGOs. There is however a lack of evidence substantiating the extent of such impacts.</td>
</tr>
<tr>
<td>namely, illegal or self-abortions and separation of FDWs from children</td>
<td></td>
</tr>
<tr>
<td>Reasons for abuse of FDWs</td>
<td>To increase the effectiveness of ongoing campaigns against FDW abuse, and measures such as the education of employers of FDWs</td>
</tr>
</tbody>
</table>

B. Singapore and the CRC and CEDAW

Singapore’s Obligations under CEDAW and the CRC

Table 5 - Singapore’s obligations under CEDAW and the CRC

<table>
<thead>
<tr>
<th>Date of Ratification</th>
<th>Instrument</th>
<th>Reservations / Declarations</th>
<th>Implementing Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 August 2010</td>
<td>Amendment to Article 20(1) of the Convention on the Elimination of All Forms of Discrimination Against Women</td>
<td>None.</td>
<td>No specific implementing legislation.</td>
</tr>
</tbody>
</table>

70 Article 38 of the Constitution gives law-making power exclusively to Parliament. Accordingly, international conventions and treaties, though ratified, can neither impose duties nor create rights enforceable in the Singapore courts unless there exists implementing domestic legislation.


73 The 2011 CRC Committee expressed concern that ‘the Convention has not yet been fully incorporated into domestic legislation, and is not directly applicable in the State party.’ Committee on the Rights of the Child, Concluding Observations: Singapore (CRC/C/SGP/CO/2-3, 2 May 2011), para. 16.

74 Children’s rights under Articles 12 to 17 are to be exercised ‘with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore’s multi-racial and multi-religious society regarding the place of the child within and outside the family.’ Articles 19 and 39 do not prohibit ‘(a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others; or (c) the judicious application of corporal punishment in the best interest of the child.’ Convention on the Rights of the Child. ‘Reservations and Declarations. Singapore.’ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.
Singapore's reservations to both the CRC and CEDAW carry, in similar terms, the following significant immigration-related reservation:

Singapore is geographically one of the smallest independent countries in the world and one of the most densely populated. The Republic of Singapore accordingly reserves the right to apply such laws and conditions governing the entry into, stay in, employment in and departure from its territory to those who do not have the right under the laws of Singapore to enter and remain indefinitely in Singapore, and to the conferment, acquisition and loss of citizenship of women who have acquired such citizenship by marriage and of children born outside Singapore. (CEDAW reservation)

This stand is reflected in policies affecting foreign wives, trafficked women and foreign workers in Singapore, as will be seen further below.

Also noteworthy is Singapore's declaration in respect of the CRC, that child's rights under Articles 12 to 17 are to be exercised 'with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family.' This reflects Singapore's policy of permitting corporal punishment in schools and homes.

The absence of specific implementing legislation for CEDAW underscores criticisms that Singapore's approach to women's issues is not premised on gender equality, but rather on the promotion of other goals, for example, the preservation of the family in relation to domestic violence.

CEDAW and CRC Implementing Mechanisms

The following are bodies involved in the implementation of CEDAW and the CRC:

<table>
<thead>
<tr>
<th>Table 6 – CEDAW and CRC Implementing Bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Body</strong></td>
</tr>
<tr>
<td>CEDAW</td>
</tr>
<tr>
<td>Inter-Ministry Committee on CEDAW (IMC-CEDAW)</td>
</tr>
<tr>
<td>Office of Women's Development (formerly known as the Women's Desk up to 1 July 2011)</td>
</tr>
<tr>
<td>CRC</td>
</tr>
<tr>
<td>Inter-Ministry Committee on the Rights of the Child (IMC-CRC)</td>
</tr>
</tbody>
</table>

76 The name change has been described as 'befitting of its standing and evolved role': Alvina Soh, 'MCYS to identify gaps on women's issues,' Channel NewsAsia, 24 June 2011, accessed 8 May 2012, http://www.channelnewsasia.com/stories/singaporelocalnews/view/1136957/1.html.
77 Singapore's Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), 14.
78 Ibid.
79 Ibid.
81 Ibid.
Some Criticisms

The Office for Women’s Development is situated within MCYS’ Family Development Group. This is seen to ignore the fact that women face many issues outside the family situation,82 and suggests that the said Office’s goals relate primarily to strengthening families and marriages, instead of addressing gender equality.83 Further, human and financial resources, capacity and authority of the Office for Women’s Development to ensure that gender equality policies are properly developed and fully implemented throughout the work of all ministries and government offices are reportedly lacking.84

Also, NGOs have criticised IMC mechanisms for dealing with the domestic implementation of international obligations and resolving conflicts between international obligations and domestic policies and programmes as ‘opaque’.85

C. VIOLENCE

1. Description of the Problem

a. Prevalence of Violence

According to one household survey, prevalence of violence against women whether within or outside the family is relatively low. The 2009 International Violence Against Women Survey86 of 2006 women aged from 18 to 69

found that, compared to other participating countries,87 Singapore had the lowest rate of lifetime violence (9.2%), physical violence (6.8%) and sexual violence (4.2%) victimisation.88 Singapore had the second lowest rate in respect of experience of violence (2.6%), physical violence (2.1%) and sexual violence (0.5%) victimisation in the 12 months preceding the survey.

The survey also found that women abused in relationships faced more serious abuse, and were less likely to report the incident.89 Findings also showed that a considerable number of women were well-educated; 30.2% of women who had experienced violence had university or postgraduate education.90 In other words, violence against women remains a concern across varying educational and income levels.

Family Violence

As will be shown below, the majority of victims of family violence cases are women and children. Also, an over-representation of minority groups in family violence cases has been found in a number of reports;91 one noted that the issue required further attention.92

83 Ibid, 21.
87 Other countries that have conducted IVAWS are Australia, Costa Rica, Czech Republic, Denmark, Greece, Hong Kong, Italy, Mozambique, Philippines, Poland and Switzerland.
89 Incidents involving partner victimisation were more serious than non-partner victimisation; but the former were less likely to regard the incident as a crime or a wrong. Significantly 77.5% and 71.7% of those involved in non-partner and partner victimisation respectively did not report the incident to the police.
90 Incidents involving partner victimisation were more serious than non-partner victimisation but the former were less likely to regard the incident as a crime or a wrong. Significantly 77.5% and 71.7% of those involved in non-partner and partner victimisation respectively did not report the incident to the police.
Indicators of the prevalence of family violence include the numbers of PPOs issued by the courts, as well as family violence cases identified in hospitals, reported to the police, or referred to Family Service Centres. Information on the number of PPO applications appears more publicly accessible than information from other sources such as hospitals, the police or Family Service Centres.

Table 7 - Numbers of fresh PPO applications from 2003 to 2009

<table>
<thead>
<tr>
<th>Year</th>
<th>Fresh PPO Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>2,783</td>
</tr>
<tr>
<td>2004</td>
<td>2,522</td>
</tr>
<tr>
<td>2005</td>
<td>2,691</td>
</tr>
<tr>
<td>2006</td>
<td>2,667</td>
</tr>
<tr>
<td>2007</td>
<td>2,554</td>
</tr>
<tr>
<td>2008</td>
<td>2,547</td>
</tr>
<tr>
<td>2009</td>
<td>2,571</td>
</tr>
</tbody>
</table>

PPOs are available to both men and women. Statistics on PPOs are usually not gender-disaggregated. However, as will be shown below, profiling studies prove that the vast majority of victims in PPO applications are women.

Trends in the number of PPO applications are not necessarily reflective of the prevalence of family violence. Increases or decreases in this number could be due to the extent of public awareness of and access to assistance, the extent of public education, the effectiveness or ineffectiveness of early intervention, among other reasons.

A 2008 SAFV report, which consolidated data from various sources, sought to provide a more comprehensive picture of the prevalence of family violence from 1995 to 2005. Its findings are below:

Figure 1 - Compilation of data on family violence from 1995 to 2005

Research findings from 2004 showed that 42.5% of PPO application cases involved the causing of hurt, 26.4% were of threats and continual harassment, and 26.1% involved multiple forms of violence. As sexual violence is not included in the statutory definition of family violence, this type of violence was not reflected in the survey.

Family violence is most likely underreported. In this regard, a 2007 MCYS study on public perceptions on family violence revealed that 51% of the 1,015 respondents polled believed that violence in the family ‘is a private affair’ and 10% believed that an abusive spouse should not be reported to the authorities.

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93 PPOs are orders protecting family members from family violence. See the Women's Charter (Cap 353, 2009 Rev Ed Sing), s 64-66.


97 Figures might not take into account the overlaps occurring when the same case is referred to the police, the hospital and/or the family service centre.


Family Violence Against Women / Spousal Violence

Women comprise the majority of victims in family violence cases. In 2006, spousal violence accounted for 76% of PPO applications and over 80% of the alleged victims were wives.101 In a 2004 study of PPO applications, women made up 82% of complainants.102

Marital rape, in limited circumstances, is criminalized, following 2008 amendments to the Penal Code. (Previously, marital rape was an exception to the definition of rape.) According to a 2011 government report, 'very few' reports of marital rape have been made since the said amendments, and in all those cases, there were no grounds for prosecution and hence no convictions.103

Foreign Wives

The abuse of foreign wives, primarily those from low-income backgrounds, has been in the spotlight in recent years. In this regard, the number of marriages between Singapore citizens and foreigners is significant. In 2010, among the 20,273 marriages involving at least one Singapore citizen, 30% were between a Singapore citizen and a foreigner (excluding permanent residents).104

The 2007 CEDAW Committee expressed concern regarding 'foreign wives of Singaporean citizens, especially in regards to violence and abuse.'105 'There has reportedly been an increase in recent years in foreign wives seeking help and being abandoned, with a notable proportion of cases involving physical abuse.'106

Child Abuse in a Family Setting

Children (below 21 years of age) were involved in 32% of PPO applications surveyed in 2004, either directly or as witnesses, with 68% of the children suffering hurt.107

The following MCYS data indicates the prevalence of child abuse in a family setting:108

![Figure 2 - MCYS data on child abuse prevalence from 2007 to 2010](image)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Abuse</td>
<td>100</td>
<td>114</td>
<td>124</td>
<td>193</td>
<td>82</td>
</tr>
<tr>
<td>Lacks Evidence but Needs Assistance</td>
<td>54</td>
<td>62</td>
<td>41</td>
<td>50</td>
<td>22</td>
</tr>
<tr>
<td>False Complaint</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Pending Investigation Outcome</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>104</td>
</tr>
<tr>
<td>Total</td>
<td>154</td>
<td>176</td>
<td>169</td>
<td>246</td>
<td>210</td>
</tr>
</tbody>
</table>

Source: MCYS, Child Abuse Investigations110


103 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), paras. 37 and 41.


106 AWARE, CEDAW Shadow Report, May 2011, paras. 6.27 and 19.19-19.20. In assessing the prevalence of abuse of foreign wives, the report relied on newspaper reports and cases reported to voluntary welfare organizations.


108 It appears that MCYS statistics exclude cases of abuse outside the family setting. MCYS generally has purview over cases referred to the Child Protection Service (CPS), which deals with cases of abuse related to a family setting; cases not related to a family setting would generally not be referred to the CPS; see MCYS, Protecting Children in Singapore, October 2005, chap. 3. Further, CYPA (Cap. 38, 2001 Rev Ed Sing), s 5 defines the crime of child abuse as one necessarily committed by ‘a person who has the custody, charge or care of the child or young person’; also, MCYS defines child abuse as abuse committed by a ‘parent or guardian’ of the child: MCYS, Protecting Children in Singapore, October 2005, 2.

109 Complete data unavailable at time of publication.

110 Ibid.
Figure 3 - MCYS data on types of child abuse prevalent from 2007 to 2010

<table>
<thead>
<tr>
<th>Types of Abuse</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>50</td>
<td>56</td>
<td>82</td>
<td>134</td>
<td>47</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>48</td>
<td>45</td>
<td>28</td>
<td>47</td>
<td>25</td>
</tr>
<tr>
<td>Physical Neglect</td>
<td>0</td>
<td>9</td>
<td>10</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>2</td>
<td>4</td>
<td>4</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>114</td>
<td>124</td>
<td>193</td>
<td>82</td>
</tr>
</tbody>
</table>

A 2005 MCYS study found that 54% of perpetrators of intra-familial child abuse were biological parents. Other perpetrators included step-parents, siblings or other caregivers.112

CPOs, which are issued to protect children from abuse in a family setting, are also indicators of prevalence of child abuse:

Table 8 - Numbers of CPO applications from 2007 to 2009

<table>
<thead>
<tr>
<th>CPO Applications</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>113</td>
<td>78</td>
<td>73</td>
</tr>
</tbody>
</table>

Neglect of the child was a significant feature of CPO cases studied in 2004.114 The types of neglect included physical neglect (40.2%), failure to supervise or protect leading to physical harm, such as drunk driving with a child or engaging in dangerous criminal activities with a child (35.3%), educational neglect (26.5%), abandonment/refusal of custody (19.6%), and failure to supervise or protect leading to sexual abuse (15.7%).

Intra-familial child abuse may be under-reported.115 A 2005 MCYS study on child sexual abuse revealed that more than half of the family members informed about the abuse failed to make reports due to shame or economic factors.116 Cases of physical child abuse may be underreported due to the perceived acceptability of forms of discipline such as caning.117

Sexual Offences

Sexual offences against women and children are rising significantly, as shown by government statistics:

Figure 4 - Numbers of rape and outrage of modesty cases from 2002 to 2009

<table>
<thead>
<tr>
<th>Offence</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>128</td>
<td>110</td>
<td>103</td>
<td>124</td>
<td>118</td>
<td>129</td>
<td>167</td>
<td>202</td>
</tr>
<tr>
<td>Rape cases involving culprits known to the victim</td>
<td>122</td>
<td>102</td>
<td>96</td>
<td>123</td>
<td>113</td>
<td>121</td>
<td>154</td>
<td>195</td>
</tr>
<tr>
<td>Outrage of modesty</td>
<td>4 099</td>
<td>1,082</td>
<td>1,096</td>
<td>1,308</td>
<td>1,280</td>
<td>1,339</td>
<td>1,236</td>
<td>1,273</td>
</tr>
</tbody>
</table>

Source: Singapore’s 2011 report to CEDAW in response to issues raised at the fourth periodic review.118

The above rape cases include statutory rape cases (i.e. consensual sex with minors), date rapes and rapes that take place when the victim is intoxicated. The increase in rape cases may be accounted for by culprits that rape victims

111 Complete data unavailable at time of publication.
112 MCYS, Protecting Children in Singapore, October 2005, chap. 3. This report appears to be the last official report comprehensively profiling child abuse cases in Singapore. Data on the type of abuse (i.e. physical, sexual and emotional abuse and physical neglect) and factors associated with the abuse were also provided.
115 John M. Elliot, Joyce I. Thomas, and Chua Yee Sian, Child Sexual Abuse in Singapore: Professional and Public Perceptions, SCS, Research Monograph No. 5, http://www.childrensociety.org.sg/images/Monograph%205%20Proofread%20Copy.pdf, chap. 2. This was shown by comparing data on intra-familial child abuse, and data on child abuse generally.
118 Rape is a gender-specific offence. While outrage of modesty is not a gender-specific offence, the fact that these statistics were cited by the government in relation to the issue of violence against women indicates that most of such cases involved women. According to the government, the police keep data on all reported cases, including sex-disaggregated data: Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 52.
Sexual harassment of women and girls in Singapore appears prevalent. Incidences of sexual harassment would be reflected to some extent by the numbers of outrage of modesty cases. Between January and March 2011, 31 cases of outrage of modesty and 2 cases of insulting the modesty of a woman in the workplace were recorded.123

According to a 2008 NGO survey on workplace sexual harassment of both men and women,124 about 214 of the 500 respondents were women who had experienced sexual harassment in the workplace.125 A similar study was conducted in 1993 on women from 56 Japanese companies.126 Of the 386 respondents, 46.9% reported having experienced sexual harassment. There have also been reports of sexual harassment on public transportation.127

Sexual Harassment

Statutory rape128 cases increased in number from 2007 to 2009, although the total number of children or young persons who are victims of sexual offences decreased. The number of statutory rape cases decreased in 2010 from about 90 to 50 cases.129

Figure 5 - Data on sexual offences against children from 2007 to 2009

<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>VICTIM'S AGE</th>
<th>CY 2007</th>
<th>CY 2008</th>
<th>CY 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>Below 14 years old</td>
<td>70</td>
<td>64</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>Age 14 - 15 years old</td>
<td>7</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Age 16 - 17 years old</td>
<td>6</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Total Victims</td>
<td>83</td>
<td>88</td>
<td>112</td>
</tr>
<tr>
<td>Outrage of modesty</td>
<td>Below 14 years old</td>
<td>255</td>
<td>244</td>
<td>187</td>
</tr>
</tbody>
</table>

Source: Singapore’s 2011 CRC report in response to issues raised during the second and third periodic reviews.

Sexual grooming of children in Singapore is ‘common’.130 A 2008 MCYS study of 20 men who had molested children related to them showed that around 6 in 10 'groomed' the child before sexually abusing him or her.131 According to official figures, there were 4 cases of sexual grooming of minors in 2008.132 Online sexual grooming is also a concern. Teenagers in Singapore have been raped, molested or otherwise abused by persons they met in online chat rooms.133

122 Committee on the Elimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), paras. 37-38.
123 Ibid, para. 68.
125 AWARE, Research Study on Workplace Sexual Harassment, 2008, 18, Table 3. 215 of the 267 respondents who had identified their gender were female. Respondents were profiled according to age and occupational level. Different types of sexual harassment were identified in the survey. Some weaknesses of the study were that it covered a limited respondent size, and not all questions were answered. The study stated that it ‘is not an attempt to examine prevalence rates.’
127 A 2009 straw poll conducted by Singapore Management University (SMU) students on 150 female students at the university revealed that 4 in 10 respondents had experienced some form of sexual harassment while on public transport, and almost half knew of someone who had been sexually harassed on public transport: Leong Wee Keat, ‘Public Transport Pests,’ TODAY, 13 March 2009, http://www.smu.edu.sg/news_room/smu_in_the_news/2009/200903.asp. It has been noted that the findings were potentially affected by many variables, and further study was warranted.
128 Under section 375 of the Penal Code, it is a crime for a man to have sexual intercourse with a girl below the age of 14 years, even with her consent. Section 140 of the Women’s Charter makes it an offence for a man to have ‘carnal connection’ with any girl below the age of 16 years old, except by way of marriage.
132 Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), para. 111.
133 ECPAT International Research Report, Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore, 2010, 22, citing
Bullying Among Children and Youth

Surveys by the SCS on the prevalence of bullying among children in schools, conducted in 2006 and 2007, found that 25% of secondary school students and 21% of primary school students were victims of bullying. More boys than girls were bullied in primary schools, while similar proportions of both genders were bullied in secondary schools. Bullies were largely male, with 4 times more male than female bullies in primary schools and 3 times more male than female bullies in secondary schools. Most bullies, boys or girls, targeted students of the same gender. Verbal bullying, particularly hurtful or vulgar name-calling, was most prevalent among students, while cyber-bullying was least common. Physical bullying was intermediate in prevalence, when assessed relative to verbal, cyber and relational bullying. The majority of bullies in primary and secondary schools, as identified by the victims, were boys. Most bullies, boys or girls, targeted students of the same gender. Bullies in both primary and secondary schools were also mainly targeting students of the same ethnicity. However, it was found that Indian primary school students were subjected to racial taunts more often, although they were not bullied more because of their race.\(^{134}\)

The SCS conducted another survey in 2010, which was a retrospective study of the recollection of primary and secondary school bullying experiences by young adults aged 25 to 29 years old. Twenty-five per cent (25%) of the young adults said they were bullied in school, which matched the results of the 2006 SCS survey on bullying in secondary schools.\(^{135}\) There was no evidence of more male or female respondents reporting bullying, although more male than female respondents were likely to be bullied through physical violence, and threats of harm, intimidation and hostile gestures. Cyber-bullying was not surveyed, as a pilot study had shown that the young adults were not exposed to this form of bullying at the time they were in school. It was also found that proportionally more Malays than Chinese were bullied in schools.\(^{136}\)

The SCS’ surveys were, however, criticised by the Minister for Education for representing a wide spectrum of bullying behaviours, including ‘teasing’. The Minister maintained that bullying involving hurt or intimidation remained infrequent.\(^{137}\) A 2006 MOE survey put prevalence at 3.7 cases per 1000 students, although internal studies conducted by the said Ministry are said to indicate prevalence of between 20% to 30%. One survey by the Health Promotion Board put prevalence at around 30%.\(^{138}\)

Cases of bullying with an element of sexual abuse have been reported. In a 2007 case, a girl was slapped, stripped and filmed by her schoolmates. There have also been incidents of self-generated sexual images or films being posted online by ex-boyfriends of teenagers.\(^{139}\)

A pilot survey of cyber bullying was conducted by CABCY in or around 2010. The respondents were 3,488 students aged 13 to 17. Findings showed that 1 in 4 had been victims of cyber bullying, and of these, 34% were also victims of traditional bullying.\(^{140}\)

Punishment of Children and Young Persons

a. Criminal Responsibility and Punishment

Children above the age of 7 and under 12 who have ‘attained sufficient maturity of understanding’ may face criminal responsibility.\(^{141}\) Children aged 14 and above but below the age of 16 can be committed to prison where the court certifies that he is of ‘so unruly a character that he cannot be detained in a place of detention or a juvenile rehabilitation centre.’\(^{142}\)

134 Koh Chee Wan and Tan Annie, *Bullying in Singapore Schools*, SCS, Research Monograph No. 8, July 2010, iii.

135 Winston Ong and John M. Elliott, *Young Adults’ Recall of School Bullying*, SCS, Research Monograph No. 9, July 2010, iii.


141 Penal Code, s 82 and s 83.

142 CYPA (Cap 38, 2001 Rev Ed Sing), s 37(2).
Children below the age of 16 can be sentenced to corporal punishment, i.e. caning, but only by the High Court. For criminal cases from 2005 to 2009, no sentence of caning was meted out to any juvenile offender.

Child offenders aged 16 and above are not protected by the juvenile justice procedures set out in the CYPAs. They may accordingly be committed to prison, and may not be offered appropriate rehabilitation services as decisions are not required to be guided by the principle of welfare for the child. While youths between 16 and 18 years of age are tried in the Community Court, which has a policy of rehabilitating offenders in the community, where possible, many convicted are reportedly sent to adult prisons.

b. Residential Institutions for Children and Youth

Children and youth alleged to have committed crimes may be placed in remand homes during the period of investigation. If convicted, they may be sent to government homes, namely, the Singapore Boys' Home and the Singapore Girls' Home. Children whose parents have applied for Beyond Parental Control orders against them are, during the period of investigation, placed in remand homes. They may thereafter be placed in homes which also house juvenile offenders.

According to BSS, a local NGO, the standard of care in children's homes has improved over the years, but bullying and harassment still occur, and children may develop aggressive behaviours in order to protect themselves. Also, children may be influenced by those who exhibit more delinquent behaviour, and develop age-inappropriate sexualised behaviours.

Such conditions relating to the institutionalisation of children have led to concerns that institutionalisation is over-used. In particular, the Beyond Parental Control and voluntary care agreement schemes, under which parents may apply for placement of their children in the care of others, even where their children have not committed crimes, have been criticised as being potentially used simply as a means for parents to abdicate their responsibilities to their children.

In government homes, remand homes, and other homes for children and youth, corporal punishment is permitted as a last resort for serious misconduct. The only form of corporal punishment permitted is caning on the palm and, for boys, on the buttocks over clothes. The number of strokes cannot exceed 10, and caning must be carried out in the presence of another staff member. Persons with mental or physical disability are exempted from such punishment. Also, solitary confinement is permitted for children of and above 12 years of age, save in remand homes.

c. Corporal Punishment in Schools and Homes

In schools, corporal punishment against girls is not permitted. Corporal punishment against boys can only be administered with a light cane on the palms of the hands or on the buttocks over the clothing. In child care centres, corporal punishment is specifically prohibited.

143 Ibid, s 37(3). Children below the age of 16 are generally tried only before the Juvenile Court, save where the offence is triable only in the High Court.

144 Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), para. 157.

145 The CYPAs does not apply to persons other than children and young persons. A 'young person' is defined as a person who is 14 years of age or above and below the age of 16 years: CYPA, s 2.


149 Beyond Parental Control orders are orders made upon the application of parents for the removal of their children, or their placement under the supervision of others: CYPA, s 50.


151 Ibid, 4.

152 Ibid, 9.


155 Child Care Centres Regulations (Cap 37A, 2012 Rev Ed Sing).
Corporal discipline at home is permitted, as long as this is ‘force lawfully used by way of correction towards a child under 21 years of age’, which is expressly provided to not amount to family violence.\textsuperscript{156} Also, acts done in good faith for the benefit of a person under 12 years of age by a parent or guardian is a defence to certain crimes in the Penal Code.\textsuperscript{157}

**Potentially Hidden Violence Issues**

The following issues are noteworthy, but do not appear to have been the subject of detailed research. In relation to disabled and stateless children, incidences of violence, including neglect, are little known. These issues will not be canvassed further in the report.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elder Abuse</td>
<td>Reported cases of elder abuse have apparently been increasing in recent years,\textsuperscript{158} with majority of cases involving the abuse of elderly women.\textsuperscript{159} Figures reportedly may be only the tip of the iceberg.\textsuperscript{160} Homeless elderly women have been reported.\textsuperscript{161} Of concern are cases of financial abuse of the elderly.\textsuperscript{162}</td>
</tr>
<tr>
<td>LGBTs</td>
<td>A 2011 report submitted to CEDAW by Sayoni, a Singapore-based organization for LGBT women in Asia, referred to incidence of bullying and ostracism of LGBT students in schools, and harassment of LGBTs in workplaces.\textsuperscript{163} This appears to be based on anecdotal evidence. A 2010 survey conducted by Sayoni of LGBT women found that 85.2% of respondents had experienced or witnessed some form of discrimination against LGBTs in their workplace, but the data did not identify the form of discrimination or whether the targets were male or female.</td>
</tr>
<tr>
<td>Disabled children</td>
<td>The 2011 CRC Committee noted with great concern the lack of qualitative and quantitative data on children with disabilities and their needs.\textsuperscript{164} Despite a considerable number of educational and social services for children with disabilities, some are reportedly falling through the cracks.\textsuperscript{165}</td>
</tr>
<tr>
<td>Stateless children</td>
<td>There have been cases of ‘stateless’ children, particularly illegitimate children of foreign parents.\textsuperscript{166} Children in these categories may find it difficult to qualify for educational and health subsidies because they are not Singaporeans.\textsuperscript{167}</td>
</tr>
</tbody>
</table>

\textsuperscript{156} Women's Charter, s. 64.
\textsuperscript{157} Penal Code, s. 89.
\textsuperscript{158} In 2004, the number of identified elderly abuse cases was 100, but it is believed that a more accurate figure was that there are another 500 cases annually that went unreported, giving a total of 600 suspected cases: SAFV, Singapore’s Response to Family Violence: 1997 to 2007 – What Comes Next? Accessibility & Dissemination, April 2008, http://www.restorativecommunityconcepts.com/singapores-response-to-family-violence.html, 8.
\textsuperscript{159} See AWARE, CEDAW Shadow Report, May 2011, para. 19.15-19.17. The report relied on the numbers of cases of elder abuse reported to some voluntary welfare organizations as well as newspaper reports.
\textsuperscript{160} See AWARE, CEDAW Shadow Report, May 2011, para. 19.15-19.17. The report relied on the numbers of cases of elder abuse reported to some voluntary welfare organizations as well as newspaper reports.
\textsuperscript{161} SCWO, CEDAW Shadow Report, June 2011, para. 34-38.
\textsuperscript{165} Lien Centre for Social Innovation, Unmet Social Needs in Singapore, Social Insight Research Series, 45.
\textsuperscript{168} CEDAW General Recommendation No. 19.

b. Root Causes of Violence and Aggravating Practices

**Gender Stereotyping**

Violence against women is known to be perpetuated by traditional attitudes in which women are regarded as subordinate to men or as having stereotyped roles.\textsuperscript{168}

There is a reported ‘persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and society at large… [and] discriminatory traditional cultural attitudes that continue to utilize ‘the head of the household’
concept, assigning this role to men. According to NGOs, the prevailing view is that women are the primary caregivers and men are the primary breadwinners; men are the heads of the household and women play a submissive role. In this regard, a 2009 MCYS survey found that 46% of fathers surveyed saw their primary role as breadwinners, and 39% cited societal views on how men should behave as a challenge to them spending more time with their children.

A number of national policies have been identified as purportedly perpetuating this stereotype. These include (i) the absence of mandatory paid paternity leave, (ii) the exclusion of women from participating in national military service, and (iii) the requirement for men to pay maintenance to their wives but not vice-versa.

Women are also said to be viewed as sex objects, and there are notions that women derive their value from their beauty and sexual attractiveness. Body image anxieties are also said to be prominent. In a 2007 survey on perceptions of women and girls, 84% of girls in Singapore aged 15 to 17 years wished they could change their appearance, and 60% felt bad about themselves because of their looks and weight. In Singapore, 1 in 5 women have also considered plastic surgery to alter their physical appearances.

In contrast, according to the Minister of State for Community, Youth and Sports, gender stereotypes are disappearing, although this is ‘a work in progress.

Family Violence

Families with low income and individuals with lower education levels are at greater risk of family violence. In a 2004 Subordinate Courts survey of PPO application cases, 71% of complainants and 65% of the respondents were earning less than $1,500 monthly, while 42% of both complainants and respondents were earning less than $500 monthly. Also, 76% of complainants and respondents did not have at least a post-secondary education.

Families ‘at risk’ are described as often being socio-economically marginalized. A typical portrait of multi-problem families (presumably including those with problems of family violence) served by BSS is that they have (i) a long history of being economically disadvantaged, with an average monthly household income of $1,500 or less, (ii) a family history of incarceration, substance-dependence, prolonged unemployment and ill-health, among other problems, with such problems often spanning generations, and (iii) little community support.

The strong association between family violence and drug and alcohol abuse has been emphasised. The last known local study on the relationship between alcohol and drug abuse and family violence was a 2000 Subordinate Courts study covering 625 cases reported to the Family Protection Unit in 2000. The 2000 study found that 26.9% of the

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170 AWARE, CEDAW Shadow Report, May 2011, 5; SCWO, CEDAW Shadow Report, June 2011, para. 63-69, citing the recent debate in 2011 on maternity leave, which focused on the role of women as carers, while largely ignoring the role of men; the continued absence of mandatory paid paternity leave despite calls for the same; anecdotal evidence from women leaders; and an official National Family Council press quote that ‘the father… is the head of the household.
174 Ibid, para. 18.9.

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cases were possibly related to alcohol and drug abuse, while 23.1% were likely related. The study emphasised that its findings did not suggest that alcohol and drug abuse was causally related to family violence.

Homeless families living in shelters, public areas, the homes of others, or shared housing under the government’s interim rental housing scheme may also be at increased risk of violence. Abuse of women in such situations by their depressed husbands, and sexual abuse of children by relatives they stayed with were reported through newspaper reports and anecdotal evidence from case workers. For this reason, the government’s stringent public housing policy, which imposes a mandatory 30-month wait to purchase one’s next public housing flat after selling one’s property has been said to put women and children in homeless families at risk of abuse.

The reported primary government response to family violence that requires both victim and perpetrator to remain in the home is another possible, but unestablished, aggravating practice.

a. Child Abuse in the Family Setting

Abuse of children in the family has, based on 2005 MCYS research findings, been associated with the parent(s) or caregiver(s)’ (i) poor understanding of the child’s developmental needs, (ii) feelings of being overwhelmed and unable to cope with the child’s challenging behaviour, and (iii) unrealistic expectations of the child. Unrealistic expectations of the child were identified as a key factor of abuse. Superstitious and cultural beliefs were also identified as associated factors.

Financial stress, marital conflicts, social isolation, substance abuse and mental health concerns were identified as precipitating factors. Indeed, in a 2004 Subordinate Courts study profiling child care and protection order applications, 45% of the children had financial difficulties and 28% of families had marital problems. Other concerns increasing the vulnerability of children to domestic abuse were lack of social support, involvement of family members in criminal activities and alcohol/drug abuse.

Perceived acceptability of some forms of physical violence against children possibly plays a role. A 2007 MCYS survey found that 11% of Singaporeans surveyed believed it acceptable for a stressed parent to hit a child.

b. Spousal Violence

Spousal violence is regarded by some to be acceptable. The 2007 MCYS survey revealed that 19% of Singaporeans surveyed believed that physical fighting was part and parcel of married life and 36% believed that an abused spouse had a duty to stay in the marriage for the sake of young children.

c. Foreign Wives

Foreign wives from low income backgrounds are especially vulnerable, as little respect is accorded to them. They are marketed as commodities by foreign bride agencies, and Singaporean men regard them as subservient, ‘traditional’, and commodities to be returned on a whim.

Certain government immigration policies buttress the financial dependency of foreign wives on their local husbands. This discourages foreign wives from leaving abusive husbands and makes them more vulnerable to coercion.

Specifically, marriage does not confer an automatic right to citizenship or permanent resident status, and foreign wives depend on their husbands as visa / visit pass sponsors in order to stay in Singapore. This immigration status means that:

190 Ibid.
191 Ibid.
192 Ibid.
193 This immigration status means that:

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a) No automatic right to work is granted, and work permits must first be obtained. Foreign wives workers may be unattractive hires, as employers must pay foreign worker levies and comply with other foreign worker regulations.194

b) State-provided medical insurance and subsidized healthcare is not available.195

c) Low income rented public housing is not available. Foreign wives who want to leave their husbands but who wish to stay in Singapore due to ongoing legal proceedings or to stay with their children, face additional difficulties in solving housing problems.196

The wait for citizenship or permanent resident status for foreign wives, which would give them greater rights, is ‘protracted’.197 The long wait ostensibly compounds the vulnerability of foreign wives.

The countervailing considerations involved in these policies, and the changes the government has made, are addressed in Section C.2.b, ‘Family Violence,’ ‘Foreign wives’.

Sexual Offences

Victim-Blaming

There is evidence of a perception that some female victims of sexual offences are the ones at fault. For instance, criticism and blame were focused on the alleged victim during a high-profile incident of alleged groping by 4 men at a New Year’s Eve party.198 In a recent gang rape case involving a girl who had gone drinking with the perpetrators, prosecutors reduced the charge to the lesser one of outrage of modesty, despite evidence that, as indicated by the presiding judge, appeared to establish a charge of rape.199 This resulted in speculation that the charge was reduced because of the victim’s perceived blameworthiness.

Sexual Harassment

Failures by companies to take reasonable steps to prevent and protect against sexual harassment related to their business and services would give opportunities for sexual harassment to occur, and for perpetrators to escape accountability.

For instance, one train service provider has a protocol for passengers who experience sexual harassment while on trains, but this was not publicized until a specific request was made by a victim, after an incident of sexual harassment had occurred.200 According to a citizen journalism website, one large company has allegedly sought to prevent employees from pursuing cases of workplace sexual harassment.201

Employers in Singapore, although well-placed to protect employees and respond to incidents of sexual harassment in the workplace, appear apathetic to this issue. Of the 92 employers contacted for the 2008 AWARE workplace sexual harassment survey, all save 8 did not respond, declined to make introductions to relevant staff or departments, stated they did not have any policies in place, or simply declined to participate without reasons.202

Bullying of Children in Schools

One significant finding from the 2006 and 2007 NGO surveys on bullying in schools is that most bullies were picking on students of the same ethnicity, implying that ethnicity does not determine whether a student is bullied.203

197 AWARE, CEDAW Shadow Report, May 2011, para. 9.5.
199 The judge was reported saying, ‘This is the first time I have come across a case [of outrage of modesty] where the agreed facts of the case the accused admitted to could have fitted penile penetration without con-sent.’ AWARE, CEDAW Shadow Report, May 2011, para. 19.26, citing ‘Jail, caning for 5,’ Straits Times, 14 August 2010.
c. Impact of Violence

Family Violence

In a 2004 survey of PPO application cases, medical attention was sought in 36% of the cases. Forty-eight per cent (48%) of complainants sustained injury in the latest incident of violence, such as bruises and/or swelling (20.4%), multiple injuries (9.6%), cuts / scratches (2.2%), and bleeding (1.5%). Hospitalisation was needed in 0.3% of the cases. The data was not disaggregated by type of complainant, e.g. spouse or child.

Impact on Children

A 1998 survey of PPO application cases reported behavioural problems among children affected by family violence, including violent behaviour and sleeping problems. Eleven per cent (11%) had suicidal tendencies.

Bullying

In the 2006 and 2007 SCS surveys on bullying in schools, 7% of primary and 10% of secondary schoolchildren reported harming themselves after experiencing bullying, and 6% of secondary schoolchildren contemplated suicide. The actual rate of suicide resulting from bullying is unknown. Also as a response to bullying, 21% of primary and 25% of secondary schoolchildren felt bad about themselves, and 11% of primary and 17% of secondary schoolchildren blamed themselves. The surveys also studied the frequency of other effects of bullying, such as loss of appetite, crying when recalling the incident, problems concentrating in class and sleeping at night, and hurting others.

The 2010 SCS survey on young adult’s recall of school bullying attempted to identify possible long term effects of bullying on young adults aged 25 to 29 after leaving school. Three psychometric tests were used. There was considerable overlap across the range of scores on all 3 tests, and a skew towards higher levels of well-being and low depression in both groups. Based on the mean scores, however, respondents who reported having been bullied had lower self-esteem, poorer well-being, and scored as more depressed than those who did not report being bullied.

Still, whether these differences were in fact long-term effects of the reported bullying experience cannot be determined with certainty. It could be that personality or lack of resilience predisposes a child both to being bullied and to lower self-esteem and well-being later in life. The survey noted that further studies were needed to determine the issue.

The respondents’ highest education level attained was unrelated to whether or not they reported being bullied, so there was no clear evidence that bullying actually led to premature school leaving. However, of the 159 respondents who did not complete their post-secondary school education, 12 (7.5%) of them reported that being bullied had led them to decide to not further their studies.

Punishment of Children and Young Persons

According to one local study, corporal punishment at home, if poorly executed, tends to build up resentment and shame, and has resulted in behavioural and emotional problems in children. The impact of committal of juveniles aged from 16 to 18, which is reportedly prevalent, does not appear to have been investigated.


208 These were the Rosenberg Self-Esteem Scale, the WHO-5 Well-Being Index, and the Major Depression Inventory.

209 Winston Ong and John M. Elliott, Young Adults’ Recall of School Bullying, SCS, Research Monograph No. 9, July 2010, 19-21.

210 Ibid, 2.

211 Ibid.

212 Ibid, 21.


2. De Jure State Responses

a. Bases of State Responsibility

*Binding Instruments*

<table>
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<th>Date</th>
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Singapore has accepted the recommendation to accede to the Convention on the Rights of Persons with Disabilities, and has stated it will do so in 2012.\(^{215}\) It has also stated that it is considering the feasibility of accession to the International Convention on the Elimination of All Forms of Racial Discrimination.\(^{216}\)

Declarations and Commitments

International and regional declarations and commitments relating to women and children’s rights that Singapore has signed include the 1994 Jakarta Declaration on the Advancement of Women in Asia and the Pacific, the 1995 Beijing Declaration and Platform for Action, the 2004 Declaration on the Elimination of Violence Against Women in the ASEAN Region, and the 2010 Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children.

b. National Policies Against Violence

*Violence Generally*

Acts of violence against women and children, whether within or outside the family, may be punished as criminal offences, including the Penal Code offences of voluntarily causing hurt or grievous hurt, use of criminal force and assault.

*Sexual Offences*

Offences criminalizing the sexual abuse of women and children include the following:

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215 Human Rights Council, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review: Singapore (A/HRC/18/11/Add.1, 11 July 2011), para. 3.

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Offence | Statutory Provision | Penalties
---|---|---
Rape (specific to females of any age and defined by the absence or presence of consent) | Section 375(1) of the Penal Code | Imprisonment of up to 20 years, and a fine or caning
Outrage of modesty through use of criminal force or assault | Section 354 of the Penal Code | Imprisonment of up to 2 years, or fine, or caning, or any combination thereof
Non-consensual sodomy, fellatio, or vaginal penetration of any person | Section 376 of the Penal Code | Imprisonment for up to 20 years, and a fine or caning.
If the victim is under 14 years old: imprisonment of not less than 8 years and up to 20 years, and caning with not less than 12 strokes.

Sexual Offences against Children

Statutory rape (i.e. sexual penetration without consent; specific to girls under the age of 14) | Section 375(3) of the Penal Code | Imprisonment of not less than 8 years and up to 20 years, and caning with not less than 12 strokes
Having carnal connection with a girl under the age of 16 years old, except by way of marriage | Section 140(1)(i) of the Women's Charter | Imprisonment for up to 5 years, and a fine of up to S$10,000
Sexual penetration of or with a minor under 16 (including sodomy and fellatio), with or without the minor's consent | Section 376A of the Penal Code | Imprisonment for up to 10 years, or a fine, or both.
If victim is under 14 years of age: imprisonment for up to 20 years, and a fine or caning.
Sexual grooming of any person under the age of 16 by a person of or above the age of 21 | Section 376E of the Penal Code | Imprisonment for a term which may extend to 3 years, a fine, or both
An ‘obscene or indecent act’ with any person below 16, or procuring or attempting to procure the same | Section 7 of the Children and Young Persons Act | A fine not exceeding $10,000 or imprisonment for a term not exceeding 5 years or both

Sexual harassment is not specifically criminalized. Instead, the offence of outrage of modesty may be invoked, as well as various offences under the Miscellaneous Offences (Public Order & Nuisance) Act.

Reporting

The duty to report crimes under section 424 of the Criminal Procedure Code 2010 does not encompass reporting the aforementioned offences, including the sexual offences or specific offences against minors. There is no duty to report crimes committed under the Women's Charter or the CYPA.

Care and Protection Orders for Children

CPOs may be issued for children under the age of 16 who have suffered violence, or are at risk of violence, to be assessed, treated and/or removed to places of temporary care and protection or placed under the care of a fit person, and for persons to be restricted from contact or access to them.

Children considered in need of care or protection include, among others, orphaned, abandoned, neglected or destitute children, children being or at risk of being ill-treated, children against whom offences have been committed, and drug-addicted children.

Protective and Curial Orders for Women and Girls

Women and girls may be detained in places of safety in certain circumstances, such as when they are victims of the aforementioned sexual offences and criminal proceedings are pending, or when they have been ill-treated and are in need of protection. Women and girls may also ask to be received into places of safety if they satisfy authorities that they are in urgent need of refuge. According to the government, these powers are used only in exceptional circumstances.

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217 Penal Code, s. 354 and s. 509.
218 CYPA, s. 9 and s. 9A.
219 Ibid, s. 4.
220 Women’s Charter, s. 155 and s. 160.
221 Ibid, s. 163.
222 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 22.
Medical or psychological treatment and other forms of rehabilitative assistance for women and girls who are victims of violence are not statutorily provided for, although as will be explained below, these form part of the government’s protocols and procedures for dealing with violence cases.

Family Violence

Marital Rape

Marital rape is excluded from the offence of rape, except where:

- the wife is living apart from her husband and (a) the marriage is in the process of being terminated, or (b) the wife has applied for a PPO against the husband; or
- the husband has (a) been restrained by the court from having sexual intercourse with the wife, or (b) had PPOs in respect of their wives in force against them.

It is only in these circumstances that marital rape is an offence. Both Muslim and non-Muslim marriages are covered by the provision.223

The issue of a complete repeal of marital rape immunity was raised in Parliament in February 2012, during a debate on a different issue. The Minister for Law stated that arguments for criminalising marital rape were ‘worth looking into’,224 perhaps signalling the possibility of amendments to further or completely repeal the marital rape exclusion.

Child Abuse

Child abuse punished by the CYPA refers only to abuse of children within a family setting. Section 5 of the CYPA criminalizes the ill-treatment of children below the age of 16 years by ‘a person who has the custody, charge or care of a child or young person’. Ill-treatment includes physical, emotional and sexual abuse, and neglect and abandonment. Offenders face imprisonment of up to 4 years or a fine of up to $4,000 or both, and where the ill-treatment results in death, to imprisonment of up to 7 years or a fine of up to $20,000 or both.

Protective Orders Against Family Violence

PPOs may be issued where family violence has occurred or is likely to occur. ‘Family violence’ is defined under section 64 of the Women’s Charter. It is gender-neutral. It refers to violence committed against a ‘family member’ – i.e. one’s spouse or former spouse, child, including an adopted child and step-child, father or mother, father-in-law or mother-in-law, brother or sister, or ‘any other relative of the person or an incapacitated person who in the opinion of the court should, in the circumstances, in either case be regarded as a member of the family of the person.’

The definition encompasses physical, emotional and psychological harm. It does not include sexual or economic violence. Acts of family violence refer to (a) wilfully or knowingly placing, or attempting to place, a family member in fear of hurt; (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt; (c) wrongfully confining or restraining a family member against his will; or (d) causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member. There are two exceptions to acts that could otherwise constitute family violence: self-defence, and the correction of a child below 21 years of age.

Types of PPOs include Domestic Exclusion Orders, which grant the right of exclusive occupation of the shared residence, or a specific part of the shared residence, to the protected person; and Expedited Orders,225 which are temporary PPOs granted in the absence of the perpetrator where there is an imminent danger of family violence.

Family violence per se is not criminalized; criminal penalties are invoked only where the relevant act(s) would constitute existing offences. CPOs for children are also available for children in situations of family violence.

Curial Measures for Family Violence

Where PPOs are issued, counselling orders may also be issued mandating the person against whom the order was made, the protected person, and their children to attend counselling.226

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224 Tay Suan Chiang & Shuli Sudderuddin, ‘Proposed marital rape law welcomed,’ Straits Times, 18 February 2012.

225 Women’s Charter, s. 66.
226 Ibid, s. 68(5)(b).
With regard to children in particular, authorities may direct the assessment and treatment of children below the age of 16 for physical or emotional injury or any injury to his health or development as a result of being ill-treated.  

Medical or psychological treatment and other forms of rehabilitative assistance for victims of family violence are not statutorily provided for. As explained below, these nevertheless form part of the government’s protocols and procedures for dealing with family violence.

Foreign Wives

The immigration policy leading to foreign wives being in a position of greater vulnerability to abuse has been explained above. The government’s rationale for not extending automatic citizenship or permanent resident status to foreign spouses is that “this is a necessary safeguard to deter abuse of permanent residence facilities by foreigners who use fake marriage as an easy conduit to secure long-term stay in Singapore;” related to this is the government’s stand that, ‘as Singapore is a very small and densely populated city State, we cannot afford to have an unregulated flow of foreigners into the country.’ In this regard, it is worth noting that the Constitution’s express prohibition on non-discrimination refers only to Singapore citizens and Singapore has made an immigration-related reservation to CEDAW.

A new immigration scheme, known as the Long Term Visit Pass Plus (LTVP+) has been introduced to assist families with foreign spouses. It will take effect from 1 April 2012. The benefits of the scheme include the following:

- The visit pass lasts for 3 years in the first instance, and up to 5 years for each renewal. This reduces the uncertainty faced as to renewal.
- Holders will receive health-care subsidies for inpatient services at certain hospitals, at levels close to what permanent residents enjoy.
- Holders can work to supplement the family income, as long as a letter of consent is granted. Employers of these holders will not be counted in foreign worker quotas, and no foreign workers’ levy is payable. This reduces the reluctance of employers to employ foreign spouses.

Foreign spouses married to Singaporeans and with at least one Singaporean child from their marriage will be eligible to apply. For those without children, factors such as the duration of the marriage and the sponsor’s ability to support a foreign spouse will be considered. However, the validity of the pass is still dependent on the sponsorship of the Singapore spouse.

c. Assessment of State Policies

Family Violence

Family Violence as a Family, Not Women’s Issue

The definition of family violence is gender-neutral. This gender-neutrality has been criticised as not conforming to international standards. Family violence protection in Singapore may favour the preservation of families over women’s rights. The family violence provisions come under a chapter on ‘Protection of Family’. There are concerns that this classification may allow judicial interpretation geared towards the preservation of families instead of women’s rights, and defeat the intent of the law. Whether this concern is real could be determined by examining judicial practice in respect of PPO applications. In this regard, the primary government

227 CYPAs s. 9A.

228 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 22.

229 Article 12 states: ‘Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment’. Article 12 does however enshrine the principle of equality of all persons before the law, and equal protection of the law for all persons.

230 See Section B, ‘Singapore and the CRC and CEDAW’ above.


233 Ibid, 14.
response to family violence reportedly requires both victim and perpetrator to remain in the home.\textsuperscript{234} If this is the case, this does suggest a policy emphasising the preservation of families over women’s rights.

Possible Gaps in the Definition of Family Violence

Sexual violence or forced sex is not recognized as family violence, and this has been criticised.\textsuperscript{235} Cohabitation relationships that are non-familial are not covered by the definition of family violence, and accordingly, women in these relationships who suffer violence are not entitled to obtain PPOs to protect themselves. This has been described as a gap in the law.\textsuperscript{236}

Violence lawfully committed in self-defence is expressly excluded from the definition of family violence. While this may protect women who perpetrate acts of violence in self-defence, it may provide a justification for men committing domestic violence.\textsuperscript{237} This is problematic, ostensibly because men are in majority of cases the perpetrators, and there is greater likelihood of the defence being abused against women. In this regard, other jurisdictions have included a defence of ‘battered women’s syndrome,’\textsuperscript{238} which would make the defence applicable only to women.

Economic violence is not recognized as family violence. This issue has, however, not garnered much attention in the literature.

Marital Rape

The continued existence of marital rape immunity has been heavily criticised.\textsuperscript{239} Singapore has been urged to completely remove marital rape immunity.\textsuperscript{240} The 2011 CEDAW Committee urged Singapore to ensure that the offence covered ‘every non-consensual sexual act.’

The government’s policy of keeping marital rape immunity is based in essence on the ‘second-guessing’ that can occur between husband and wife over whether the wife has consented to sex; the scenario where spouses still engage in sex despite rocky marriages was cited as an illustration.\textsuperscript{241} In other words, it is harder for husbands to know when their wives do not consent to sex. Proponents of abolishing marital rape immunity have argued that false allegations of rape are punishable (and would presumably be deterred), and the solution should be a matter of discretion in enforcement.\textsuperscript{242}

The existing exceptions to marital rape immunity have been criticised. The government’s rationale for the existing exceptions is that these are situations that would put the husband on clear notice that his wife would not be willing to have sex with him.\textsuperscript{243} However, the requirement that wives first file PPOs is seen to unfairly shift the onus to the victim to ensure she obtains justice. While the government has said that all that is needed is the filing, not grant, of a PPO,\textsuperscript{244} there may be practical obstacles to engaging the PPO procedure, such as limited operating hours of court facilities, and the difficulties faced by minors and/or women with disabilities.\textsuperscript{245}

Mediation and Counselling

\textsuperscript{234} SCWO, \textit{CEDAW Shadow Report}, June 2011, para. 191. The report did not give details substantiating of the nature of this reported Government response.


\textsuperscript{238} \textit{Ibid}.

\textsuperscript{239} Letter dated 27 June 2011 from Equality Now to the CEDAW Committee titled ‘Re: Information on Singapore for consideration by the Committee on the Elimination of Discrimination against Women at its 49th Session’.


\textsuperscript{242} Parliamentary Debates Singapore: Official Report, vol. 88 at col. 44 (14 February 2012)


\textsuperscript{244} \textit{Ibid}.

\textsuperscript{245} Letter dated 27 June 2011 from Equality Now to the CEDAW Committee titled ‘Re: Information on Singapore for consideration by the Committee on the Elimination of Discrimination against Women at its 49th Session’.
The Women’s Charter has been criticised for being ‘completely silent on the issue of counselling and mediation/settlement/reconciliation’ in respect of family violence.246 However, the Women’s Charter does in fact give the courts the discretion to order counselling when PPOs are issued.247 These are routinely issued.248 The question then may be whether limiting counselling orders to situations where PPOs are issued is an adequate response.249

Sexual Harassment

The 2011 CEDAW Committee expressed its concern over the lack of a legal definition and prohibition of sexual harassment.250 The existing nuisance offences under the Miscellaneous Offences (Public Order & Nuisance) Act have been described by AWARE as ‘far from sufficient’ to address the issue.251 Claims made under criminal or civil law are said to remain inadequate to cover the specific nature and forms of sexual harassment, provide adequate responses like interim relief and compensation or appropriate procedures under the circumstances.252

In relation to employers’ obligations to prevent and redress workplace sexual harassment, MOM has no official guidelines for employers on workplace sexual harassment, and has no plans to develop such guidelines.253 The ambiguity surrounding employers’ legal obligations and responsibilities relating to workplace sexual harassment may result in little impetus for companies to address the problem, despite being well-placed to do so.

Mandatory Reporting of Child Abuse

The 2011 CRC Committee has encouraged Singapore ‘to establish a mandatory requirement for professionals working with children to report and take appropriate action in suspected cases of child abuse and neglect’.254 According to the government, the outcome from other countries’ experiences with mandatory reporting have been varied; further, there will be instances of reporting arising from over-zealous or overly suspicious attitudes of relatives, neighbours and friends, which result in stress and trauma for children and their families.255 These concerns may however apply to much lesser extent to professionals working with or for children. More than 80% of doctors and lawyers in a Singapore study felt that mandatory reporting is necessary and should apply to at least social workers, medical professionals and police.256

Punishment of Children

Increasing the minimum age of criminal responsibility from 7 to 14 years old has been recommended, primarily on the basis that children between the ages of 7 and 14 would not fully understand right from wrong or the consequences of their actions.257 Singapore’s position is that maintaining the current minimum age of 7 provides for optimal early intervention and rehabilitation, prevents children from committing more serious offences later, and protects young children from being exploited by adults for criminal activities.258 These objectives can however be achieved through effective rehabilitation programmes that do not criminalise and...

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247 Women’s Charter, s. 65(5)(b).


249 Other ASEAN countries appear to legislatively provide for mediation and counselling wherever there are conflicts. See UN Women, Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices, 2nd ed. (UN Women, 2011), 29.


256 SAFV, Singapore’s Response to Family Violence: 1997 to 2007 – What Comes Next? Accessibility & Dissemination, April 2008, http://www.restorativecommunityconcepts.com/singapores-response-to-family-violence.html,59. This was supported by a study of the general public in which 63% felt there was a need for a mandatory reporting law.


stigmatise a child at such a young age.\textsuperscript{259}

According to the government, in practice, young children that offend are not prosecuted in court, but are placed in diversionary and rehabilitative programmes.\textsuperscript{260} It hence seems that the minimum age of criminal responsibility is in place to guard against exceptional cases, or perhaps to serve as a deterrent.

Other recommendations relating to the punishment of children and young persons include:

- extending the juvenile justice protections under the CYPA to children from 16 to 18 years old;\textsuperscript{261}

- repealing the existing exclusion from the definition of family violence of force lawfully used to correct a child below 21;\textsuperscript{262}

- prohibiting all forms of corporal punishment, including caning, in all settings, including schools, the penal system, alternative care settings and the army.\textsuperscript{263}

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

MCYS takes the lead in addressing family violence and child abuse issues. Three inter-ministry working groups and committees have been established to address the specific problems of child abuse, dysfunctional families, and juvenile rehabilitation. Dysfunctional families and juvenile delinquency are factors associated with violence against women and children. All are led by MCYS.

Table 12 – Inter-ministry groups addressing Family Violence and Child Abuse Issues

<table>
<thead>
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<th>Group</th>
<th>Functions</th>
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<tbody>
<tr>
<td>Inter-Ministry Working Group on Child Abuse</td>
<td>Oversees the coordination and management of child abuse protocol amongst government agencies.\textsuperscript{264}</td>
</tr>
<tr>
<td>Inter-Ministry Committee on Dysfunctional Families</td>
<td>Aims to enhance assistance to dysfunctional families and develop their long-term resilience.\textsuperscript{265} Comprises MCYS, MHA, MOE, MOH, Ministry of National Development (MND), NCSS, social work agencies, self-help groups and other people sector representatives who work with dysfunctional families.</td>
</tr>
<tr>
<td>The National Committee on Youth Guidance and Rehabilitation (formerly the Inter-Ministry Committee on Youth Crime)</td>
<td>Supports youth-at-risk and helps them find positive alternatives to crime and anti-social behaviour. Comprises representatives from MCYS, MOE, MOH, MHA, Central Narcotics Bureau, SPF, Singapore Prison Service, Subordinate Courts, NCSS, National Crime Prevention Council, National Youth Council, academics and self-help groups.\textsuperscript{266}</td>
</tr>
</tbody>
</table>

Family Violence Networking System

The Family Violence Networking System comprises the police, hospitals, Family Service Centres, the courts and MCYS. Family Service Centres are run by voluntary welfare organisations and supported by MCYS. They are ‘key nodes of help’, providing counseling and casework intervention,


\textsuperscript{260} Singapore’s Second and Third Periodic Report to the United Nations Committee on the Rights of the Child (CRC/C/SGP/2-3, 6 January 2009), para. 74.

\textsuperscript{261} The Committee on the Rights of the Child has backed this recommendation. Committee on the Rights of the Child, Concluding Observations: Singapore (CRC/C/SGP/CO/2-3, 2 May 2011), para. 69(e).


\textsuperscript{264} Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 236.

\textsuperscript{265} Ibid, 7.

\textsuperscript{266} ’National Committee on Youth Guidance and Rehabilitation,’ MCYS, http://app1.mcys.gov.sg/NYGR.aspx.
financial assistance and support groups. They are State-funded, and their inclusion in the network reflects the government’s ‘Many Helping Hands’ approach, whereby ‘[the] government sets policies, outsources the work, and dispenses the funds.’ There are 38 Family Service Centres spread island-wide.

In this network, victims and perpetrators of family violence alike may access assistance through multiple contact points, namely, the police, hospitals and Family Service Centres. Protocols and procedures, including case referrals, roles and responsibilities, are set out in a regularly updated manual formulated by MCYS entitled ‘Integrated Management of Family Violence Cases in Singapore.’ Members of the network are organized into Regional Family Violence Networking Groups set up in 6 geographical regions, to allow for closer collaboration and networking within each group.

Policy-making is also carried out within the Family Violence Networking System. The Family Violence Dialogue Group provides a platform for various agencies to jointly set strategic policy frameworks to enhance services, facilitate inter-agency work processes, and collaborate on public education efforts. The Dialogue Group is headed jointly by MCYS and the SPF, and comprises representatives from the Family Court, Singapore Prisons Service, MOH, MOE, the NCSS, and social service agencies. On an annual basis, MCYS and the SPF co-organise the National Family Violence Networking Symposium for partner agencies to share best practices in policy, practice and research concerning family violence.

Some Criticisms

The adequacy of communication among the many stakeholders within the diversity of networks has been questioned. For instance, poor inter-agency and intra-network communication and coordination has reportedly resulted in cases falling through the cracks, and victims approaching the wrong doors.

Information dissemination to stakeholders about the system is reportedly lacking. According to a 2008 study by SAFV, professionals in the system lack knowledge and are unclear about many aspects of the system.

Improvements to the composition of participants in the various networks and groups may be needed. For instance, shelters are involved only to a limited extent in the family violence network, despite having a wealth of first-hand information on family violence victims.

Child Protection System

Special procedures are in place to address child abuse. The following sets out the general flow for the management of child abuse cases.

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271 Ibid, 7-9.

272 In one case, repeated sexual offences were committed by a father against his daughter for over 10 years, resulting in 2 convictions. Although intra-familial sexual abuse cases are to be referred to the Child Protection Service once a report is made, MCYS had no records of the case being referred to them. The case raises concerns around the inter-ministry or inter-agency co-ordination of information and handling of cases: AWARE, CEDAW Shadow Report, May 2011, para. 19.10.

273 In one case, victims seeking help were turned away from one shelter to another, a situation that could have been avoided had service providers tapped into the network and determined which shelter had availability: SAFV, Singapore’s Response to Family Violence: 1997 to 2007 – What Comes Next? Accessibility & Dissemination, April 2008, http://www.restorativecommunityconcepts.com/singapores-response-to-family-violence.html, 23, 24 and 64.

274 Ibid, 51.

275 Ibid, 52.
Management of Child Protection in Singapore (Diagram 1)

Figure 6 – Child protection management system


The Child Protection Service is run by MCYS. Child safety and welfare issues are brought before the Child Abuse Protection Team, comprising senior Child Protection Officers, psychologists, consultant paediatricians and other professionals.

The Child Protection System underwent a review in 2011, and new initiatives are being implemented. One of these is an enhanced workgroup, the Inter-Ministry Workgroup on Child Protection, comprising a wider representation from relevant stakeholders.276

b. Complaints Process

Avenues for complaints include the police, hospitals, Family Service Centres, as well as NGOs who run helplines and shelters. There is a Child Protection Hotline and National Family Service Centre Helpline. The Family Violence Networking System is useful in facilitating case referrals even in non-family violence situations.

For family violence cases, 2007 MCYS survey findings indicated that 73% of Singaporeans were aware of where to go for help when they experience family violence. Seventy-four per cent (74%) of these respondents indicated that they would approach the police for help, while 26% would approach the Family Service Centres.277

Victim Compensation

Victims may obtain compensation from convicted offenders at the end of any criminal proceeding. Under section 359 of the Criminal Procedure Code 2010, the court shall, after convicting the offender, consider whether or not it is appropriate to make the compensation order, and if so, the court must make the order. This will not affect the victim’s right to take up civil action against the perpetrator.

Since January 2011 after the Criminal Procedure Code 2010 came into operation, the court had, in one case involving a breach of a PPO, ordered the perpetrator-husband to compensate his wife for her injuries.278

Protections During Investigations and Court Proceedings

The following are some available measures to protect victims from the re-traumatisation that can occur as a result of investigative and court procedures:


278 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 39.
Table 13 - List of Protection Measures against Re-traumatization during Investigative and Court Procedures

<table>
<thead>
<tr>
<th>Protection Measure</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy in lodging PPO applications</td>
<td>The office for lodging complaints of family violence is housed in the Family Court building, in a ‘calm, quiet place away from the busy traffic of the courts’. According to one NGO study, privacy can still be improved; further separate waiting areas and staggered departure times for alleged perpetrators and victims respectively need to be automatic, instead of being available only upon request.</td>
</tr>
<tr>
<td>Anonymity</td>
<td>• For certain criminal proceedings under the Women’s Charter, including for underaged sex, exploitation and trafficking, the press are prohibited from publishing any material that would lead to the identification of these women and girls. In all civil and criminal proceedings involving children under 16, the publication of material that would lead to identification is prohibited. For all other proceedings not expressly provided for, the court has a general discretion to make orders for the identity of any person to be kept anonymous.</td>
</tr>
<tr>
<td>Closed court proceedings</td>
<td>• Proceedings for the Penal Code offences of commercial sexual exploitation of minors, sexual grooming and child sex tourism abroad, and that involve any woman or girl, may be held in closed court. Where such proceedings involve a girl under the age of 16, proceedings must be held in closed court. For all other proceedings involving any person, the courts have a general discretion to order proceedings to be held in closed court.</td>
</tr>
<tr>
<td>Testifying via videolink</td>
<td>As an alternative to giving direct testimony, women and children who are victims of certain crimes under the Penal Code (including sexual offences and exploitation and trafficking offences), the Women’s Charter (including underaged sex, exploitation and trafficking) and the Children and Young Persons Act may testify by live video or live television link during the proceedings.</td>
</tr>
<tr>
<td>Special interview rooms for victims of sexual crimes</td>
<td>A police-run victim care centre for victims of serious sexual crimes has private counselling rooms, consultation rooms as well as a children’s interview room. Apart from police officers, only authorised officers, including psychologists and counsellors, are allowed access to the rooms. The rooms have been carefully designed and painted in soft pastel colours to assist in easing victims’ trauma. The children’s interview room is designed like a child’s play room and is furnished with children’s reading materials and toys.</td>
</tr>
<tr>
<td>Disallowance of use of evidence of sexual history in rape and sexual assault cases</td>
<td>The 2012 repeal of a provision in the Evidence Act allowing the sexual history of victims of sexual assault and rape to be used against them in court has been lauded.</td>
</tr>
</tbody>
</table>

280 Ibid.
281 Women’s Charter, s. 153.
282 CYPA, s. 35.
283 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed Sing), s 8; Subordinate Courts Act (Cap 321, 2007 Rev Ed Sing), s. 7.
284 Women’s Charter (Cap 353, 2009 Rev Ed Sing), s. 153..
285 Supreme Court of Judicature Act, s 8; Subordinate Courts Act, s. 7.
286 Criminal Procedure Code 2010, s. 281.
Protection Measure | Details
--- | ---
**Vulnerable Witness Support Programme** | Children under 16, or persons with a mental capacity of 16, and who are prosecution witnesses are placed in the Vulnerable Witness Support Program run by the Attorney-General’s Chambers and the Singapore Police Force. Sensitive cases under the Programme may be referred to the Singapore Children’s Society, which assigns a trained, volunteer support person to each child witness to help the child deal with stress management and explain court procedures.289

**Joint interviews by police and MCYS officers** | Joint interviews of child victims of sexual abuse are conducted by police and MCYS officers, who respectively investigate the case and determine the care and protection plan for the child. This is done to reduce repeated interviews which can confuse a child victim and retard his or her recovery.290 Police officers investigating cases involving children who may have been abused are provided with child sensitivity training.291

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**Issues**

*Participation by Children*

The legislation and establishment of procedures for the child’s right to be heard have been called for, including by the 2011 CRC Committee. There are reportedly no formal procedures for children to be systematically invited to express their views in these judicial processes that affect them. Children also have no legal right to participate and be heard in judicial proceedings under the care and protection regime.292

According to the government, protocols are in place to ensure that officers have sought the views of the child and family in preparing social reports ordered by the court in proceedings under the CYPA.293 Protocols for seeking the views of children in other situations were not, however, mentioned by the government.

Views of children are also sought through trained counsellors in the Family Court in the course of their preparation of reports such as custody/access evaluation reports. Views may also be sought through mental health professionals from external agencies who may be tasked to put up reports for high conflict cases. In addition, judges may also interview the children directly, where appropriate. Should Family Group Conferences be utilized in child protection practices, these conferences would allow the views of the child to be heard.294 These measures appear to be ad hoc.

**Alleged Victim-Blaming by Prosecutors in Sexual Crime Cases**

In a high-profile 2010 gang rape case, involving a female teenager who had gone drinking with her perpetrators, prosecutors decided to reduce the charge to the lesser one of outrage of modesty, despite evidence that, as indicated by the presiding judge, appeared to establish a charge of rape.295 One media report stated that the victim was not completely blameless. Concerns have been raised that prosecutors reduced the charges because of the victim’s perceived blameworthiness.296 This was acknowledged to be speculative, but if true, would have negative implications for prosecutors’ commitment, and victims’ ability, to attaining retributive justice.

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291 Ibid, para. 105.
293 Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), para. 46.
294 Ibid, para. 47 and 49.
295 The judge was reported saying, ‘This is the first time I have come across a case [of outrage of modesty] where the agreed facts of the case the accused admitted to could have fitted penile penetration without consent.’ AWARE, CEDAW Shadow Report, May 2011, para. 19.26, citing ‘Jail, caning for 5,’ Straits Times, 14 August 2010.
Legal Aid for Foreign Wives

State-funded legal aid for foreign wives who wish to pursue redress for abuse has been recommended.297 Presently, their foreign status disqualifies them from receiving State-funded legal aid.298

c. Protection and Rehabilitation

The following are forms of protective and rehabilitative assistance provided by the State to victims of all forms of violence:

<table>
<thead>
<tr>
<th>State Assistance</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>38 State-funded Family Service Centres, including 3 crisis shelters for women and children</td>
<td>Family Service Centres provide counseling and casework intervention, financial assistance and support groups.299 Three (3) crisis shelters for women provide victims with temporary accommodation, protection, practical assistance programmes and emotional support.300 They are Star Shelter, St George's Place, and Good Shepherd Centre. Whether shelters in Singapore are enough has been of concern. Shelters reportedly have limited capacity and resources.301</td>
</tr>
<tr>
<td>Medical and psychological services</td>
<td>The National Family Violence Networking System and the Child Protection System ensure appropriate and timely referrals of cases to other assistance services, such as medical and psychological services.302</td>
</tr>
</tbody>
</table>

Table 14 - List of State Assistance Provided to Victims of All Forms of Violence

For Children

<table>
<thead>
<tr>
<th>CPOs for children</th>
<th>CPOs are issued under the CYPA, and have been described above.</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 Children and Young Persons Homes</td>
<td>Children and young persons admitted into these homes are those who are from dysfunctional families and in need of shelter; abused or neglected; in need of care and protection; beyond parental control; and in conflict with the Law.303 Placement in residential care is a last resort.304</td>
</tr>
<tr>
<td>Family Group Conferencing</td>
<td>Family Group Conferences are usually convened in child protection cases by a neutral party such as a counselor from MCYS or BSS. Family Group Conferences are an empowering and restorative model of working with families which enables families to take the lead in deciding what needs to be done to ensure that children are safe and well cared for. It can be implemented by children's homes and VWOs.305</td>
</tr>
</tbody>
</table>

The following are forms of family violence-specific assistance provided by the State. The government has confirmed in April 2011 that these and the above resources, such as crisis shelters, medical treatment, psychological support, counseling, and financial aid, are available to all victims of family violence, regardless of nationality.306 These would accordingly be available to abused foreign wives.

298 The services of the Legal Aid Bureau are only available to Singapore Citizens and Singapore Permanent Residents. Legal Aid Bureau website, http://app2.lab.gov.sg.
302
305 Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), para. 46; Singapore’s Second and Third Periodic Report to the United Nations Committee on the Rights of the Child (CRC/C/SGP/2-3, 6 January 2009), 57.
Studies have been conducted on the effectiveness of PPOs and the mandatory counselling programme. Results of these studies were positive; these are however dated.\textsuperscript{315} Recidivism rates of participants of the mandatory counselling programme are tracked, by tracking whether the perpetrator breached a PPO within one year of completing the programme. Recidivism rates were less than 2% from 2006 to 2009.\textsuperscript{316}


\textsuperscript{308} MCYS, Protecting Families From Violence: The Singapore Experience, 2009, 11.

\textsuperscript{309} Ibid.


\textsuperscript{311} MCYS, Protecting Children in Singapore, October 2005, 17-19.


\textsuperscript{313} MCYS, Protecting Children in Singapore, October 2005, 18.


\textsuperscript{316} Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/4/Add.1, 18 May 2011), para. 43.
d. Prevention Strategy

**Gender-Stereotyping**

NGOs have highlighted the need for the government to implement a policy of gender mainstreaming.317 A gender mainstreaming approach, and gendered curriculum in schools and tertiary institutions, is reportedly lacking.318

**Family Violence**

The police have developed a Code of Practice for the Investigation of Family Violence.319 Perpetrators may however be getting away with lesser punitive enforcement responses than warranted. Police have reportedly not responded to cases of spousal psychological abuse as assertively as the law allows, for example, through immediacy of action and the use of arrests.320

MCYS takes a ‘life-cycle approach’ in preventing family violence. This starts from promoting healthy family relationships in premarital and marriage workshops to equipping parents to nurture and protect their children. Funding is given to social service agencies to run parent education and marriage enrichment programmes and MCYS actively promotes these programmes through advertisements, articles in the media, seminars and popular personalities.321

MCYS works with the media and magazines to educate the public on family violence through articles and advertisements. The focus has largely been preventive in nature, emphasising the identification of signs of family violence and the need to seek help early. Public education materials like pamphlets and collaterals have also been distributed widely through polyclinics, social service agencies, police, libraries and schools, as well as on the Internet.322

To encourage and incentivise social service agencies to raise public awareness on family violence, MCYS started a Co-Funding Scheme in 2003 where the government co-funds public awareness projects organised at the community level. Public campaigns and a docu-drama are among the initiatives that have been funded.323 In 2007, the White Ribbon Campaign, which was launched in Singapore in 2003 to eliminate violence against women, called for men to ‘Break the Silence, Stop the Violence’.324

**Child Abuse**

Public education and other preventive efforts targeting children, teachers, parents and the public have been implemented and/or funded by the government, including the following:

- **Publicity programmes in schools.** These including roving plays and child-friendly public education posters, booklets and postcards.325

- **Sexuality education.** Parents are taught how to talk to their children aged 10 to 17 about sexuality issues in the 'Love Them. Talk about Sex' programme, which included workshops and a resource booklet. Teachers are given a resource package on how to educate students on sexual abuse.326 Sexuality education in schools and training of teachers include legal issues relating to sexual crime as well as trends, particularly those relating to Internet Relay Chat and telephone chat lines.327

- **Cyber-wellness public education.** In January 2009 the Government established the Inter-Ministry Cyber-wellness Steering Committee (ICSC) to implement a national strategy for the protection of minors and cyber-wellness public education in Singapore.328

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319 SCWO, CEDAW Shadow Report, June 2011, 47.
324 Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 5.12.
326 Ibid, para. 261 and 327.
327 Ibid, para. 326 and 486.
Sexual Offences

While the police do take a tough stance against sexual offences, there is again a concern that offenders receive lesser punishment than warranted. First, there are concerns over the understanding of investigating officers of what constitutes a sexual crime. In a 2008 criminal case, a poor understanding of what constitutes rape was shown by an investigating officer from the Serious Sexual Crimes Branch, who told an alleged victim that if the accused ‘did not force or coerce her into having sex, it meant that she had not been raped.’ This was ostensibly erroneous as the proper test was whether or not the victim had consented to having sex. Application of erroneous definitions would mean that perpetrators of rape may go unidentified. Second, there has also been speculation that a decision by prosecutors to reduce charges in a 2010 gang rape case, despite evidence that appeared to establish a charge of rape, was prompted by the view that the female victim was to blame.

Punishment of Children and Young Persons

Corporal punishment is permitted as a last resort to discipline children in children’s homes. All homes for children must be licensed. They are guided by regulations issued by MCYS, and kept in check by an independent review board.

According to the government, clear procedures and stringent checks and balances are in place to check any potential abuse of institutional authority by relevant personnel in meting out corporal punishment. Corporal punishment as a disciplinary measure is carried out by either the head of school or a delegated senior member of staff at an appropriate venue.

4. Role of Non-State Actors

a. Assistance to Victims

State-funded and independent NGOs and VWOs provide an array of social services for victims. These include shelters, hotlines, counselling and befriending services, and legal assistance.

b. Prevention Programs

NGOs have been active in raising public awareness through media and publicity campaigns. Some, like AWARE and BSS provide public education services through workshops and seminars, and producing public education materials. The SCS has since 2004 been running a bully-free campaign to promote a bully-free school environment.

NGOs have also been key in research and advocacy. Policy changes, such as the Long Term Visit Pass Plus for foreign spouses, the repeal of the provision allowing for a woman’s sexual history to be adduced to impeach her credibility at trial, certain amendments to key legislation such as the Women’s Charter and the CYPA, appear to be to considerable extent the result of NGO lobbying.

NGOs such as AWARE and the SCS have engaged in research efforts to shed light on situations of violence against women and children in Singapore. The SCS provides grants amounting to $1,000 per study each year to support students pursuing research on issues related to family, children and youths, including child abuse and neglect.

c. Monitoring and Cooperation

Independent monitoring of the State’s responses to violence against women and children is lacking. A 2008 report by local NGO, the Society Against Family Violence (SAFV), has noted this, and is significant for its effort to fill the gap by reviewing the State’s responses to family violence and identifying areas for future development.
Cooperation among State-funded VWOs and the government is relatively close, by virtue of the National Family Violence Networking System and the ‘Many Helping Hands’ approach.

5. Progress Indicators and Challenges

The 2008 SAFV report assessed the responses to family violence in Singapore from 1997 to 2007. Findings were that:

- Reporting increased due to strengthened legislation (e.g. amendments to the Women's Charter to introduce PPOs) and protocols (the Family Violence Networking System)
- Communication, understanding and trust among various stakeholders, such as VWOs and the police, increased
- Public awareness among victims of available resources increased
- Social service delivery underwent innovation and expansion
- Awareness of the use of safety planning with victims as a tool by stakeholders such as VWOs, hospitals, the courts and the police was an area of improvement.

The area of least development identified was research with the goals of developing a locally, evidence-based response to family violence and child abuse.

The report also highlighted specific issues and concerns pertaining to various aspects of the management of family violence. These concerns include a lack of clarity about the family violence management system among professionals themselves, that the police were not responding to psychological abuse as assertively as the law allows, and victims were not systematically channeled to higher levels of expertise.336

D. EXPLOITATION

This section focuses on sexual and labour exploitation and trafficking. According to the government, organ trafficking has limited prevalence.337 As the literature on this issue is scant, it will not be canvassed in this report. With regard to labour exploitation, most of the literature on issues affecting foreign female workers in Singapore pertains to FDWs. FDWs will hence be the main focus of the discussion on labour exploitation.

1. Description of the Problem

a. Prevalence of Exploitation

Overall Snapshot

Data compiled on the prevalence of cases involving or related to sexual and labour exploitation are set out below. In all official cases of trafficking for sexual exploitation, the victims were female.338

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338 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 52. According to the government, the police keep data on all reported cases, including sex-disaggregated data.
Table 16 - Figures relating to Commercial Sexual Exploitation, and Labour and Sex Trafficking in Singapore from 2009 to 2011

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Official reported cases</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 43 reported cases of sex trafficking(^{339})</td>
<td>• 94 arrests for pimping(^{341})</td>
<td>• 7614 arrests of foreign women for vice activities(^{344})</td>
<td></td>
</tr>
<tr>
<td>• 67 cases with elements of labour trafficking(^{340})</td>
<td>• 81 trafficking victims, of whom 23 were children in prostitution; 1 from Singapore(^{342})</td>
<td>• 32 reported cases of alleged trafficking(^{345})</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 50 alleged cases of sex trafficking, of which 7 were 'successfully investigated'(^{343})</td>
<td>• 0 reported cases of forced labour(^{346})</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 146 male and female victims of forced prostitution and forced labour (non-governmental actors)(^{348})</td>
<td>• 89 minors aged from 14 to under 18 arrested for prostitution offences(^{347})</td>
<td>• 15 victims of sexual exploitation under 16, with 14 under 14</td>
</tr>
<tr>
<td><strong>Unofficial reported cases</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 105 female sex trafficking victims (foreign embassies)(^{351})</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Convictions</strong></td>
<td>• 5 sex trafficking convictions(^{349})</td>
<td></td>
<td>• 2 trafficking convictions(^{352})</td>
</tr>
<tr>
<td></td>
<td>• 8 labour trafficking convictions(^{350})</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Unless otherwise stated in this report, the figures are not disaggregated by age or sex, and references to ‘trafficking’ were not categorised by type of exploitation. Shaded boxes: no information.)

\(^{339}\) Under investigation at the time of this report. Esther Ng, ‘New Plan to Tackle Human Trafficking,’ TODAY, 22 March 2012.

\(^{340}\) Ibid.

\(^{341}\) Ministry of Foreign Affairs, ‘Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, para. 8 and 10.


\(^{343}\) Ibid, para. 8.


\(^{345}\) Ibid, para. 9. Data not disaggregated, type of exploitation not stated.


\(^{347}\) Ministry of Foreign Affairs, ‘Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, para. 10.

\(^{348}\) Ibid.

\(^{349}\) Ibid, para. 8.

\(^{350}\) Ministry of Foreign Affairs, ‘Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, para. 9.

\(^{351}\) Ibid.

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2007</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Official reported cases</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 5047 arrests of foreign women for vice activities(^{353})</td>
<td>• 5400 arrests of foreign women for vice activities(^{355})</td>
<td>• 33 investigated cases of trafficking in women and girls(^{358})</td>
<td></td>
</tr>
<tr>
<td>• 20 victims of sexual exploitation under 16, with 17 under 14(^{354})</td>
<td>• 28 cases of forced prostitution and importation of women by false pretences(^{356})</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 5 victims of sexual exploitation under 16, with 4 of under 14(^{357})</td>
<td>• 60 female minors involved in prostitution deported(^{363})</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Unofficial reported cases</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 136 trafficking cases (Philippines embassy)(^{359})</td>
<td>• 17 trafficking cases (Thai embassy)(^{361})</td>
<td>• 125 trafficking cases (Philippines embassy)(^{364})</td>
<td></td>
</tr>
<tr>
<td>• At least 53 of foreign females arrested and deported for vice activities were children(^{360})</td>
<td>• 212 trafficking cases of which about 57 involved prostitution and coercion to have sex (Philippines embassy)(^{362})</td>
<td>• 34 Vietnamese women and children rescued and repatriated from Singapore (Vietnam government)(^{365})</td>
<td></td>
</tr>
<tr>
<td><strong>Convictions</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 2 sex trafficking-related convictions, 1 conviction for child commercial sexual exploitation(^{366})</td>
<td>• 15 prosecutions for pimping</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 30 prosecutions for vice-abetting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 0 trafficking convictions(^{367})</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Unless otherwise stated in this report, the figures are not disaggregated by age or sex, and references to ‘trafficking’ were not categorised by type of exploitation. Shaded boxes: no information found.)

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\(^{354}\) Committee on the Rights of the Child, *Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011)*, 32, Table 15.


\(^{356}\) Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), 23.

\(^{357}\) Committee on the Rights of the Child, *Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011)*, 32, Table 15.


\(^{362}\) Agence France-Presse, ‘Women trafficked to Singapore lured into prostitution,’ 1 September 2008, http://afp.google.com/article/ALeqM5gmnM4mWGQc52EtAniorozCZ5u4Q


\(^{367}\) Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), 23.
The figures, while piecemeal, do suggest an increase in the number of trafficking cases reported or acknowledged in recent years. This would not in itself indicate an increase in prevalence; it could also for example indicate an increase in enforcement or reporting efforts. 

Labour Exploitation

Apart from numbers on actual investigations and prosecutions of labour trafficking cases, there are other data indicators of labour exploitation and labour trafficking, e.g. non-payment of wages, salary deductions, withholding of passports of foreign workers and preventing workers from making complaints. The number of work hours and days of rest may also be indicative of exploitation. Importantly, none of these taken alone are conclusive of an occurrence of labour exploitation or trafficking.

Table 18 - Figures relating to Other Data Indicators of Labour Exploitation and Labour Trafficking from 2008 to 2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Official reported cases</th>
<th>Unofficial reported cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>• 67 cases with elements of labour trafficking (still under investigation)</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>• 8 labour trafficking convictions</td>
<td>• 146 male and female victims of forced prostitution and forced labour</td>
</tr>
<tr>
<td>2009</td>
<td>• 0 reported cases of forced labour, • 8 prosecuted for failing to pay wages of FDWs, • 2 convictions of employment agencies and 33 'stern warnings' for withholding the passports of foreign workers, • 228 prosecutions of employment agencies and employers for breaches of employment laws (breach not stated) and 476 convictions for breaches of the Employment of Foreign Manpower Act (breach not stated)</td>
<td>• 676 Employment Act contraventions for migrant workers at NGO shelter</td>
</tr>
<tr>
<td>2008</td>
<td>• 276 cases of unpaid wages collected by authorities on behalf of FDWs</td>
<td>• 194 cases of non-payment of salary among migrant workers at NGO shelter</td>
</tr>
</tbody>
</table>

368 Under investigation at the time of this report. Esther Ng, 'New Plan to Tackle Human Trafficking,' TODAY, 22 March 2012.

369 Ministry of Foreign Affairs, 'Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,' 1 August 2011, para. 10. These concerned shell companies and the persistent withholding of passports by employment agencies.


373 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 79.


Work hours are long and rest days are few for FDWs, as shown by 2 independent surveys:

Table 19 - Findings of surveys on FDWs

<table>
<thead>
<tr>
<th>2007/2008 survey of FDWs at temporary shelter</th>
<th>2011 NGO survey of 108 households employing FDWs in Singapore</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 67% of the workers worked 16 to 19 hours a day</td>
<td>• FDWs worked an average of 14 hours per day.</td>
</tr>
<tr>
<td>• 68% had no days off</td>
<td>• 12% had at least one weekly day off</td>
</tr>
<tr>
<td>• 7% had a weekly day off</td>
<td>• 50% had at least one monthly day off</td>
</tr>
</tbody>
</table>

The 2007/2008 survey also found that 20% of foreign workers faced non-payment of salary, 19% ‘withholding of savings’, 15% salary deductions as penalty, and 15% were asked to pay repatriation costs. There is a bias in the percentages as many FDWs were in the shelter as a result of mistreatment by their employers or employment agencies.

There have also been reports of employers hiring repatriation companies, which employ intimidation, coercion, violence and wrongful confinement, to escort foreign workers to the airport, and ensure they have no opportunity to pursue complaints and redress, such as for payment of wages and forced labour. In 2010, 2 cases of forced repatriation and wrongful confinement by repatriation companies were investigated. An employee from a repatriation company was prosecuted and sent to jail for voluntarily causing hurt to a foreign worker. The employers who had engaged the repatriation companies were also given stern warnings for the abetment of wrongful restraint.

According to the government, the number of complaints made against repatriation companies has remained small over the years. Since 2010 to November 2011, authorities received 7 complaints against 3 such companies. These figures may not reflect the full extent of the problem, as victims subject to such forced removal from Singapore would not often be in a position to make complaints, given the use of intimidation and coercion prior to their departure.

Traffic

Scale of Trafficking in Singapore

Singapore is said to have a ‘significant’ human trafficking problem, according to the US State Department. In 2010, Singapore was placed on the US State Department's Tier 2 watchlist for trafficking in persons. The government has erstwhile appeared reluctant to acknowledge the problem of trafficking, stating in 2010 that ‘Singapore does not have a serious [human trafficking] problem.'

There appears to be a shift in the government’s position. In March 2012, the Minister of State for Manpower

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377 Kayoko Ueno, ‘Research survey report on shelter residents 2007 to 2008’, accessed 8 May 2012, http://www.home.org.sg/library/research/index.html. This was a research study conducted from October 2007 to August 2008 of 219 foreign workers temporarily residing at a shelter run by HOMEa local NGO. The workers were from Philippines, Indonesia, India, Myanmar, and Sri Lanka.

378 UN Women, HOME, TWC2, Made to Work Attitudes Towards Granting Regular Days Off to Maids in Singapore, 2011.

379 Under the Employment of Foreign Manpower (Work Passes) Regulations, repatriation costs are instead to be paid by employers.


381 Ministry of Foreign Affairs, ‘Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, paras. 16 and 18.


384 Countries on the Tier 2 watchlist are countries that whose governments do not fully comply with the TVPA’s 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; 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 itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year; see ‘Tier Placements,’ US State Department, http://www.state.gov/j/tip/rls/tiprpt/2011/164228.htm.

stated that while trafficking in persons was ‘not a severe problem in Singapore’, signs of sex trafficking and labour-trafficking related exploitation did exist.386 The 2010 US State Department’s Trafficking in Persons report noted that the government had ‘reversed its longstanding approach of denying a significant labour trafficking problem in the country.’387 The government has since formed an Inter-agency Task Force against Trafficking in Persons, and rolled out a National Plan of Action against Trafficking in Persons.

There has been a striking discrepancy between unofficial and official figures of trafficking. The government has highlighted that it has received very few reports from foreign embassies of trafficking cases, despite the relatively high figures provided by these embassies.388 In this regard, circumstances causing foreign victims to be reluctant to report to local authorities have been noted, such as having to stay for between 6 months to a year in Singapore while investigations are ongoing, but being barred from seeking employment.389

The discrepancy has also been attributed to the adoption by authorities of a narrower definition of trafficking that may ignore situations of coercion and deception.390 Situations of coercion and deception do appear to be covered by Singapore’s criminal laws relating to trafficking. Any failures to identify situations of trafficking may instead relate to errors in how statutory definitions of trafficking are applied in practice.

This could explain the relatively low number of convictions compared to the numbers of reported cases. Prosecution and conviction rates may also be affected by difficulties faced in obtaining access and evidence, problems that 2011 legislative amendments seek to address.391

Nature of Trafficking in Singapore

Singapore is primarily a destination country and, to a lesser extent, transit point for trafficking.392 Women and children trafficked to or through Singapore come from Philippines, Indonesia, Cambodia, Thailand, India, Bangladesh, Sri Lanka, China, Vietnam, and Nepal.393 The Philippines, Indonesia and Vietnam have been flagged as origin countries of significance for trafficking in Singapore, based on the numbers of reported victims from these countries.394 Trafficking of Cambodian women and children to Singapore is also a ‘growing phenomenon’.395

The most commonly identified sectors of exploitation of trafficked women, children and young persons in Singapore, are prostitution and domestic work.

With regard to prostitution, women, children and young people are deployed in commercial sex venues.396 Locations of exploitation of prostitution include Geylang, the main red-light district in Singapore, Orchard Road, where a shopping centre known for being frequented by prostitutes is located, and some residential areas such as Toa Payoh, Joo Chiat and Tanjong Katong.397 There are also ‘forest brothels’, where foreign prostitutes provide sex services in forests to male workers.398

disposal of evidence which is believed will be removed or disposed. These enhance the ability of the police to identify, investigate and secure evidence to prosecute traffickers: Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), Annex 1.

According to ECPAT’s CSEC Report’s field research, a common ruse used to lure women and young people to Singapore is deception about job opportunities in Singapore, such as in hotels and restaurants. A number were aware that they would be engaging in sex-related activity, but were deceived about the conditions attached, and subjected to forced prostitution under the threat of serious harm, including financial harm. The survivors interviewed in the field research were generally kept under constant and close surveillance and monitoring, and were often denied freedom of movement and association. Debt bondage was used in all cases to control them. Debts were arbitrarily imposed without agreement prior to their departure, or were agreed to in part or full, but with the expectation that they would be easily repaid through high salaries in Singapore and without imposition of further debt.

With regard to domestic work, anecdotal evidence suggests that many migrant workers, including FDWs, are deceived about the nature of their employment or salary and the conditions they would face in Singapore, and faced confiscation of their passports, restrictions on their movement, and illegal withholding of their pay. In particular, many owe alleged debts associated with their employment, rendering them vulnerable to forced labour.

An additional sector of exploitation may be the purchase of foreign brides by Singaporean men. In Vietnam in 2010, 4 people were found guilty of trafficking Vietnamese women to Singaporean and Malaysian men who had purchased them as wives. The women were reportedly led to believe that they would either get a job or be married to wealthy men.

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403 Ibid, 3 and 53.
Child Exploitation

Child Sexual Exploitation in Singapore

<table>
<thead>
<tr>
<th>Table 20 - Figures relating to Child Sexual Exploitation in Singapore from 2007 to 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2010</strong></td>
</tr>
<tr>
<td>----</td>
</tr>
<tr>
<td><strong>Official numbers of reported cases</strong></td>
</tr>
<tr>
<td><strong>Unofficial numbers of reported cases</strong></td>
</tr>
<tr>
<td><strong>Convictions</strong></td>
</tr>
</tbody>
</table>


409 Committee on the Rights of the Child, *Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011)*, 32, Table 15.

410 Ibid.


415 Ibid.

The 2011 CRC Committee expressed concern over the insufficient data on child victims of trafficking and the sexual exploitation of children, and noted that, based on statistics provided by the government, cases of sexual exploitation and abuse of children may be under-reported.416 ECPAT’s CSEC Report noted that participation of child survivors in its field research was limited due to lack of access.417

An increasing number of Singaporean teenagers, both girls and boys, are exchanging sexual services for access to modern goods or for extra pocket money, using the Internet or mobile phones to advertise or sell sex services. Advertisements of girls offering sex services in Singapore in exchange for money can easily be found on the Internet. The phenomenon has been referred to as ‘compensated dating.’418 Criminal charges have been brought against men who have sex with these children for money.419


418 Ibid, 23.

419 Ibid, citing a number of media reports of anecdotal evidence and court cases from 2005 to 2009.
In one particularly high profile scandal in April 2012, 48 men from their early 20s to late 40s, including uniformed officers, civil servants, businessmen and at least one member of the social elite, were charged for having paid sex with an underaged callgirl.420

**Child Sex Tourism**

Singapore's laws on child sex tourism prohibit citizens and permanent residents from having commercial sex with minors outside Singapore, and acts by any person in or outside Singapore to facilitate the same.421

No arrests or prosecutions were made for child sex tourism offences during 2007 and 2008.422 Nevertheless, reports suggest that a considerable number of Singaporean men are child sex tourists.423 According to an NGO survey, almost half of all clients of prostitution in the Indonesian Riau islands are from Singapore.424 It has been reported that 70% to 80% of clients of prostitution in Batam, one of the main Riau islands, are from Singapore, and an estimated 600 Singaporean sex tourists travel there every weekend,425 where they have sex with child prostitutes as young as 14.426 Further, a 2007 study found Singaporean men to be among the most frequent child sex tourism perpetrators in Thailand, and among child sex offenders in Cambodia.427

The possibility that child sex tourism takes place in Singapore should be investigated.428 Incidents of travellers, foreign workers and expatriates buying sex services, including from minors during their stay in Singapore have been reported by the press.429 Singapore's laws prohibiting sex with minors apply in such cases.

**Child Labour**

Figures on child labour seem unavailable. According to the government, there were no cases of migrant workers under 18 years of age from 2007 to 2009.430 The 2011 CRC Committee highlighted the absence of information in the 2009 Singapore CRC Report on monitoring the working and living conditions of child labour.431

b. Root Causes of Exploitation and Aggravating Practices

**Sexual Exploitation and Trafficking**

ECPAT's CSEC Report profiled Filipina and Indonesian victim participants, comprising women and girls. Some commonalities in profile were that they had difficult situations in their home countries, such as needing to care for family members, lack of employment opportunities, financial difficulties consequent to some crisis event, or sexual abuse within the family setting. In the case of Indonesians, an additional factor increasing the

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421 It is an offence for any person who is a citizen or permanent resident of Singapore to, while outside Singapore, have commercial sex with any person under 18, or communicate with any person for purposes of the same. The penalties had the acts been committed in Singapore apply: Penal Code, s. 376C. Further, it is an offence for any person to facilitate (by making travel arrangements or providing transport), promote, or assist a person to obtain, commercial sex with a person under 18 outside Singapore: Penal Code, s. 376D.


425 AWARE, Beyond Borders: Sex with Children, September 2006, 5, citing Chee, F. ‘It’s Not All About Sex, Baby.’ Straits Times, 10 January 2006; Cheong, Y. ‘Get Real! Poll Finds Strong Support For Prosecution of Child Sex Tourists.’


428 Ibid.


430 Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), para. 156.

vulnerability of children and young people to sex trafficking was their prior involvement in prostitution or internal sex trafficking in Indonesia.\textsuperscript{432}

With regard to child sex tourism, Singaporean men who engage in child sex tourism are working class men, attracted by prices of sex services that are lower than in Singapore. A report posits that travelling to countries such as Indonesia for sex services allows these men, who may be taxi drivers or day labourers, to acquire more purchasing power and thereby fulfil their fantasy of being a ‘towkay’ (boss).\textsuperscript{433}

The vulnerability of children and youth to online sexual exploitation and grooming has been attributed to their widespread utilisation of the Internet, including Internet chat rooms, and exposure, both voluntary and involuntary, to online pornography.\textsuperscript{434}

With regard to ‘compensated dating,’ counsellors and social workers relate that some teenagers feel compelled to sell sex services in order to buy fashionable products.\textsuperscript{435} The phenomenon of ‘compensated dating’ in Singapore has been attributed to widespread consumerism that targets children, the lack of attention on the part of parents, as well as to a ‘glamorisation’ of sex and pervasive sexualisation of children in the media.\textsuperscript{436}

\textit{Labour Exploitation}

Debt bondage can be used to keep foreign workers in situations of exploitation. High fees paid to recruitment agencies reportedly place FDWs in situations of debt bondage. NGO reports from 2011 indicate that placement fees paid by FDWs range from 6 to 10 months’ salary.\textsuperscript{437}

The withholding of passports and other identity documents is closely associated with exploitation, and apparently a "proven contributor to trafficking."\textsuperscript{438} As shown above, such breaches of employment laws have been reported.

The following government policies relating to the grant of foreign workers’ work passes and permits are seen to potentially lead to conditions of forced labour and exploitation:\textsuperscript{439}

\begin{itemize}
  \item having the grant and cancellation of each FDW’s work pass dependent on the application of the employer, and not the worker. Employers are not statutorily required to give notice before termination;
  \item requiring employers to repatriate FDWs within 7 days from the cancellation/expiry of their work permits; and
  \item allowing foreign workers to change employers only with the consent of the current employer.\textsuperscript{440}
\end{itemize}

According to NGOs, FDWs, with their employment and repatriation in the hands of their employers, feel compelled to comply with employers’ orders and are deterred from making complaints of situations of abuse and exploitation.\textsuperscript{442}

\textit{c. Impact of Exploitation}

This section will focus on sexual exploitation and sex trafficking. With regard to labour exploitation and labour trafficking, NGO reports have collated media reports and case studies on the impact of abuses of FDWs. These are addressed in ‘Migration’, mainly because of the difficulties in concluding that those cases were situations of exploitation and trafficking.

\textit{Sexual Exploitation and Trafficking}

ECPAT’s CSEC Report found that some trafficking victims interviewed suffered from reproductive health issues not

\begin{footnotes}
\item[434] \textit{Ibid}, 22.
\item[435] \textit{Ibid}. 24.
\item[436] \textit{Ibid}, citing ‘Sex for sale on rise among Singapore’s girls,’ \textit{Times of India}, 23 October 2005.
\end{footnotes}
limited to HIV/AIDS, such as vaginal bleeding and sexually transmitted infections, among other health issues resulting from their sex work. Some experienced stress, anxiety and depression, nausea and vomiting. Others were subjected to physical abuse and sexual harassment from customers and/or their controllers.  

Some victims of sex trafficking who return to their home countries remain in prostitution as 'freelancers,' although they had never been engaged in prostitution prior to being trafficked to Singapore. Others re-entered Singapore as sex workers at a later stage.  

2. De Jure State Responses  

a. Bases of State Responsibility  

<table>
<thead>
<tr>
<th>Date of Ratification</th>
<th>Instrument</th>
<th>Reservations / Declarations</th>
<th>Implementing Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>International</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25 August 1965</td>
<td>International Labour Organisation Convention concerning Forced or Compulsory Labour (ILO C. 29)</td>
<td>None</td>
<td>No specific implementing legislation</td>
</tr>
<tr>
<td>25 August 1965</td>
<td>International Labour Organisation Right to Organise and Collective Bargaining Convention, 1949 (ILO C.98)</td>
<td>None</td>
<td>No specific implementing legislation</td>
</tr>
<tr>
<td>30 May 2002</td>
<td>International Labour Organisation Equal Remuneration Convention, 1951 (ILO C.100)</td>
<td>None</td>
<td>No specific implementing legislation</td>
</tr>
<tr>
<td>7 November 2005</td>
<td>International Labour Organisation Minimum Age Convention, 1973 (ILO C.138)</td>
<td>None</td>
<td>No specific implementing legislation</td>
</tr>
<tr>
<td>14 June 2001</td>
<td>International Labour Organisation Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO C.182)</td>
<td>None</td>
<td>No specific implementing legislation</td>
</tr>
<tr>
<td>28 August 2007</td>
<td>United Nations Convention against Transnational Organized Crime</td>
<td>Article 35(2) 446</td>
<td>No specific implementing legislation</td>
</tr>
<tr>
<td>6 November 2009</td>
<td>United Nations Convention Against Corruption</td>
<td>Article 66(2) 447</td>
<td>No specific implementing legislation</td>
</tr>
<tr>
<td><strong>Regional</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28 April 2005</td>
<td>Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries</td>
<td>None</td>
<td>No specific implementing legislation</td>
</tr>
</tbody>
</table>

444 Ibid, 56.  
445 Article 38 of the Constitution gives law-making power exclusively to Parliament. Accordingly, international conventions and treaties, though ratified, can neither impose duties nor create rights enforceable in the Singapore courts unless there exists implementing domestic legislation.  
446 'Pursuant to Article 35, paragraph 3 of the above mentioned Convention, the Government of the Republic of Singapore does not consider itself bound by Article 35, paragraph 2 of the said Convention.'  
Singapore has also signed the *Rio de Janeiro Declaration and Call to Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*.\(^{448}\)

**Treaties Under Consideration**

In March 2012, during the unveiling of the National Action Plan against Trafficking, the Minister of State for Manpower stated that before acceding to the Trafficking Protocol, Singapore needed ‘to conduct a thorough review and ensure Singapore is able to fulfil its obligations in an international agreement first.’ Once ready, Singapore would then ‘translate it into action.’\(^{449}\)

In 2011, Singapore stated that it was studying the Optional Protocol to the Convention on the Rights of the Child on the sale of the child, child prostitution and child pornography, and its obligations.\(^{450}\)

**Cross-Border Cooperation in ASEAN**

Singapore has signed the ASEAN Joint Declaration against the Trafficking of Persons, Particularly Women and Children and the Framework for Cooperation between ASEAN and the United Nations Development Fund for Women. It has ratified the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.\(^{451}\) It has also entered into a bilateral extradition treaty with Indonesia.\(^{452}\)

**b. State Policies Against Exploitation**

**Sexual Exploitation**

Safeguards against sexual exploitation can be categorized into those protecting women and girls, and those protecting children specifically. Those relating to both women and girls are addressed in this section, while those relating to children only are addressed below in Section D.2.b, ‘Exploitation of children.’

While this section details policies on the exploitation of prostitution, there are laws that criminalize other forms of sexual exploitation.\(^{453}\)

**Exploitation of Prostitution**

‘Prostitution’ is gender-specific. It is defined as ‘the act of a female offering her body for sexual penetration for hire, whether in money or in kind.’\(^{454}\) The act of prostitution itself is not illegal.

The exploitation of prostitution is illegal. The following forms of exploitation of prostitution of women and girls are criminalized:

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\(^{450}\) Committee on the Rights of the Child, *Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011)*, para. 148.

\(^{451}\) ASEAN, *Responses to Trafficking in Persons*, April 2006, 58.


\(^{453}\) Other provisions that could be invoked to prosecute sexual exploitation, including but not limited to exploitation of prostitution, are the sexual offences (e.g. rape) in the *Penal Code*, which also criminalizes the abetment of such offences. Forcibly detaining any woman or girl to ‘have carnal connection’ with any male person is also criminalized by Section 140 of the *Women’s Charter*. This could cover some other situations of sexual exploitation that do not constitute exploitation of prostitution.

\(^{454}\) *Women’s Charter*, s. 2.
Forced detention of women for purposes of sexual exploitation can be prosecuted using section 140 of the Women’s Charter. This section prohibits the detention of any woman or girl against her will in a brothel; and the detention of any woman or girl against her will in any place, (i) to have carnal connection (except by way of marriage) with any male person, (ii) for the purpose of prostitution, or (iii) for any unlawful or immoral purpose. Offenders face imprisonment for up to 5 years, and a fine of up to S$10,000.

The prohibitions appear to cover situations of victims trapped by debt bondage and other non-physical forms of coercion. Under section 140(3)(c)(iii), there is a rebuttable presumption that an alleged offender has detained a woman or girl against her will when that person has, among other things, threatened her with legal proceedings for debt recovery, or uses ‘any other threat whatsoever’. There has nevertheless been some controversy over whether section 140 prohibits debt bondage and other non-physical forms of coercion.

Also, brothels are prohibited. However, the government has taken ‘a pragmatic approach to tackling vice by confining prostitution to traditional red light areas.

### Table 22 - List of Forms of Exploitation of Prostitution that are Criminalized

<table>
<thead>
<tr>
<th>Form of Exploitation</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling, letting for hire, or otherwise disposing of any woman or girl for prostitution within or outside Singapore, or attempting to do the same</td>
<td>Imprisonment for up to 5 years, and a fine of up to S$10,000. Repeat offenders are liable to be caned.</td>
</tr>
<tr>
<td>Buying, hiring, or otherwise obtaining possession of any woman or girl for prostitution, or attempting to do the same</td>
<td></td>
</tr>
<tr>
<td>Living or trading in the prostitution of another</td>
<td></td>
</tr>
<tr>
<td>Selling or buying any female of any age for the purpose of prostitution</td>
<td>Imprisonment for a term not exceeding 10 years, and a fine</td>
</tr>
</tbody>
</table>

455 Ibid, s. 140.
456 Ibid.
457 Ibid, s. 146.
458 Penal Code, s. 373A(c).
459 Women’s Charter, s. 140(3)(c)(iii).
460 Section 140 has been interpreted by the US Department of State in its 2011 TIP report as not prohibiting non-physical forms of coercion, such as debt bondage or threat of abuse of the legal process. The Inter-agency Task Force on Trafficking in Persons has disagreed with this interpretation, taking the position that section 140 covers a wide variety of situations, including where there is no threat of physical injury: Ministry of Foreign Affairs, ‘Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, para. 23. Separately, local NGO, TWC2, together with the Global Alliance against Traffic in Women, have in their 2011 CEDAW shadow report taken the view that section 140(c)(iii) of the Women’s Charter does appear to offer an avenue for prosecuting those who trap women into sex work by using their indebtedness. The said NGOs note, however, that the provision seems little used.

461 Under section 148 of the Women’s Charter, a person who keeps, manages or assists in the management of a brothel is liable for a fine of up to S$3,000, imprisonment of up to 3 years, or both. Repeat offenders face harsher penalties, but are not liable to be caned.


463 Sections 11 and 12 of the Undesirable Publications Act (Cap 338, 1998 Rev Ed Sing) criminalize the making, reproducing, selling, supplying, offering to supply, exhibiting, importing, exporting or possession of obscene or objectionable publications respectively. Offences in relation to obscene publications carry a fine of up to S$10,000 or imprisonment for up to 2 years, or both. Offences in relation to objectionable publications carry a fine of up to S$5,000, imprisonment for up to 12 months, or both.

464 Sections 29 to 31 of the Films Act (Cap 107, 1998 Rev Ed Sing) criminalize the making, reproducing, importing, distributing, exhibiting, possession and advertisement of obscene films. Offenders face a fine of at least S$1,000 per film (or more depending on the type of offence), or imprisonment of a maximum of 2 years (or less depending on the type of offence), or both.

465 Section 2 of the Undesirable Publications Act defines ‘publication’ as including any ‘thing… on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any picture, photograph, word, statement, sign or representation.’ Section 2 of the Films Act defines ‘film’ as including any ‘material record or other electronic device, is capable of being reproduced or displayed as wholly or partly visual moving pictures.’ The 2009 Films (Amendment) Bill parliamentary debates make clear that Internet visuals are included in the prohibition.

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Delphia Lim
Labour Exploitation

Forced labour,466 slavery,467 and habitually dealing in slavery468 are criminalized by the Penal Code.

No minimum wage or salary is imposed in Singapore.469 The matter is left to market forces and mutual negotiations between the employer and the employee or representing trade union.

The Employment Act provides safeguards for employees regardless of their nationality. All terms and conditions of employment that are less favourable to an employee than those prescribed by the Employment Act are illegal, null and void to the extent that they are less favourable.470

These safeguards cover all employees, except seamen, domestic workers, and persons employed in a managerial or executive capacity (including professionals such as doctors and lawyers).471 According to the government, personnel in managerial and executive positions are excluded as ‘they are in a better position to negotiate their terms and conditions of employment;’ seamen and domestic workers are excluded as ‘the provisions in the Act are difficult to enforce due to the nature of their work.’472

466 Penal Code, s. 374. Offenders face imprisonment for a term which may extend to one year, a fine, or both.
467 Penal Code, s. 370. Offenders face imprisonment for a term which may extend to 7 years, and a fine.
468 Penal Code, s. 371. Offenders face life imprisonment, or imprisonment for up to 10 years, and a fine.
470 Employment Act, s. 8.
471 Employment Act, s. 2. Managers and executives are employees with executive or supervisory functions. These functions include the authority to influence or make decision on issues such as recruitment, discipline, termination of employment, assessment of performance and reward, or involvement in the formulation of strategies and policies of the enterprise, or the management and running of the business. They also include professionals with tertiary education and specialised knowledge/skills and whose employment terms are comparable to those of managers and executives. Professionals such as lawyers, accountants, dentists and doctors whose nature and terms of employment are comparable to executives would generally be deemed as such; see ‘The Employment Act: Who it covers’, MOM, last updated on 6 February 2012, http://www.mom.gov.sg/employment-practices/employment-rights-conditions/employment-act/Pages/default.aspx.
473 These are issued pursuant to powers set out in the Employment of Foreign Manpower Act (Cap. 91A, 2009 Rev Ed Sing).
The following summarizes some of the Employment Act’s statutory safeguards against labour exploitation:

### Table 23 - List of Safeguards Provided for in the Employment Act, Against Labour Exploitation

<table>
<thead>
<tr>
<th>Safeguard against Exploitation</th>
<th>Scope of Applicability</th>
<th>Penalty (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees will not be in breach of or terminating without notice where they are immediately threatened by danger to the person by violence or disease, which they did not by their contract of service undertake to run.</td>
<td>All employees to whom the Employment Act is generally applicable</td>
<td>Employers in breach are liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or to both, and for a subsequent offence under the same section to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.</td>
</tr>
<tr>
<td>Employers are prohibited from making deductions from employees’ salaries, unless such deductions are those specified in the Act, or authorized by a court or other competent authority.</td>
<td>All employees to whom the Employment Act is generally applicable</td>
<td>Employers in breach are liable for a fine not exceeding $5,000, and for a second or subsequent offence to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.</td>
</tr>
<tr>
<td>Employees must be paid their salaries at least once a month.</td>
<td>Same as above, as well as managers and executives with a salary not exceeding $4,500 a month</td>
<td>Employers in breach are liable for a fine not exceeding $5,000, and for a second or subsequent offence to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.</td>
</tr>
<tr>
<td>Mandatory paid holidays or payment in lieu, and mandatory sick leave</td>
<td>All employees to whom the Employment Act is generally applicable</td>
<td>Employers in breach are liable for a fine not exceeding $5,000, and for a second or subsequent offence to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.</td>
</tr>
<tr>
<td>Mandatory weekly rest days or payment in lieu</td>
<td>Workmen (generally, persons engaged in manual labour) with a monthly salary of up to $8,500, and employees with a monthly salary of up to $2,000</td>
<td>Employers in breach are liable for a fine not exceeding $5,000, and for a second or subsequent offence to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.</td>
</tr>
</tbody>
</table>

*FDWs are excluded from the Employment Act and its provisions on specific work hours, rest days and holidays. The government’s position is that, for domestic workers, such regulation is not practical given that they work in a home environment and domestic arrangements vary in different households.*

Foreign Domestic Workers

FDWs are excluded from the Employment Act and its provisions on specific work hours, rest days and holidays. The government’s position is that, for domestic workers, such regulation is not practical given that they work in a home environment and domestic arrangements vary in different households.

The employment of FDWs is largely regulated by the Employment of Foreign Manpower (Work Passes)
Regulations, which requires employers to, among other things:
- pay a basic salary amount to their foreign employees regularly (within 7 days of a stipulated salary period). The basic salary is an amount that was declared to the authorities in their work permit or work pass applications;
- provide 'safe working conditions and take such measures as are necessary to ensure the safety and health of the foreign employee at work';
- provide 'acceptable accommodation for the foreign employee'; and
- bear the costs of the foreign employee's upkeep and maintenance in Singapore, including the provision of medical treatment, and for foreign domestic workers, food.

Employers in breach of the foregoing regulations are liable for a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or both.

In a significant move, and after sustained lobbying by NGOs, the government has announced that from 1 January 2013, it will be mandatory for FDWs to have one rest day per week, or compensation in lieu.483 This appears to apply only to FDWs and not Singaporean domestic workers.

The Regulations also provide for certain safeguards against debt bondage of foreign employees, including FDWs.484 Employers in breach of the foregoing are liable for a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or both.

The Employment Agencies Act protects against exploitation involving employment agencies. It is an offence to engage the services of an unlicensed employment agency.485 There are safeguards against debt bondage due to employment agency fees via prescribed fee caps.486 Employment agencies are also required to ensure, after obtaining employment for the foreign employee, that the foreign employee's passport or other identification documents are returned directly to that foreign employee as soon as practicable.487

All employment agencies placing FDWs must be accredited, and these accredited agencies are required to facilitate the signing of standard contracts issued by accreditation bodies.488

Other Forms of Exploitation

Forced marriage of any person and related acts are criminalized.489 Trading in any woman or girl, whether or not for prostitution, is prohibited.490 For all exploitation prosecutions, laws against wrongful restraint and confinement under the Penal Code, and wrongful detention under the Employment Act,491 may be invoked depending on the circumstances of the case.

Trafficking

The definition of 'trafficking' in the Trafficking Protocol has not been incorporated as such into local laws. According to the government, Singapore nevertheless currently adopts the Trafficking Protocol's definition as its working definition, including in front-line law enforcement.492

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484 Employers are prohibited from (i) indirectly or directly demanding or receiving any sums from their foreign employees, or any benefits from an employment agency, for employing or continuing to employ, or guaranteeing the employment of, foreign employees; and (ii) recovering or deducting certain specified costs and expenses that would be incurred in respect of foreign employees, such as costs of work permit applications and medical examinations: Employment of Foreign Manpower (Work Passes) Regulations (Chap 91A, R 29 and R 30, 2009 Rev Ed Sing), r 29 and r 30.

485 Employment Agencies Act (Cap 92, 1985 Rev Ed Sing), s. 22A.

486 Employment agencies are prohibited from charging foreign applicants any sum greater than a prescribed fee. This prescribed fee is equivalent to one month's salary for each year of either the period of validity of the work pass, or the contractual period of employment. The prescribed fee cannot in any event exceed 2 months' salary: Section 23 of the Employment Agencies Act read with Rule 12 of the 2011 Employment Agencies Rules. Those in breach are liable for a fine not exceeding $5,000 and, in respect of a second or subsequent offence, to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or to both.

487 Employment Agencies Act, s. 10(2).

488 Singapore's Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 11.49 and 11.52.

489 Compelling a person to marry against his will, by the use of any force or threat, is prohibited: Section 36 of the Women's Charter. Kidnapping or abducting a female of any age for purposes of forced marriage is also prohibited: Penal Code, s. 366.

490 The buying or selling of any woman or girl, whether or not for the purpose of present or subsequent prostitution, is prohibited: Women's Charter, s. 141.

491 Employment Act, s. 108.

492 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 45.
The National Plan of Action against Trafficking in Persons, unveiled in March 2012, seeks, among other things, to provide a common definition for trafficking to enhance processes in victim identification and protection. Local laws are currently being reviewed, including the issue of whether there should be a dedicated law on human trafficking.


494 Esther Ng, ‘New Plan to Tackle Human Trafficking,’ TODAY, 22 March 2012.

While outside the scope of this study, a preliminary search of case law suggests that there are no reported cases of prosecutions brought based on sections 141 and 142 of the Women's Charter, despite them being capable of encompassing a wide variety of situations of trafficking. It appears that some sex trafficking prosecutions are instead brought as charges of procuring a woman for prostitution under section 140 of the Women's Charter, including cases involving deception.

There are other laws that do not specifically envisage a situation of exploitation, but that could nevertheless be invoked to prosecute acts of trafficking, e.g. the offences of kidnapping, abduction, and wrongful restraint and confinement under the Penal Code.

Illegal immigration offences are also relevant. The government has viewed preventing trafficking as involving enforcement against illegal immigration. In describing

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Table 24 - Offences that Criminalize Aspects of Trafficking for Purposes not limited to Sexual Exploitation

<table>
<thead>
<tr>
<th>Prohibited Acts</th>
<th>Purpose of Prohibited Act</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buying, selling, procuring, trafficking in, or bringing into or taking out of Singapore for the purpose of such traffic, any woman or girl</td>
<td>‘Whether or not for the purpose of present or subsequent prostitution’</td>
<td>Imprisonment for up to 5 years, and a fine of up to S$10,000.</td>
</tr>
<tr>
<td>Bringing into or taking out of Singapore, or assisting in the same, by or under false pretence, false representation or fraudulent or deceitful means made or used either within or without Singapore, any woman or girl</td>
<td>(i) For the purpose of prostitution either within or without Singapore; or (ii) ‘Whether or not for the purpose of present or future prostitution’</td>
<td></td>
</tr>
<tr>
<td>Detaining any woman or girl against her will, or attempting to do so</td>
<td>For, among other things, any unlawful or immoral purpose.</td>
<td>A fine not exceeding $5,000 or imprisonment for a term not exceeding 2 years, or both.</td>
</tr>
<tr>
<td>Inducing or attempting to induce, by force, intoxication or ill-treatment, intimidation or fraud, or by means of false representations, any person</td>
<td>To enter into a contract of service to work overseas</td>
<td></td>
</tr>
</tbody>
</table>

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495 Women's Charter, s. 141.
496 Ibid, s. 142.
497 Ibid, s. 140(1)(h).
498 Employment Act, s. 113.
500 Section 57 of the Immigration Act (Cap 133, 2008 Rev Ed Sing) criminalizes, among other things, abetting a person to enter Singapore unlawfully, and harbouring or employing an illegal immigrant.
actions taken against trafficking in its Fourth Periodic Report to the CEDAW Committee, the government cited Singapore's stringent laws against immigration offenders, its efforts to detect and deter the smuggling of illegal immigrants, and the publicizing of these measures.\(^{501}\)

**Trafficking for Sexual Exploitation**

The following offences criminalize aspects of trafficking for the purpose of sexual exploitation:

<table>
<thead>
<tr>
<th>Prohibited Act</th>
<th>Purpose of Prohibited Act</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procuring or bringing into Singapore any woman or girl, or attempting to do so(^{502})</td>
<td>(i) To have carnal connection (except by way of marriage) with any male person; or (ii) For the purpose of prostitution either within or without Singapore</td>
<td>Imprisonment for up to 5 years, and a fine of up to S$10,000. Repeat offenders are liable to be caned.</td>
</tr>
<tr>
<td>Knowingly receiving or harbouring any woman or girl who has been procured, brought into Singapore, or sold or purchased, or imported under false pretences, or attempting to do so(^{503})</td>
<td>(i) To have carnal connection (except by way of marriage) with any male person; or (ii) For the purpose of prostitution (iii) For any unlawful or immoral purpose</td>
<td></td>
</tr>
<tr>
<td>Detaining any woman or girl against her will in any place, or attempting to do so(^{504})</td>
<td>(i) To have carnal connection (except by way of marriage) with any male person; or (ii) For the purpose of prostitution (iii) For any unlawful or immoral purpose</td>
<td></td>
</tr>
<tr>
<td>Detaining any woman or girl against her will in a brothel, or attempting to do so(^{505})</td>
<td>None expressly stated.</td>
<td></td>
</tr>
<tr>
<td>Bringing or assisting in bringing, by any false pretence, false representation, or fraudulent or deceitful means, any female of any age(^{506})</td>
<td>For the purpose of prostitution</td>
<td>Imprisonment for a term not exceeding 10 years and a fine</td>
</tr>
<tr>
<td>Bringing or assisting in bringing into Singapore any female of any age, with intent that the female be sold or bought(^{507})</td>
<td>‘Illicit intercourse’ or ‘a life of prostitution’</td>
<td>Imprisonment of up to 10 years, and a fine or caning</td>
</tr>
<tr>
<td>Kidnapping and abduction of a female of any age(^{508})</td>
<td>For purposes that would put that person in danger of grievous hurt or non-consensual sodomy</td>
<td></td>
</tr>
<tr>
<td>Kidnapping and abduction of any person(^{509})</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Exploitation of Children**

The following section addresses offences relating specifically to children and young persons. The age of a ‘minor’ for purposes of these offences varies. Generally, it appears that the greater the perceived severity of the criminal conduct, the greater the protection afforded by raising the age limit. With regard to sexual offences, it should be noted that the minimum age for consensual sex for an unmarried girl is 16.

\(^{501}\) *Singapore’s Fourth Periodic Report* (CEDAW/C/SGP/4, 3 April 2009), paras. 6.6 and 6.7.

\(^{502}\) *Women’s Charter*, s. 140.

\(^{503}\) Ibid.

\(^{504}\) Ibid.

\(^{505}\) Ibid.

\(^{506}\) *Penal Code*, s. 373A(a).

\(^{507}\) Ibid, s. 373A(b).

\(^{508}\) Ibid, s. 366.

\(^{509}\) Ibid, s. 367.
Sexual Exploitation and Prostitution of Children

Children who prostitute themselves or engage in commercial sex are not criminally penalized for doing so.

The following summarizes provisions relevant to sexual exploitation and prostitution of children in Singapore:

<table>
<thead>
<tr>
<th>Prohibited Acts</th>
<th>Purpose of Prohibited Act</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling, letting to hire, or otherwise disposing of any person under the age of 21 years</td>
<td>(i) Prostitution (ii) illicit intercourse; or (iii) any unlawful and immoral purpose, at any age</td>
<td>Imprisonment for a term which may extend to 10 years and a fine</td>
</tr>
<tr>
<td>Buying, hiring or otherwise obtaining possession of any person under the age of 21 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Having commercial sex with any person under 18 years of age</td>
<td></td>
<td>Imprisonment for a term which may extend to 7 years, a fine, or both</td>
</tr>
<tr>
<td>Communicating with any person for the purpose of obtaining commercial sex with any person under 18 years of age</td>
<td></td>
<td>Imprisonment for a term which may extend to 2 years, or with fine, or with both</td>
</tr>
<tr>
<td>Sexual grooming of any person under the age of 16 by a person of or above the age of 21</td>
<td></td>
<td>Imprisonment for a term which may extend to 3 years, a fine, or both</td>
</tr>
<tr>
<td>An 'obscene or indecent act' with any person below 16</td>
<td></td>
<td>A fine not exceeding $10,000 or imprisonment for a term not exceeding 5 years or both</td>
</tr>
<tr>
<td>Procuring or attempting to procure an 'obscene or indecent act' by any person below 16</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The laws against commercial sex with children generally, and against sexual grooming, are relevant to addressing the growing trends of ‘compensated dating’ and online child sexual exploitation.

The defence of reasonable mistake as to age is available to any person under the age of 21 who commits the offence of obtaining commercial sex with a minor, or communicating with any person for purposes of the same. Persons aged 21 and above will not escape liability even if they are mistaken as to the minor's age.

There are also laws prohibiting certain acts of facilitating, inducing or encouraging the prostitution of girls under the age of 16. These laws do not cover situations involving boys. Child sex tourism by Singaporeans abroad is criminalized.

Child Labour Exploitation

The labour safeguards for children under the Employment Act extend to persons under the age of 16. With certain exceptions, children below the age of 15 may not be employed for labour. Other safeguards include

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510 Penal Code, s. 372.
511 Ibid, s. 373.
512 Ibid, s. 376B(1).
513 Ibid, s. 376B(2).
514 Ibid, s. 376E.
515 CYPA, s. 7(a). Abetting, procuring or attempting to procure the commission of the same is also an offence.
516 Ibid, s. 7(b).
517 Penal Code, s. 377D.
518 Women's Charter, s. 143 and 145.
519 It is an offence for any person who is a citizen or permanent resident of Singapore to, while outside Singapore, have commercial sex with any person under 18, or communicate with any person for purposes of the same. The penalties had the acts been committed in Singapore apply: Penal Code, s. 376C. Further, it is an offence for any person to facilitate (by making travel arrangements or providing transport), promote, or assist a person to obtain, commercial sex with a person under 18 outside Singapore: Penal Code, s. 376D.
520 Employment Act, s. 67A
521 Employment Act, s. 68. Exception is made for children employed in businesses run solely by the family, or children aged 13 and above who are employed in light work.
restrictions on work hours and type of occupation and work.522 In broad terms, children covered by the said Act may not be engaged to perform risky or dangerous work.

**Child Trafficking**

The trafficking offences specifically relating to children cover those under 14 years of age. Section 12 of the CYPA criminalizes certain acts relating to the ‘transfer… of possession, custody or control’ of such children for ‘any valuable consideration.’523 Section 13 of the CYPA criminalizes the bringing of children into Singapore, using ‘false pretence, false representations or fraudulent or deceitful means’, whether employed within or outside Singapore. Offenders are liable for a fine not exceeding $10,000 or to imprisonment for a term not exceeding 5 years, or both.

**Cross-border Cooperation in ASEAN**

ASEAN Member States, including Singapore, have acknowledged that trafficking often has a strong transnational element, an effective response requires both coordination and collaboration across national borders.524

In this regard, Singapore has the following policies for extending or receiving law enforcement assistance to other countries in the following situations:
- Singapore can provide mutual legal assistance to any country, even if there is no bilateral treaty or other arrangement in place, if certain conditions are met.525 Such assistance includes taking of evidence, custody of persons in transit, search and seizure, identifying or locating persons, and service of process.526
- Singapore may extradite fugitives to Commonwealth countries (including Malaysia), and to non-Commonwealth countries where treaties exist. Extradition is possible for a range of offences, including some relating to trafficking.527 Also, Singapore has a bilateral extradition treaty with Indonesia.
- Singapore may assist, and receive assistance from Brunei and Malaysia, in carrying out the arrests of persons and service of summons.528

**c. Assessment of State Policies against Exploitation**

**Trafficking**

One significant and recurring recommendation made by NGOs is for a victim-centric and consolidated anti-trafficking law. From reports, there appear to be two main reasons supporting this.

First, Singapore’s current laws relating to trafficking and exploitation are said to be lacking in provisions for victim support.529 The existing framework has been described as a ‘predominantly transnational criminal justice framework,’ as opposed to a ‘human rights framework.’530 The latter ostensibly refers to an emphasis on victim protection and rehabilitation.

In this regard, it has been suggested that the anti-human trafficking law be one that ‘provides for a multi-disciplinary response including witness protection, community education and rehabilitation of survivors.’531 Laws providing for the grant of temporary visas to foreign victims bringing civil proceedings for compensation have

522 Employment (Children and Young Persons) Regulations.

523 Section 12 states: ‘(1) Every person who takes any part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 4 years. (2) Every person who, without lawful authority or excuse harbours or has in his possession, custody or control any child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or outside Singapore shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 5 years or to both.

524 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 1.


528 Section 121 of the Criminal Procedure Code 2010 provides for reciprocal arrangements with Brunei and Malaysia for reciprocal arrangements with Brunei and Malaysia for the arrest of persons and service of summons.


also been recommended.532

Second, consolidation may give needed clarity and consistency. The existing laws under the Women’s Charter, Penal Code and CYPA have been described as ‘too piecemeal’.533 As shown above, there is indeed an array of various relevant provisions found in different statutes, some of which overlap with others in the situations they cover, and provide for different ranges of penalties.

Further, there has been disagreement over the scope of certain offences. Singapore’s trafficking laws have been described by one NGO as ‘comprehensive’,534 and by another as ‘highly restrictive [such as to exclude the vast majority of trafficking cases]’ and narrower in scope than the Trafficking Protocol’s definition.535 There has been disagreement over whether the laws cover situations of debt bondage and other non-physical coercion.536 Some also assert that laws do not cover situations where women and children are brought into Singapore by deception.537 In this regard, it is not clear from the plain wording of the relevant provisions that the foregoing criticisms are correct. Further, there have been trafficking convictions involving women deceived into travelling to Singapore.538

The concern of the NGOs appears to be that, in practice, authorities are overlooking cases where victims consented to travel to Singapore as a result of being deceived or coerced.539 Insofar as the matter is one of errors in the application of laws by authorities such as front-line law enforcement personnel, a consolidated definition of trafficking could prove easier to put in operation. It is laudable that the government is looking into a common definition of trafficking to ‘enhance processes in victim identification and protection’.540

A number of other recommendations raised by NGOs are relevant to the ongoing legislation review.

First, the government has been urged to ensure that all actions carried out in the process of trafficking are punished, regardless of whether or not actual exploitation occurs.541 In this regard, section 140 of the Penal Code criminalizes attempts to commit any offence punishable by imprisonment or fine.

Second, the absence of any express provision that the consent of a victim is irrelevant when the victim has given consent as a result of fraud, deception, abuse of power etc, has been highlighted as of concern.542

Third, it has been noted that laws are silent on whether victims of trafficking will be prosecuted for offences committed as part of the trafficking process.543 The government has stated that it will not prosecute such victims.544 Nevertheless, specific statutory provision for

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533 Esther Ng, ‘New Plan to Tackle Human Trafficking,’ TODAY, 22 March 2012.
536 Section 140 has been interpreted by the US Department of State in its 2011 TIP report as not prohibiting non-physical forms of coercion, such as debt bondage or threat of abuse of the legal process. The Inter-agency Task Force on Trafficking in Persons has disagreed with this interpretation, taking the position that section 140 covers a wide variety of situations, including where there is no threat of physical injury: Ministry of Foreign Affairs, ‘Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, para. 23. Separately, local NGO, TWC2, together with the Global Alliance against Traffic in Women, have in their 2011 CEDAW shadow report taken the view that section 140(c)(iii) of the Women’s Charter does appear to offer an avenue for prosecuting those who trap women into sex work by using their indebtedness. The said NGOs note, however, that the provision seems little used.
537 TWC2 and the Global Alliance Against Traffic in Women, Singapore Shadow Report: 4th Periodic Review, June 2011, 16; AWARE, CEDAW Shadow Report, May 2011, 59-60. The argument raised in the former report is that reference in the provisions to bringing into Singapore by ‘false pretence, false representation or fraudulent or deceitful means’ refers to fraud and deception practised on the authorities, not the victim.
539 TWC2 and the Global Alliance Against Traffic in Women, Singapore Shadow Report: 4th Periodic Review, June 2011, 17-18 (‘…authorities in Singapore appear to operate on the basis that the presence of any element of consent or cooperation by individuals in their own exploitation necessarily means that they are not victims of trafficking. For the authorities, it is enough that a person did not appeal for assistance at passport control and say that s/he was going to be subjected to exploitation and be restricted under another person’s control for any subsequent claim to have been trafficked to be rejected.’); AWARE, CEDAW Shadow Report, May 2011, para. 6.3 and 6.13.
543 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 23.
544 Ibid, citing a government communication.
The government favours contractual over statutory protection. All employment agencies placing FDWs must be accredited, and these accredited agencies are required to facilitate the signing of standard contracts issued by accreditation bodies.550 One response made to this is that FDWs do not have sufficient bargaining power in making such arrangements with their employers, especially as many would at the time for entering into their employment contracts likely be concerned with placement fees already incurred.551 There does not as yet appear to be any clear evidence showing whether the use of accredited employment agencies is either effective or ineffective in providing FDWs with contractual safeguards. In any case, effectiveness is ultimately dependent on whether the FDW is in a position to have contracts enforced.

Government policies that make the foreign worker's employment in Singapore, and change of employer, dependent on her current employer have been described above. These may compel workers to comply with orders and deter them from making complaints, thereby making them vulnerable to exploitation. The government's opposing concern is presumably that with Singapore's geographical size and dense population, these policies that tightly control the ability of FDWs to stay in Singapore are necessary to keep the population size manageable.552

In terms of preventing debt bondage of FDWs, it is relevant to note the government's recent proposal to impose stiffer penalties on employers who receive 'kickbacks or bribes' from foreign workers to get employed.553

3. Implementation, Monitoring and Enforcement

Singapore has not fared well on recent independent rankings of its performance in relation to combating trafficking and exploitation. Besides being placed on the US State Department's Tier 2 watchlist in 2010 and 2011,554

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546 United States Department of State, Trafficking in Persons Report 2011 – Singapore, accessed 8 May 2012, http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm. In this regard, the penalties for sex trafficking-related offences in the Penal Code include a maximum of 10 years' imprisonment and a fine and/or caning. The penalty for rape is imprisonment for up to 20 years and a fine and/or caning.

547 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 12.


549 Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 11.47.

550 Ibid. para. 11.49 and 11.52.

551 AWARE, CEDAW Shadow Report, May 2011, para. 11.79.

552 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 24.

553 Janice Heng, 'Errant bosses face stiffer penalties,' Straits Times, 11 May 2012.

554 Countries on the Tier 2 watchlist are countries whose governments do not fully comply with the TVPA’s 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
it has also from 2009 to 2012 been categorised as a country making 'slow progress' in ECPAT International's rankings of States based on their actions to protect children from sex trafficking.

a. Implementing and Monitoring Mechanisms

The MHA and MOM are the primary government ministries that deal with issues of exploitation and trafficking.

The SPF is under the purview of the MHA. The SPF’s Specialised Crime Branch (Criminal Investigation Department) has a dedicated unit handling vice issues, including trafficking of women for commercial sexual exploitation. Investigators attached to the unit deal with human trafficking cases as and when they arise, and in addition to other investigative responsibilities. The unit has no exclusive nationwide mandate to investigate allegations of trafficking. The government has plans to set up specialised enforcement teams to combat sex and labour trafficking.

The Legal Services Division of MOM has the primary function of prosecuting offenders of the legislation within the purview of MOM, including the Employment of Foreign Workers Act, Employment Act and the Employment Agencies Act. The Labour Relations and Workplaces Division investigates claims and complaints on salary matters and other terms and conditions of employment in respect of all employees covered by the Employment Act. The Foreign Manpower Management Division of MOM enforces the work permit conditions covering FDWs as well as their employment contracts. There is inter-departmental cooperation under the Ministry to facilitate the well-being of foreign workers, including among the said Divisions.

An Inter-Agency Taskforce was set up in November 2010 to coordinate anti-trafficking initiatives and policy alignment between government agencies in Singapore, and review and identify areas for improvement in the current system. The Taskforce is chaired by MOM and MHA, and includes representatives from the SPF, ICA, MCYS, MOH, MinLaw, the MFA and the AGC.

In March 2012, after 3-month long consultations with various stakeholders such as non-government agencies, researchers, academia and foreign governments, the Taskforce launched the National Plan of Action against trafficking in persons, a roadmap for action from 2012 to 2015. The government’s efforts will focus on sex and labour trafficking.

b. Complaints Process

Compensation

Victims may obtain compensation from convicted offenders at the end of the criminal proceedings. Under

561 Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 11.46.
563 Ministry of Foreign Affairs, ‘Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, para. 3.
564 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 46.

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section 359 of the Criminal Procedure Code 2010, the court shall after convicting the offender consider whether or not it is appropriate to make the compensation order, and if so, the court must make the order. This will not affect the victim’s right to take up civil action against the perpetrator. This mechanism makes it possible for victims to receive compensation without the usual civil litigation burdens of time and cost.

It is conceivable that victims might still wish to seek compensation outside of the section 359 route, e.g. because prosecutions were not pursued, the court declined to order compensation under section 359 due to complexities of the case, or to seek a greater amount of compensation. However, the very nature of the crimes of exploitation and trafficking committed against them would suggest that these victims are likely not in a position to pursue ordinary civil proceedings, which are potentially lengthy and costly. In particular, foreigners have limited access to government-based pro bono services. There appear to be limited, or no, effective avenues for compensation claims to be brought by trafficked victims.

**Avenues for Making Complaints**

Apart from directly lodging complaints with the police, victims may seek assistance from foreign embassies, Family Service Centres, or other civil society organizations, and receive assistance in having their cases referred to the police. The National Family Violence Networking System, described above, also addresses cases involving victims of exploitation and trafficking. Foreign victims may also make complaints to immigration officers at immigration checkpoints in Singapore, while they are in transit during their return to their home country.

The government is exploring setting up a Trafficking in Persons hotline, for trafficked persons to obtain assistance or report offences.

**Sexual Exploitation Cases**

A non-comprehensive picture of how victims arrive at the aforementioned places of assistance, e.g. foreign embassies and civil society organisations, is provided by the 2010 ECPAT International research report. Victim were ‘rescued’ or assisted by NGO outreach workers or similar personnel from civil society organisations, or found their way to a civil society organisation or foreign embassy after their ‘contracts’ were completed, escaping independently, or being picked up during and released after a police raid.

The report notes that ‘none of the participants reported exiting through the active cooperation and/or intervention of the police or immigration authorities.’

**Labour Cases**

For labour cases, MOM has complaints channels in place. For FDWs in particular, there is a toll-free helpline manned by MOM officers; feedback forms in prepaid envelopes are distributed to all FDWs at a compulsory course attended when they first arrive; random interviews are conducted by MOM with FDWs working for the first time in Singapore during their initial months; and home visits are conducted by MOM officers. Avenues would be redundant if victims are unaware of them. MOM has procedures for making foreign workers aware of available avenues for help. An advisory booklet,

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568 The services of the Legal Aid Bureau are only available to Singapore Citizens and Singapore Permanent Residents: Legal Aid Bureau, http://app2.lab.gov.sg/.


570 Ministry of Foreign Affairs, 'Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,’ 1 August 2011, para. 7.


572 ECPAT International Research Report, *Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore*, 2010, 58. The report acknowledges a bias in these results, as all victim participants were met through NGOs or foreign embassies.

573 Ibid.


575 Committee on the Elimination of Discrimination Against Women, *Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011)*, para. 84.
available in English and 9 native languages of foreign workers, is, according to the government, circulated to all foreign workers. It sets out their rights and obligations while working here, and provides useful telephone numbers which foreign workers can call in the event of an emergency, such as numbers for medical help, one-stop social service, the Samaritans of Singapore, the Labour Relations and Welfare Department, the Work Permit Department of MOM as well as various embassy helpdesk lines.\(^{577}\)

Further, all foreign workers entering Singapore on a work permit (for lower-skilled or unskilled labour) are issued letters prior to their departure for employment that provide information on their expected occupation and basic monthly salary as declared by their employers. These letters also inform workers of the employment-related expenses that should be borne by their employers and cannot be passed on to the worker.\(^{577}\)

All newly-arrived FDWs must attend a compulsory half-day safety awareness course before they are issued their work permits, during which they are advised on their employment rights and the avenues to seek help if they encounter employment problems.\(^{578}\)

Social networks and MOM appear to be the main resources for foreign workers to access avenues for recourse. In a 2007/2008 research study, 219 foreign workers temporarily residing at a shelter run by HOME were asked how they learnt of the NGO or its shelters. In the case of 47% of the respondents, it was through a friend or relative working in Singapore, and for 32%, it was through MOM. A small number learnt of the shelters through articles published on the newspapers or in the magazines (5%), the police (4%), the embassy (4%) or locals (2%). Forty-three per cent (43%) came to the shelter on their own initiative, and 25% were referred to by MOM. Besides the NGO, 42% sought advice from their friends or relatives, and 28% also sought advice from MOM on the problems they encountered.\(^{579}\)

Protection and Assistance During Investigations and Court Proceedings

Assistance to Foreign Survivors

Foreign survivors face particular problems in pursuing redress in Singapore due to their immigration status, namely, problems in staying on in Singapore and supporting themselves through gainful employment.

As the above does not apply unless the survivor is called as a prosecution witness, it has been recommended that any temporary visa granted for the duration of the prosecutions be expanded to cover civil proceedings brought by these survivors.\(^{582}\) While there are ostensibly concerns that sham claims will be brought so that persons can delay their return, the fact that the government reportedly grants temporary visas to foreign workers pending determination of their labour compensation claims, where legitimate, shows that addressing these concerns in relation to sex workers may be feasible.

Foreign workers not in the sex industry and who came into Singapore on a work permit are in a better position. For them, the process described above generally applies. In addition, these foreign workers, including FDWs, are allowed during the proceedings to work on the Temporary Jobs Scheme.\(^{583}\) For FDWs in such situations, \(^{583}\) Ministry of Information, Communication and the Arts, 'Singapore's Detailed Response to the Allegations in the 2010 US State Department's Trafficking in Persons Report,' press release, 30 June 2010, para. 10.

576 Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 11.34.


578 Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 11.36.

the requirement for their employers’ consent to change employers is waived. These workers are at the end of the criminal proceedings given the option to convert their temporary employment to permanent status. According to the government, many convert to regular work permits after their cases are completed.

These foreign workers pursuing civil claims against their employers are also allowed to stay in Singapore until their claims are settled. According to HOME, however, this applies to workers with salary or work injury compensation claims, but not to claims against agents for fees paid to them.

**Arrangements During Criminal Proceedings**

Some of the applicable protections available to women and girls during criminal proceedings for exploitation and trafficking have been outlined above. Further, women and girls who are prosecution witnesses in prosecutions for Women’s Charter offences relating to exploitation and trafficking may be detained by authorities in places of safety pending the determination of the proceedings.

**Barriers to Access**

**Sexual Exploitation and Sex Trafficking**

The following are reported barriers faced by sex exploitation and trafficking victims.

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First, foreigners involved in the sex trade are reportedly treated as potential or actual offenders, which would deter victims from approaching authorities or raising complaints. According to NGOs, women and children caught in brothel and vice raids are treated as immigration offenders and promptly deported. The 2010 US Trafficking in Persons Report cites an example how nearly all of the 7,614 women and children detained in anti-vice sweeps in 2009 were deported after arrest. Also, 89 minors were arrested by the police in 2009 for prostitution offences. The act of arrest could, in the view of these minors, imply criminality and deter them from coming forward, still it is not known how these minors were in fact treated upon arrest. One media report cites a case where 2 trafficked Chinese nationals who ran away and approached the police for help were instead detained before apparently being released 'on bail.'

Second, and related to the above, there have been allegations by NGOs that investigations by front-line enforcement officers into the existence of sex exploitation and trafficking often overlook cases of trafficking. Where cases of trafficking go unrecognized, foreign victims will be deported and have little chance of claiming redress.

Third, it seems possible that victims in the sex trade, who may not wish to approach authorities, are not always made aware of other avenues for recourse available to them. In one case study in ECPAT’s CSEC Report, a victim who was picked up during a police raid was released on a monthly pass but, despite asking the police, was not told of places where she could go, such as her embassy.

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584 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 19.

585 Ibid.


587 Radha Basu, 'Holding area is a room in the office: Close tabs kept on workers in case they try to run off,' Straits Times, 31 January 2009, (According to MOM rules, all injured workers may stay in Singapore until their claims are settled.)

588 HOME and TWC2, Justice Delayed, Justice Denied, 26.

589 Table 13 - List of Protection Measures against Re-traumatization during Investigative and Court Procedures, 64.

590 Women’s Charter, s. 155.


593 Ibid; Ministry of Information, Communication and the Arts, 'Singapore’s Detailed Response to the Allegations in the 2010 US State Department’s Trafficking in Persons Report,' press release, 30 June 2010, para. 14 (none of the minors were below the age of 14).


596 Ibid.
Fourth, victims of trafficking reportedly do not wish to file official complaints due to the lack of adequate social, legal, and other support made available from authorities. For instance, it has been noted that victims are deterred from making complaints to the authorities by the prospect of having to stay for between 6 months to a year in Singapore while investigations are ongoing, but being unable to seek employment.

Labour Exploitation and Trafficking

Foreign workers may be deterred from making complaints because their ability to remain in Singapore and earn wages is to large extent within the control of their employer. In addition, employers have, as described above, used repatriation companies to ensure that their foreign workers are unable to pursue complaints and redress, such as for non-payments of salary and conditions of forced labour.

c. Protection and Rehabilitation of Victims

Trafficking

Promises have been made, as part of the National Action Plan against Trafficking, that the management of trafficking victims will be enhanced, particularly for prosecution witnesses, and this will be in the form of clearer victim identification procedures and enhanced victim-care services.

Discovering / Identifying Victims

Where victims of trafficking go unrecognized, they are deported and unable to avail themselves of protection and rehabilitation assistance; some may instead be prosecuted for offences committed as part of the trafficking process.

Trenchant criticisms have been levelled against victim identification procedures in law enforcement. According to the 2011 US TIP report, ‘[t]he government showed minimal progress in identifying and protecting trafficking victims, despite ample financial resources.’ It stated that ‘law enforcement authorities continued to [wait] for victims to come forward and file complaints before investigating trafficking offenses.’

According to ECPAT’s CSEC Report, in most of the victim participants’ cases, there was no active cooperation and/or intervention by the police or immigration authorities in their exit process. This was despite the fact that police and immigration authorities had been deployed at the areas where the trafficked victims worked, and in fact had harrassed or questioned them. The report also observed that authorities did not work in cooperation with NGOs and embassies to investigate venues where there could be trafficked persons. These findings suggest that authorities are not making active efforts to search for and identify victims of trafficking.

Instead, according to the same research, law enforcers continue to raid, punish, detain and deport trafficked victims, leaving them highly vulnerable to further trauma and abuse.

It is therefore unsurprising that evidence points to victims being trafficked or exploited again: there are victims who have re-entered Singapore’s commercial sex sector after deportation, or ended up in prostitution in their home countries.

Non-Prosecution of Victims of Trafficking

Laws are silent on whether victims of trafficking will be prosecuted for offences committed as part of the trafficking process. According to the government, if a foreign victim were to report that she had been trafficked, she would not

598 AWARE, CEDAW Shadow Report, May 2011, para. 6.43.
be treated as an offender by the authorities.\textsuperscript{607} MOM has in March 2012 acknowledged in relation to trafficking that ‘few will step forward if they fear being prosecuted for offences they may have been coerced into committing.’\textsuperscript{608} Given this policy, it is proper victim identification that is pivotal to ensuring that victims are not prosecuted as offenders.

\textit{Return of Victims of Trafficking}

For victims who express their desire to return home, Singapore facilitates their return and works closely with their home countries. For victims who are children, the Child Protection Service in MCYS will work with the relevant agencies in consultation with the Embassy, a suitable NGO or the international social service to ensure that the child is returned to a safe care environment and suitable NGO or the international social service to ensure that the child is returned to a safe care environment and support services are available to the child and his/her family.\textsuperscript{609}

It has been reported however that the government did not provide victims of sex or labour trafficking with legal alternatives to removal to countries where they may face hardship or retribution.\textsuperscript{610}

\textit{State-Funded Shelters for Victims of Exploitation}

Due to the government’s ‘Many Helping Hands’ policy, there are no state-run shelters. The government instead funds, monitors and works closely with the VWO-run shelters; these are part of the National Family Violence Networking System.\textsuperscript{611} There are 3 selected Family Service Centres that have crisis shelters and are able to provide victims with temporary accommodation, protection, practical assistance programmes and emotional support.\textsuperscript{612}

Family Service Centres follow the protocols on case management and referrals to legal, medical and psychological services for victims of violence and abuse.\textsuperscript{613} Cases involving children that are referred to MCYS are reviewed by the Child Abuse Protection Team.\textsuperscript{614} The system and protocols have been described above. In addition, a protocol exists to manage the cases of victims of trafficking for sexual exploitation; this is stipulated in the Integrated Management of Family Violence Cases Manual, which is shared by all key agencies.\textsuperscript{615}

The state-funded shelters for trafficking victims are the same as those for victims of family violence. There are no trafficking-specific shelters yet, state-funded or otherwise.\textsuperscript{616} In 2010, 7 trafficked victims were assisted by state-funded shelters for medical services.\textsuperscript{617} In 2009, 8 Thai and Vietnamese children who were potential victims of trafficking were reportedly referred to these shelters.\textsuperscript{618}

The Inter-agency Taskforce against Trafficking in Persons ‘has committed to review the adequacy of current shelter facilities and will make the necessary recommendations by next year.’\textsuperscript{619}

\footnotesize
\begin{itemize}
\item \textsuperscript{607} "Ibid, 23, citing a government communication.
\item \textsuperscript{608} Speech by Mr Tan Chuan-Jin, Minister of State for National Development and Manpower at the launch event of the National Plan of Action, 21 March 2012, http://www.mom.gov.sg/newsroom/Pages/Speeches-Detail.aspx?listid=375.
\item \textsuperscript{609} Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 12.
\item \textsuperscript{611} Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 12; Ministry of Information, Communication and the Arts, ‘Singapore’s Detailed Response to the Allegations in the 2010 US State Department’s Trafficking in Persons Report,’ press release, 30 June 2010, para. 14.
\item \textsuperscript{612} Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), 25.
\item \textsuperscript{613} Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 12; Ministry of Information, Communication and the Arts, ‘Singapore’s Detailed Response to the Allegations in the 2010 US State Department’s Trafficking in Persons Report,’ press release, 30 June 2010, para. 14.
\item \textsuperscript{614} ECPAT International Research Report, Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore, 2010, 32.
\item \textsuperscript{615} Ibid, 32 and 33.
\item \textsuperscript{616} Local NGO HOME has announced plans to open an Anti-Human Trafficking Centre: Imelda Saad, ‘HOME to set up anti-human trafficking centre in S’pore,’ Channel NewsAsia, 27 November 2011, http://www.channelnewsasia.com/stories/singaporelocalnews/view/1167812/1/.
\item \textsuperscript{617} Ministry of Foreign Affairs, ‘Detailed Response from the Singapore Inter-agency Task Force to the 2011 US TIP Report,’ 1 August 2011, para. 20.
\item \textsuperscript{619} Speech by Mr Tan Chuan-Jin, Minister of State for National Development and Manpower at the launch event of the National Plan of Action, 21 March 2012, http://www.mom.gov.sg/newsroom/Pages/Speeches-Detail.aspx?listid=375.
\end{itemize}
Victims may approach these shelters on their own, or may be detained there by the authorities. Under the Women's Charter, women and girls who are victims of exploitation, including trafficking, may be detained by authorities in places of safety. They may not leave such places without authorisation. They may also, on their own application, be received into places of safety if they satisfy authorities that they are in urgent need of refuge. These powers are used only in exceptional circumstances. During the period of detention, the victim is provided with medical, psychological and counselling services, although this is not statutorily provided for.

Authorities may, under the CYPD, intervene to protect children under 16 who are victims or suspected victims of exploitation, including trafficking, and place them in places of temporary care and protection.

According to the 2011 US TIP report, trafficking victims residing in these government-funded shelters have their movements restricted while assisting authorities with investigation and prosecution. The government has clarified that these residents have the freedom to enter and leave shelters, and are required to provide contact details and sign in/out when they do so. This does not apply where the individual faces physical threats or there are serious concerns with witness tampering.

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620 Sections 155, 156, 159 and 160 of the Women's Charter. The aforementioned places of safety and temporary care and protection are welfare centres and temporary residential shelters run by voluntary welfare organizations (VWOs), including Family Service Centres.

621 Section 169 of the Women's Charter. A decision to detain can be subject to an appeal and an independent review. A discharge committee appointed by the Minister reviews all the cases of all women and girls detained after six months, and may recommend discharge or release on licence. If the woman or girl breaches her licence, she is brought back before the Director and may be detained for a further period: Sections 155, 161, 163 and 179 of the Women's Charter.

622 Women’s Charter, s. 163.

623 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 22.

624 CYPD, s. 9.


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628 Ibid.

629 United States Department of State, Trafficking in Persons Report 2011 – Singapore, accessed 8 May 2012, http://www.state.gov/j/tip/rls/tpiprt/2010/142761.htm. See also ECPAT International Research Report, Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore, 2010, 63 (lack of a screening system to identify victims and specific training); TWC2 and the Global Alliance Against Traffic in Women, Singapore Shadow Report: 4th Periodic Review, June 2011, 18 (‘...the authorities in Singapore appear to operate on the basis that the presence of any element of consent or cooperation by individuals in their own exploitation necessarily means that they are not victims of trafficking. For the authorities, it is enough that a person did not appeal for assistance at passport control and say that s/he was going to be subjected to exploitation and be restricted under another person’s control for any subsequent claim to have been trafficked (sic) to be rejected. The basis for this assertion was not stated; it is not known if it arises from any specific cases the NGO was privy to.)

participants to exit their situations of exploitation, despite having had direct contact at police stations or in the areas they worked.

In one ECPAT case study, a Filipina recruiter was jailed for 3 months in Singapore for offences relating to the deployment of a minor in prostitution, but upon returning to the Philippines was sentenced to life imprisonment under Philippines’ anti-trafficking law for her involvement in a child sex trafficking syndicate.631 Without further information, this is equivocal as to whether there was a lack of thoroughness in investigations and/or questionable prosecutorial discretion, because the disparate outcomes may have equally been the result of difficulties obtaining evidence, especially if most of the evidence was in the Philippines. It does nevertheless warrant further attention being paid to the conduct of investigations and prosecutions.632

Some Recent Capacity-Building Measures by the Government

- Development of a ‘TIP Card’ by the police, which contains the key elements of trafficking as defined under international law, and lists twelve indicators to assist front-line officers in assessing whether a particular case meets the elements of trafficking in persons; it also includes the contact details of officers in the Specialised Crime Branch, which investigates all cases of sexual exploitation related to trafficking633
- Compiling a new handbook for law enforcement officers, drawing on best practices shared by international partners634
- Training for law enforcers,635 including in ‘specialised interview techniques

Cross-Border Collaboration

Informal cooperation between police in Singapore, the Criminal Investigation Division Anti-trafficking Unit in Indonesia and police in Malaysia has been fostered. There have been some successes, including the uncovering of a child trafficking ring operating across Indonesia, Malaysia and Singapore.637

Anti-Commercial Sex Raids

Anti-commercial sex operations are conducted by the government to enforce laws against sexual exploitation, and reduce demand for commercial sexual services.

Table 27 - Number of Anti-commercial Sex Operations in Singapore from 2008 to 2010

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2009</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of anti-commercial sex operations</td>
<td>3,608</td>
<td>About 2,600</td>
<td>About 1,400</td>
</tr>
</tbody>
</table>

The US State Department has nevertheless asserted that the Singapore government has not been making efforts to reduce the demand in Singapore’s commercial sex industry, likely because of the low numbers of prosecutions and convictions brought for sexual exploitation and trafficking offences.641

632 Ibid.
633 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 60.
636 Ibid.
640 Ibid.
Regulation of Employment of Foreign Manpower

The Foreign Manpower Management Division maintains the standards of employment agencies through accreditation and a demerit points system, and oversees and enforces the Employment Agencies Act.\(^{642}\)

Singapore authorities carry out regular inspections and audits to ensure that employers comply with their statutory obligations. In 2009, 2,252 foreign worker-related inspections were conducted by the authorities. FDWs working in Singapore for the first time are also randomly selected for interviews especially within the first six months of their stay in Singapore.\(^{643}\)

However, the obligations of employers and employment agencies are said to be not strictly enforced. According to one NGO, despite statutory prohibitions on the withholding of identity documents of foreign workers, 9 out of 10 FDWs who seek assistance from the NGO do not have identification documents.\(^{644}\) Also, high placement fees continue to be charged by employment agencies, despite a statutory cap on such fees.\(^{645}\)

Education and Public Awareness

Trafficking

The government has cited the publicizing of its tough enforcement measures against immigration offenders, e.g. in parliamentary debates and the media, as a means of raising awareness of trafficking in persons and deterring would-be human smugglers and traffickers.\(^{646}\) Viewing a trafficking issue through the lens of immigration enforcement, instead of viewing it for what it is – a trafficking issue – is questionable.

Commercial Sexual Exploitation of Children

Government measures to raise awareness about the different types of commercial sexual exploitation of children include:

- Participating in the ChildWise Regional Education Campaign against Child Sex Tourism (Singapore is a member of the ChildWise Regional Taskforce)\(^{647}\)
- Sexuality education in schools and training of teachers on, among others, legal issues relating to sexual crime as well as trends, particularly those relating to Internet Relay Chat and the telephone chat line.\(^{648}\) Sexuality education has proved to be an effective strategy in preventing prostitution-related practices such as ‘compensated dating’, which has become quite common among Singaporean children.\(^{649}\)

Labour Exploitation

As described above, the government has adopted certain procedures to be followed on arrival of foreign workers with work permits in Singapore, to ensure they are apprised of their rights and avenues for recourse. In addition, MOM has trained NGO workers on local labour law to assist them in answering calls to 24-hour hotlines.\(^{650}\) However, the absence of efforts by the State-linked labour union, the National Trade Unions Congress, to organize women migrant workers has been highlighted.\(^{651}\)

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\(^{642}\) Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), para. 11.46.


\(^{644}\) AWARE, CEDAW Shadow Report, May 2011, 106.

\(^{645}\) Ibid.

\(^{646}\) Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 13.

\(^{647}\) Ibid.; Committee on the Rights of the Child, Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1, 12 January 2011), para. 118 to 119.


\(^{651}\) HOME, Shadow Report to 9th Session. 2011 CEDAW, 2011, para. 22.
4. Role of Non-State Actors

a. Assistance to Victims

Non-State-funded shelters

HOME runs a shelter for women. Residents are usually victims of abuse and exploitation. Programs are organized for their rehabilitation and recovery. HOME has also announced plans to set up an Anti-Human Trafficking Centre in 2012, which is envisaged to have services like a toll-free emergency hotline, that allows trafficked victims to speak to persons who can speak their languages, and a consultant who is an expert on international laws, human right laws, and trafficking laws, to help in the training and the building of capacity of stakeholders.

Certain embassies, including the Philippines and Indonesian embassies, operate shelters for their nationals, primarily for female domestic workers and women engaged in prostitution.

Outreach

NGOs apparently do not have the necessary expertise in conducting outreach or rescue work for sex trafficking victims specifically. While victim participants in ECPAT’s CSEC Report reported being rescued or assisted by local NGOs providing direct health services to sex workers, none of these organisations have an awareness about trafficking, nor is it an explicit component of their agenda or mandate. Further, these organisations conduct outreach in specific locales only (primarily Geylang).

Other Services

A number of NGOs provide free legal services, such as legal consultations and conciliation services, to foreign workers, supported by panels of pro bono lawyers. NGOs also operate helplines that foreign women can turn to.

b. Prevention Programs

There have been a few public campaigns against human trafficking. These include UN Women’s Sound Out Against Trafficking campaign, and a campaign Traffick Lights initiated by a youth group at a local university. HOME and TWC2, have also engaged in some publicity efforts via their websites and forums on human trafficking. These organizations also publicize cases of exploitation of foreign workers.

Vigorous advocacy efforts and lobbying for law and policy reform in relation to trafficking and exploitation have been made by NGOs, such as SCWO, AWARE, HOME and TWC2, for instance, through CEDAW shadow reports. In April 2012, NGOs issued a joint civil society statement urging the Interagency Taskforce on Trafficking in Persons to prioritise accession to the Trafficking Protocol and to ‘fasttrack the enactment into Singapore law of the definition of trafficking set out in Article 3 of the Palermo Protocol.’ The NGOs also asked the Taskforce to utilise civil society’s range of expertise and skills, including in research, awareness-raising, training and the provision of direct services to trafficked and potentially trafficked persons.

Research efforts are limited. The most notable research report is ECPAT’s CSEC Report, which engaged in field research to provide empirical evidence of the prevalence and profile of sex trafficking in Singapore. No other such

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field research appears to have been undertaken.\textsuperscript{661} Surveys and research conducted by HOME and TWC2 on issues affecting FDWs and other migrant workers provide some evidence relevant to trafficking and exploitation, but do not address these issues directly. HOME has notably announced plans to conduct research interviews with migrant workers in the shelter it runs to identify trafficking victims.\textsuperscript{662}

c. Monitoring and Cooperation

Singapore has, at the time of the publication of this report, only just launched a targeted response to human trafficking. Independent monitoring of the policies and practices implemented under this targeted strategy will be needed.

Cooperation between NGOs and the authorities on issues relating to trafficking and exploitation was previously lacking. Collaboration and cooperation between NGOs conducting outreach in respect of prostitution and law enforcement authorities to investigate venues where there could be trafficked persons was reportedly limited, as was cooperative exchange of information about potential trafficking issues with NGOs and foreign diplomatic missions.\textsuperscript{663} Cooperation in the provision of protection and rehabilitation exists largely in the form of the Family Violence Networking System which victims of trafficking and exploitation may access.

Consultations held by the Inter-agency Taskforce against Trafficking with stakeholders such as NGOs, academia, researchers and foreign governments in formulating the National Plan of Action against trafficking may signal improvements in cooperation and collaboration to come.

5. Progress Indicators and Challenges

The increase in reported and acknowledged official cases of trafficking and exploitation signals a greater openness of the government to acknowledge and address the problem. The setting up of the Inter-agency Taskforce against Trafficking in Persons and launch of the National Action Plan against Trafficking in Persons are all recent, laudable developments. It remains to be seen how effective these measures are.

Capacity-building and research to encourage greater understanding of the problem are crucial. The capacity of both government and non-state actors to deal with issues of trafficking can be improved, as acknowledged by local NGOs who are seeking consultants. Field research on trafficking in Singapore is also fledgling.


\textsuperscript{662} Speech by Bridget Tan, founder and president of HOME, at a forum by ONE (Singapore), ‘Child Prostitution, Human Trafficking and Poverty,’ 18 January 2012.

E. ABUSE AND DISCRIMINATION IN MIGRATION

As at December 2009, there were 856,000 migrant workers engaged in low-skilled or semi-skilled manual jobs, 196,000 migrant women worked as live-in domestic workers.664 In 2011, there were 206,000 FDWs in Singapore.665 Live-in FDWs come mainly from Indonesia, the Philippines and Sri Lanka; smaller numbers come from India, Myanmar, Bangladesh, Thailand, Nepal and Pakistan.666

As most of the literature on issues affecting foreign female workers in Singapore pertains to FDWs, this section will focus solely on them.

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration672

Abuse

Table 28 - Figures on Abuse of Foreign Workers in Singapore

<table>
<thead>
<tr>
<th></th>
<th>Official numbers</th>
<th>Unofficial numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>• 5 prosecuted for endangering the lives of FDWs in 2009 and 2010667</td>
<td>• 685 injury cases for migrant workers668</td>
</tr>
<tr>
<td>2009</td>
<td>• 60 cases of abuse of FDWs671</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 32 jailed for abuse of FDWs from 2001 to 2009672</td>
<td>• 676 Employment Act contraventions for migrant workers669</td>
</tr>
<tr>
<td>2008</td>
<td>• 53 cases of abuse of FDWs673</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>• 68 cases of abuse of FDWs675</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>• 42 cases of abuse of FDWs676</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>• 59 cases of abuse of FDWs677</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 147 FDWs died from workplace accidents or suicides from 1999 to 2005.678</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 1,388 migrant domestic workers who suffered violations provided shelter670</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 80,000 to 100,000 migrant workers were not given proper accommodation.674</td>
<td></td>
</tr>
</tbody>
</table>

664 HOME and TWC2, Justice Delayed, Justice Denied, 3, citing Francis Chan, 'Foreign worker levy to increase over 3 years,' Straits Times, 23 February 2010.

665 Amanda Tan, 'Weekly day off for maids a must from next year,' Straits Times, 6 March 2012, Page A1


667 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 81.

668 Solidarity for Migrant Workers, A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review, May 2011, para 30.

669 Ibid.


671 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 83.

672 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), para. 81.


674 Solidarity for Migrant Workers, A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review, May 2011, para. 46, referring to Melissa Sim, 'Temporary housing still needed,' Straits Times, 18 September 2008.


677 Ibid.

Abuse is reportedly encountered by FDWs even before they arrive in Singapore, at training centres in their home countries.\textsuperscript{679} In a 2007/2008 survey conducted on FDWs temporarily residing at a HOME shelter, 17% of the respondents alleged various forms of maltreatment and problems in their agencies or training centers in their own countries.\textsuperscript{680}

In Singapore, numerous media reports and victim testimonies collated by NGOs have detailed the abuse of FDWs by both employers and employment agencies.\textsuperscript{681} Abuses range from physical and sexual abuse and harassment, to psychological and verbal abuse and threats, including in the form of isolation, inadequate provision of food and accommodation and absence of safety measures.\textsuperscript{682} For instance, FDWs have been sexually harassed and violated by employers or other members in the household, often in the absence of others.\textsuperscript{683} They have been denied food or given leftovers because of employers’ neglect or the mistakes the FDWs made at work,\textsuperscript{684} and restricted from religious fasting or praying.\textsuperscript{685} Some are deprived of privacy, due to poor accommodation arrangements and surveillance.\textsuperscript{686} FDWs have also been confined and had their movements and communication avenues restricted.\textsuperscript{687}

The 2007/2008 survey referred to above found that among the 219 respondents, 56% alleged to have been subjected to verbal abuse and 18% experienced neglect by employers such as not being given enough food or medicine, or any rest after a long day of work. Among the 20% of respondents who alleged to have been physically abused, there were accounts of extreme physical abuse such as having been hit with an object or spat on, forced to walk a long distance, splashed with cold water, pushed off the stairs, as well as cases of sexual abuse.\textsuperscript{688} There is a bias in the percentages as many FDWs were in the shelter as a result of abuse by their employers or employment agencies.

Employment agencies are, according to reports, often culprits or complicit in abuses, conducting strip-searches, making threats and inflicting physical abuse, confiscating and withholding passports and other travel documents, and refusing to remove women from abusive employment situations.\textsuperscript{689} In the 2007/2008 survey, 23% of respondents experienced verbal abuse by employment agents, and there were cases of physical and sexual abuse by the agents as well.\textsuperscript{690}

State Policies and Practices Reported to be Discriminatory

The following are state policies and practices that have been heavily criticized by NGOs advocating for FDWs’ rights. The statutory restrictions under the Employment of Foreign Manpower (Work Passes) Regulations are said to be in themselves human rights violations.\textsuperscript{691}

\textsuperscript{679} Human Rights Watch, ‘Maid to Order,’ http://www.hrw.org/node/11507/section/3.

\textsuperscript{680} Problems were for example, home country’s agents and Singapore agents differed in their explanations of working conditions. Kayoko Ueno, ‘Research survey report on shelter residents 2007 to 2008.’


\textsuperscript{682} Solidarity for Migrant Workers, Submission to Universal Periodic Review, para. 30.


\textsuperscript{684} Solidarity for Migrant Workers, A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review, May 2011, para 47.

\textsuperscript{685} Ibid, para 26.

\textsuperscript{686} Ibid, para 15.

\textsuperscript{687} Human Rights Watch, ‘Maid to Order,’ http://www.hrw.org/node/11507/section/6; Solidarity for Migrant Workers, A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review, May 2011.

\textsuperscript{688} Problems were for example, home country’s agents and Singapore agents differed in their explanations of working conditions. Kayoko Ueno, ‘Research survey report on shelter residents 2007 to 2008.’


\textsuperscript{690} Kayoko Ueno, ‘Research survey report on shelter residents 2007 to 2008.’

State Policy / Practice | Details
--- | ---
Prohibition on becoming pregnant or delivering any child in Singapore during and after the validity period of work permit | Pregnancy of an FDW is consequently a legitimate reason for termination of her employment and deportation. At least 100 FDWs are reportedly sent home every year due to pregnancy.

Prohibition on marrying a Singapore citizen or permanent resident (whether or not the marriage takes place in Singapore), during and after the validity period of work permit, without prior approval | Restrictions on marriage affect both men and women, but it is usually female migrant workers who find themselves in situations where they wish to marry Singaporean men. Economic status is reportedly often a deciding factor which means in practice, many of these workers, who are generally lowly paid, see their marriage applications rejected.

Mandatory initial and 6-monthly medical examinations. Positive diagnosis for infectious diseases, namely tuberculosis, malaria, syphilis and/or HIV, will lead to repatriation. Employers who wish to know the results of the medical examination may obtain a copy of the completed report directly from the examining doctor. | These laws are said to provide better protection than those currently available to FDWs under the Employment of Foreign Manpower Act and its regulations, which are said to be inadequate.

Exclusion of FDWs from the Employment Act and the Work Injury Compensation Act | -

### Table 29 - Criticisms on State Policies and Practices by NGOs advocating for FDWs’ Rights

<table>
<thead>
<tr>
<th>State Policy / Practice</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibition on becoming pregnant or delivering any child in Singapore during and after the validity period of work permit</td>
<td>Pregnancy of an FDW is consequently a legitimate reason for termination of her employment and deportation. At least 100 FDWs are reportedly sent home every year due to pregnancy.</td>
</tr>
<tr>
<td>Prohibition on marrying a Singapore citizen or permanent resident (whether or not the marriage takes place in Singapore), during and after the validity period of work permit, without prior approval</td>
<td>Restrictions on marriage affect both men and women, but it is usually female migrant workers who find themselves in situations where they wish to marry Singaporean men. Economic status is reportedly often a deciding factor which means in practice, many of these workers, who are generally lowly paid, see their marriage applications rejected.</td>
</tr>
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<td>Mandatory initial and 6-monthly medical examinations. Positive diagnosis for infectious diseases, namely tuberculosis, malaria, syphilis and/or HIV, will lead to repatriation. Employers who wish to know the results of the medical examination may obtain a copy of the completed report directly from the examining doctor.</td>
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</tr>
<tr>
<td>Exclusion of FDWs from the Employment Act and the Work Injury Compensation Act</td>
<td>-</td>
</tr>
</tbody>
</table>

### b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices

Attitudes Towards FDWs

Abuse against FDWs reportedly arises from perceptions that abusive behaviour towards FDWs is acceptable, and these are a result of regarding FDWs as the ‘subservient other’ in the home, and the ‘inferior other’ in the public sphere. Causes of this perception of FDWs as inferior have been attributed to the ideologies of patriarchy and Confucianism, the hierarchical social structure, class and race prejudice, and corporate culture. Discrimination on the basis of religion, ethnicity and race has also been noted. FDWs have been described as socially and economically invisible.

The use of the term ‘maid’ reportedly encourages derogatory
stereotypes of FDWs. FDWs are apparently represented by the media as ‘loose’, sexually predatory and at the same time primarily interested in boyfriends for the money they spend on them.703 A condition in FDWs’ work permit conditions states that a foreign worker ‘shall not indulge or be involved in any illegal, immoral or undesirable activities, including breaking up families in Singapore.’ This has been said to reflect prevailing discriminatory attitudes towards FDWs.704

The acceptability of imposing harsh conditions on FDWs may be related to the accepted view that ‘tough working conditions are a part of normal and unquestioned characteristic of live-in domestic work.’705

Employers’ Obligations

Certain obligations imposed on employers appear to be prompting employers to engage in wrongful conduct towards FDWs. For instance:

- Employers are reluctant to give FDWs days off, and restrict their movements by among other things confiscating their passports, because of a fear that FDWs will get pregnant, or engage in conduct in breach of their work permit, resulting in employers losing their security bond;706 and
- Employers are unwilling to let FDWs receive medical attention, and are impatient to get hospitalized employees out of hospital, because they are obliged to insure FDWs for medical and hospitalisation costs.

However, these reasons do not mean that the obligations on employers are problematic. Such situations may stem from employers’ pre-existing attitudes towards FDWs.

Nature of Domestic Work

FDWs’ work permits require them to reside at their employers’ residences. The unique nature of work in a domestic setting includes the encroachment on both parties’ personal spaces and other stresses. This renders the live-in FDW-employer relationship vulnerable to conflict.707 In addition, law enforcement against abuses of FDWs is thought ‘difficult to enforce due to the nature of their work.’708 This is one of the government’s stated reasons for excluding FDWs from the scope of the Employment Act.

Rationale for Reportedly Discriminatory State Policies

The statutory restrictions imposed on FDWs are presumably justified by the government’s strict stance on immigration, i.e. these policies that tightly control the ability of FDWs to stay in Singapore are necessary to keep the population size manageable.709

In particular, Singapore has adopted a migration policy which welcomes the skilled while rotating the low-skilled in and out of the country.710 Singapore is said to regard foreign domestic workers as a transient workforce who can be repatriated during periods of economic slowdown.711

c. Impact of Abuse and Discrimination in Migration

State Policies and Practices Reported to be Discriminatory


709 Committee on the Elimination of Discrimination Against Women, Responses to the list of issues and questions with regard to the consideration of the fourth periodic report (CEDAW/C/SGP/Q/4/Add.1, 18 May 2011), 24.


Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

2. **De Jure State Responses**

   **a. Bases of State Responsibility**

Singapore does not appear to be bound by any instruments pertaining specifically to migrant workers. It has not

<table>
<thead>
<tr>
<th>State Policy / Practice</th>
<th>Impact</th>
<th>Details</th>
</tr>
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<tbody>
<tr>
<td>Prohibition on becoming pregnant or delivering any child in Singapore during and after the validity period of work permit$^{712}$</td>
<td>Unsafe and illegal abortions</td>
<td>For fear of being deported if found to be pregnant, FDWs have been reported to self administer unsafe abortions or to undergo illegal ones, leading to serious injury.$^{713}$</td>
</tr>
<tr>
<td>Prohibition on marrying a Singapore citizen or permanent resident (whether or not the marriage takes place in Singapore), during and after the validity period of work permit, without prior approval$^{714}$</td>
<td>Separation of FDWs from children</td>
<td>Such situations may arise when an FDW bears a child with a Singaporean man, and the child is a Singapore citizen by birth or descent. Rejection of the marriage application would result in the FDW having to leave Singapore for breaching her work permit, and the child remaining in Singapore with the Singaporean father due to the benefits s/he can receive as a Singapore citizen here.$^{715}$ This was noted with concern by the 2011 CRC Committee.$^{716}$</td>
</tr>
<tr>
<td>Mandatory initial and 6-monthly medical examinations. Positive diagnosis for infectious diseases, namely tuberculosis, malaria, syphilis and/or HIV, will lead to repatriation.$^{717}$</td>
<td>Unwillingness to undergo medical examinations. Vulnerability to traffickers.$^{718}$</td>
<td></td>
</tr>
</tbody>
</table>

712 *Employment of Foreign Manpower (Work Passes) Regulations*. Condition 9, Part IV (Conditions to be complied with by foreign employee), First Schedule.

713 Solidarity for Migrant Workers, *A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review*, May 2011, ANNEX J.

714 *Employment of Foreign Manpower (Work Passes) Regulations*. Condition 8, Part IV (Conditions to be complied with by foreign employee), First Schedule.


716 The CRC Committee has noted that the application of the EFMA results in the separation of some children from their parents and has urged the Government to review its immigration legislation (in particular the Immigration Act and the EFMA), with a view to avoid the separation of children from their parents: Committee on the Rights of the Child, *Concluding Observations: Singapore* (CRC/C/SGP/CO/2-3, 2 May 2011), paras 44-45.


Plans for an ASEAN socio-cultural blueprint to be established by 2015 would involve strategic action plans on issues including progress for migrant rights.720

b. National Policies Against Abuse and Discrimination in Migration

The offences against violence under the Women’s Charter (save for family violence) and the Penal Code described above apply to FDWs. Significantly, enhanced penalties apply when an employer of a ‘domestic maid’, or a member of the employer’s household, commits certain Penal Code offences against the maid, such as causing hurt or grievous hurt, wrongful confinement, assault or use of force, and an act intending to insult the modesty of a domestic maid. A ‘domestic maid’ is specifically defined as female, and is a house servant who resides in her employer’s private dwelling-house. Penalties are enhanced by one and a half times the amount of punishment to which the perpetrator would otherwise have been liable for that offence.721

The safeguards in the Employment of Foreign Manpower Act, its regulations and the Employment Agencies Act are set out above under ‘Exploitation,’ as are the regulatory measures taken by the government, such as accreditation of employment agencies.

c. Assessment of State Policies

Assessments made of State policies relating to FDWs are canvassed above under ‘Exploitation.’ In particular, the government has denied that the exclusion of FDWs from the Employment Act is ‘gender biased.’ However, it is said that all FDWs in Singapore are women,722 hence the exclusion has a disproportionate impact on women.

The following recommendations have been made by NGOs:723

- Repeal the reportedly discriminatory restrictions and immigration policies set out above
- Repeal the requirement for FDWs to stay at their employers’ residences
- Provide for the entitlement of FDWs to marry in Singapore without the permission of authorities
- Remove the work permit condition which forbid FDWs from engaging in ‘immoral and undesirable activities’724
- Ensure that FDWs have the same rights and protection on health and safety that are extended to all workers in Singapore
- Enact regulations to ensure FDWs are not restricted from exercising the freedoms of religion and association
- Facilitate the organization of associations for FDWs

Cross-border Collaboration

Exploitative placement fees may be to considerable extent a problem in the FDW’s country of origin. Singapore does not appear to have any formal bilateral or regional cooperation agreements or arrangements with the common sending countries of FDWs.

It was thus recommended that Singapore pursue ‘bilateral and multilateral tracks in seeking to streamline procedures for placement of workers, reduce costs and relieve workers of most of the current placement costs’725 and to also ‘actively pursue negotiations for multilateral agreements with major labour sending States to Singapore; agree upon limits to recruitment fees and standards covering employment to prevent contract substitution and exploitative practices.726

3. Implementation, Monitoring and Enforcement

a. Implementing and Monitoring Mechanisms

There are no implementing and monitoring mechanisms specifically for FDWs or migrant workers. The need for the Office for Women’s Development to take into account foreign female workers in its development and action plans, and the
formulation of a human rights action plan to address and monitor the rights of migrant women and women domestic workers has been raised.\textsuperscript{727}

b. Complaints Process

The concerns described above relating to complaints mechanisms for victims of labour exploitation and trafficking apply to FDWs who are victims of abuse.\textsuperscript{728} Complaints regarding discriminatory State policies would be made through the judicial review process. However, the prohibition against discrimination in the Constitution refers only to Singapore citizens.

c. Protection and Rehabilitation

The various protection and rehabilitation measures available to victims of labour exploitation and trafficking, described above, apply to FDWs who are victims of abuse.\textsuperscript{729}

d. Prevention Strategy

The prevention measures taken in relation to labour exploitation and trafficking, described above, apply to prevent abuse of FDWs.\textsuperscript{730}

Public Education and Awareness

In addition to the efforts to educate FDWs and apprise them of their rights, as described above, the Ministry of Manpower has also engaged in employer education. It has produced an information kit for employers, on their responsibilities and statutory obligations, a guide on cultural norms and customs of the main source countries for FDWs, and an electronic newsletter. Employers are also required to attend an Orientation Programme, where they are advised on cultivating a good working relationship with the FDWs.\textsuperscript{731} Employers who change FDWs 5 or more times in a 1 year period may be required to attend an interview by the authorities. Applications from employers who persist in changing FDWs frequently without satisfactory reasons may be rejected.\textsuperscript{732}

However, actions to eliminate prejudices and all other practices which are based on the idea of the inferiority or the superiority or on stereotyped roles for FDWs are noted to be absent.\textsuperscript{733}

4. Role of Non-State Actors

a. Assistance to Victims

There appear to be a large number of social service providers in Singapore for FDWs who suffer abuse. These run the gamut from general assistance for migrants, self-help, free meals for incomeless migrant workers, health, housing, employment, financial services, training, legal, religious, counselling, social and cultural activities.\textsuperscript{734}

Some of the most vocal groups that are involved in providing a wide range of assistance specific to migrant workers include HOME and TWC2. Both run helpdesks and provide legal aid services to migrant workers.\textsuperscript{735} HOME provides shelter for displaced migrant workers. TWC2 runs the Cuff Road Food Programme\textsuperscript{736} which provides free meals, and the Care Fund\textsuperscript{737} which extends monetary help for essential medical and surgical treatment, among other needs, where there is no other help available.

b. Prevention Programs

NGOs have organised ad hoc public campaigns, including the high-profile ‘Day Off’ Campaign organised by UN Women, TWC2 and HOME to encourage employers to voluntarily give FDWs a weekly day off. UN Women is one of the few non-local NGOs operating in Singapore, and has paid particular attention to migrant workers and trafficking in persons and partnered local NGOs in support of campaigns and projects for the rights of FDWs.\textsuperscript{738}

\textsuperscript{727} Ibid, 3.
\textsuperscript{728} See Section D.3.b, ‘Complaints Process,’ 102.
\textsuperscript{729} See Section D.3.c, ‘Protection and Rehabilitation of Victims,’ 107.
\textsuperscript{731} Singapore’s Fourth Periodic Report (CEDAW/C/SGP/4, 3 April 2009), 53.
\textsuperscript{732} Ibid.
\textsuperscript{733} HOME, Shadow Report to 49th Session. 2011 CEDAW, 2011, para. 18.
\textsuperscript{734} ‘Migrant Workers,’ Concern.sg, www.concern.sg/Migrant_Workers.
\textsuperscript{735} HOME and TWC2, Justice Delayed, Justice Denied, 2010, 36.
Active advocacy efforts, and commendable research efforts, have been made by NGOs. For example, TCW2, HOME and AWARE have conducted surveys and collated victim testimonies on issues affecting FDWs and other migrant workers, to support their advocacy work. All three have been active in lobbying the government, through debates in the media and their shadow reports to CEDAW. HOME participated in the CEDAW process alongside government representatives, including in briefings and dialogue sessions with the CEDAW Committee.739 Human Rights Watch has also engaged in research and advocacy efforts for FDWs in Singapore and engaged directly with the government in doing so.740

Training workshops and courses are also run for FDWs, including health and rights education, and finances and management training.741

c. Monitoring and Cooperation

Local NGOs have partnered with each other, and international NGOs in research, advocacy and lobbying efforts, such as releasing research reports, joint public campaigns, and issuing joint submissions to CEDAW and the UPR.

With regard to cooperation with the government however, the absence of consultations by the government with NGOs on FDW issues has been highlighted.742

Cooperation in relation to training programmes and assistance for FDWs is however notable, such as provision by the government of training on legal issues to FDW hotline workers at a local NGO,743 and collaboration with local NGOs to develop a skills training programme for FDWs.744

5. Progress Indicators and Challenges

The government’s recent policy change to give FDWs a mandatory weekly day off perhaps signals greater openness to take more active steps to regulate the employment of FDWs. Consultations with NGOs on FDW issues are however not being regularly undertaken.

Whether the government’s response to abuse of FDWs, such as its employer and employee education efforts, and the system of regulation of employment agencies, is effective, and areas for improvement, have not been studied. This research gap impedes evidence-based approaches to policy development.

744 AWARE, CEDAW Shadow Report, May 2011, para. 11.54.
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Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A BASELINE STUDY

by
Kitti Jayangakula
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Capital City: Bangkok

| Population¹ | Male: 32,967,826 |
|            | Female: 33,752,327 |
|            | Both sexes: 66,720,153 (July 2011 est.) |
| Life expectancy² | Male: 71.24 years |
|            | Female: 76.08 years |
|            | Both sexes: 73.6 years (2011 est.) |
| Age structure³ | 0-14 years: 19.9% (male 6,779,723/female 6,466,625) |
|            | 15-64 years: 70.9% (male 23,410,091/female 23,913,499) |
| Sex ratio⁴  | at birth: 1.054 male(s)/female |
|            | under 15 years: 1.05 male(s)/female |
|            | 15-64 years: 0.98 male(s)/female |
|            | 65 years and over: 0.82 male(s)/female |
|            | Total population: 0.98 male(s)/female |
| Religions⁵ | Buddhist 94.6%, Muslim 4.6%, Christian 0.7%, other 0.1% |
| Ethnic groups⁶ | Thai 75%, Chinese 14 %, other 11% |
|            | Female: 90.5 (1995-2005) |
|            | Both sexes: 94% (2005-2008) |
| Poverty line⁸ | THB 1,678 (approx. USD 55) (2010) |
| Gross Domestic Product⁹ | -2.2% (2010) |
| Net enrolment ratio in secondary school¹⁰ | Male: 68 |
|            | Female: 77 |

2 Ibid.
3 Ibid.
4 Ibid.
5 Ibid.
6 Ibid.
10 “Statistic on Thailand.”
<table>
<thead>
<tr>
<th><strong>Migration rate</strong>(^{11})</th>
<th>Net 0.3 migrants/1,000 population (2010-2015)</th>
</tr>
</thead>
</table>
| **Number of citizens working overseas**\(^{12}\) | Male: 121,168  
Female: 22,627 (2010) |
| **Number of foreign workers in country**\(^{13}\) | Male: 755,822  
Female: 579,333 (2010) |
| **Percentage of female-headed households**\(^{14}\) | 8.4 |
| **Labour force anticipation rate**\(^{15}\) | Male: 79.3  
Female: 63.0 (May 2011) |
| **Unemployment rate**\(^{16}\) | Male: 0.6  
Female: 0.6 (May 2011) |
| **Proportion of unpaid family workers**\(^{17}\) | Male: 1.29  
Female: 26.68 (June 2006) |
| **Fertility rate**\(^{18}\) | 1.66 children born/women (2011 est.) |
| **Maternal mortality rate**\(^{19}\) | 48.0 |
| **Infant mortality rate**\(^{20}\) | Total 16.39 deaths/1,000 live births |
| **Legal definition of 'child'**\(^{21}\) | 'Child' means a person below 18 years of age, but does not include those who have attained majority through marriage. |
| **Age of majority**\(^{22}\) | 20 years old |
| **Marriageable age**\(^{23}\) | 17 years old |
| **Age of consent**\(^{24}\) | 15 years old |
| **Age of criminal responsibility**\(^{25}\) | 10 years old |
| **Minimum age of employment**\(^{26}\) | 15 years old |
| **Minimum age of military recruitment and participation**\(^{27}\) | 21 years old |

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16 Ibid.


18 “The CIA World Factbook.”


20 “The CIA World Factbook.”

21 The Child Protection Act B.E. 2546 (2003), Section 4.

22 The Civil and Commercial Code, Section 19.

23 Ibid., Section 1448.

24 The Penal Code, Section 277.

25 Ibid., Section 73.

26 The Labour Protection Act B.E. 2541 (1998), Section 44.

27 The Military Service Act B.E. 2497 (1954), Section 25.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
A. OVERVIEW

The Kingdom of Thailand is located in the Southeast Asian Region. Myanmar is to the west, Laos to the north and east, Cambodia to the southeast, and Malaysia to the south. The south coast of Thailand faces the Gulf of Thailand. Thailand is a constitutional monarchy country, where the King is the Head of State. The country has a bicameral parliamentary system, with a House of Representatives and a Senate. The political system remains multi-party, and thus the House of Representatives consists of representatives of diverse political parties.

As home to a population of 66.7 million, Thailand comprises diverse ethnic groups: 75% of Thais; 14% of Chinese; and 11% of other ethnic groups, which includes approximately 3% of Malay (1.7 million people, predominantly Muslims living in the three southernmost provinces).

Map 1: Map of Thailand

The supreme law of the country is the Constitution of the Kingdom of Thailand, which is higher than all other laws, decree, administrative rules and regulations. The current Constitution is the Constitutional of the Kingdom of Thailand B.E. 2550 (2007). The Constitution in Section 5 guarantees the equal protection of all Thai people and states that:

The Thai people, irrespective of their origin, sex, or religion shall enjoy equal protection under the Constitution.

Source: Cartographic Section, Department of Field Support, United Nations
The Constitution in Section 30 recognises the principles of equality and non-discrimination, that:

'All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view not inconsistent with the provisions of the Constitution, shall not be permitted.

In addition, a number of provisions of the Constitution concerning the rights of women and children have been guaranteed. For example, Section 52 recognises the enjoyment of the rights of children and youth to survive and to receive physical, mental, and intellectual development; and guarantees the rights of children and women to receive protection against violence and unfair treatment from the State. In addition, Section 35 protects women and children from the unlawful exploitation of their personal rights.

At an international level, Thailand endorsed the Universal Declaration of Human Rights of 1948 (UDHR) and is a signatory to 7 major human rights instruments, namely: (1) the International Covenant on Civil and Political Rights (ICCPR); (2) the International Covenant on Economic, Social and Cultural Rights (ICESCR); (3) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol (OP-CEDAW); (4) the Convention on the Rights of the Child (CRC) and its two Optional Protocols on the Involvement of Children in Armed Conflict (OP-CRC-AS) and in the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC); (5) the Convention on the Elimination of All Forms of Racial Discrimination (CERD); (6) the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and (7) the Convention on the Rights of Person with Disabilities (CPRD).

<table>
<thead>
<tr>
<th>Universal human rights treaties</th>
<th>Date of ratification, accession or succession</th>
<th>Declarations/reservations</th>
<th>Recognition of specific competences of treaty bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICERD</td>
<td>January 28, 2003</td>
<td>Yes (Reservation, art. 4, 22)</td>
<td>Individual complaints (art. 14): No</td>
</tr>
<tr>
<td>ICESCR</td>
<td>September 5, 1999</td>
<td>Yes (Declaration, art. 1, para. 1)</td>
<td>–</td>
</tr>
<tr>
<td>ICCPR</td>
<td>October 29, 1996</td>
<td>Yes (Declarations, art.1., para. 1, 6, para. 5, 9, para. 3 and 20)</td>
<td>Inter-State complaints (art. 41): No</td>
</tr>
<tr>
<td>CEDAW</td>
<td>August 9, 1985</td>
<td>Yes (Reservation, art. 16, 29, para. 1)</td>
<td>–</td>
</tr>
<tr>
<td>OP-CEDAW</td>
<td>June 14, 2000</td>
<td></td>
<td>Individual complaints: Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inquiry procedure (arts. 8 and 9): Yes</td>
</tr>
<tr>
<td>CAT</td>
<td>October 2, 2007</td>
<td>Yes (Reservation, art. 30, para. 1)</td>
<td>Inter-State complaints (art. 21): No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Individual complaints (art. 22): No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inquiry procedure (art. 20): Yes</td>
</tr>
<tr>
<td>CRC</td>
<td>March 27, 1992</td>
<td>Yes (Reservation, art. 22)</td>
<td>–</td>
</tr>
<tr>
<td>OP-CRC-AC</td>
<td>February 27, 2006</td>
<td>Binding declaration under art. 3: 18 years</td>
<td>–</td>
</tr>
<tr>
<td>OP-CRC-SC</td>
<td>January 11, 2006</td>
<td></td>
<td>–</td>
</tr>
<tr>
<td>CRPD</td>
<td>July 29, 2008</td>
<td>Yes (Declaration, art. 18)</td>
<td>–</td>
</tr>
</tbody>
</table>

Thailand is also a Party to the 4 Geneva Conventions of 1949 and became a Party to the United Nations Convention against Corruption on March 31, 2011. Moreover, the country signed the Rome Statute of the International Criminal Court and in January 2012 signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICAPED). As a result, the country has international obligations to respect the human rights of all persons according to those international human rights instruments.

Apart from international human rights treaties, Thailand is bound to ensure decent work and labour rights of all workers in accordance with international labour standards set by the Declaration on Fundamental Principles and Rights at Work set by the International Labour Organisation (ILO) and ratified the 14 following labour conventions issued by ILO as follow:

<table>
<thead>
<tr>
<th>No.</th>
<th>ILO Convention</th>
<th>Subject</th>
<th>Date of ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>C014</td>
<td>Weekly Rest (Industry) Convention, 1921</td>
<td>April 5, 1968</td>
</tr>
<tr>
<td>2.</td>
<td>C019</td>
<td>Equality of Treatment (Accident Compensation) Convention, 1925</td>
<td>April 5, 1968</td>
</tr>
<tr>
<td>4.</td>
<td>C080</td>
<td>Final Articles Revision Convention, 1946</td>
<td>December 5, 1947</td>
</tr>
<tr>
<td>5.</td>
<td>C088</td>
<td>Employment Service Convention, 1948</td>
<td>February 26, 1969</td>
</tr>
<tr>
<td>6.</td>
<td>C100</td>
<td>Equal Remuneration Convention, 1951</td>
<td>February 8, 1999</td>
</tr>
</tbody>
</table>


Thailand intends to ratify the ILO Conventions on Freedom of Association and Protection of the Right to Organise (No.87) and Right to Organise and Collective Bargaining (No.98).28

The rights of women and children under the principle of equality and non-discrimination are mainly protected by the CEDAW and the CRC, respectively. In domestic level, those rights are recognised by the Constitution, consistent with the obligations under the CEDAW and CRC. Yet, in reality, inequality and discrimination of women and children are frequently manifested in Thai society, in particular, in the form of violence, exploitation for sexual and labour purposes of women and children, including woman and child migrants.

Regarding violence against women and children, there are many forms of violence, such as domestic violence, sexual harassment, rape, and corporal punishment. However, most of violence cases against women and children in Thailand relate to domestic violence. Apart from violence, Thailand also faces the problems of exploitation of women and children for sexual and other purposes, including child prostitution, child labour, trafficking in persons. Recently, the US Department of State Reports on Human Rights Practices, released on 8 April 2010, stated that:

… [c]hild prostitution remained a problem in Thailand. Children (both boys and girls), especially among migrant populations, were sometimes forced, coerced, or lured into prostitution. While it was widely believed, there were fewer incidences of citizen forced into prostitution, children from poor families remained vulnerable, and there were some incidences, which parents forced their children into prostitution. Moreover, paedophilia continued, by citizens and foreign sex tourists.29

According to Thai laws, migrant workers in Thailand are able to enjoy equal rights and protection as citizens. However, the abuse and discrimination against migrant workers, in particular women and children, are also significant problems in Thailand. For example, according to government regulations, employers shall pay equal wages and benefit for equal work, regardless of gender. Nonetheless, discrimination in hiring was common, and women were concentrated in lower-paying jobs. In practice, women received lower pay for equal work in many sectors of the economy.30

Abovementioned problems show that the rights of women and children are expressly recognised and protected by laws; however, in reality women and children, both migrants and non-migrants, in Thailand are vulnerable to becoming victims of violence, sexual exploitation, forced prostitution, trafficking in persons, and discrimination in particular.

B. VIOLENCE

1. Description of the Problem

a. Prevalence of Violence

Violence against women and children is a significant social and public health problem in many countries, including Thailand. The violence on women and children remains an important challenge.

Domestic Violence

Domestic violence is a form of violence against women, children as well as elderly, that is perpetrated by intimate partner and family members. It often occurs in private spaces and is often tacitly overlooked by society as a private or family matter.31 Domestic violence is one of major violence against women and children problems in Thailand, particularly intimate partner violence and child abuse at home. Prevalence of this problem in Thailand was reflected and pointed out in the Report on Human Rights Practices for Thailand of the US Department of State which stated that:

… [d]omestic violence against women was a significant problem [in 2009] … Some domestic violence crimes were prosecuted under provisions for assault or violence against person where harsher penalties could be levied. Additionally, domestic violence in Thailand frequently went unreported, and police often were unwilling to pursue reports of domestic violence.32

In addition, a more recent 10-country study on domestic violence by the World Health Organisation (WHO) documented that the lifetime prevalence of physical and sexual domestic violence reported by Bangkok women was 22.9% and 29.9%, respectively.33 In addition, even though

the problem of violence has been highlighted by many sources, it has not been publicly discussed until recently because domestic violence against women has long been viewed as a private family matter in society.34

Statistically, according to the One Stop Crisis Center (OSCC) programme of the Ministry of Public Health (MPH), the number of violence against women and children cases in Thailand grows progressively. In 2004, data from 70 hospitals shows that there were 6,951 violence against women and children cases (approximately 19 cases per day). Figures doubled to more than 19,000 cases in 2007 (approximately 52 cases per day). In 2009, statistics from 617 hospitals show 23,499 cases of violence (approximately 64 cases per day).35 Interestingly, 80% involved domestic violence.36 Prevalence of domestic violence, particularly intimate partner violence, is an increasing problem. This affects women even during pregnancy and after giving birth.37

**Sexual Abuse**

Focusing on sexual abuse against women and children in Thailand, the MPH reported that from January to November 2009, an estimated 25,750 women and children were abused; approximately 12,000 women were above 18 year old and 13,000 were children.38 In addition, majority of the abused children were girls and most of the cases of those children involved sexual abuse.39 In addition, according to a recent WHO 10-country study, 40% of Thai women experience physical or sexual violence at least once during their lifetimes.40

Moreover, statistic collected by the Royal Thai Police (RTP) between 2009 and 2011 show that the number of rape cases reported to the police are as follow:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of rape cases reported</th>
<th>Number of suspected arrested</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>4,680</td>
<td>2,584</td>
</tr>
<tr>
<td>2010</td>
<td>4,255</td>
<td>2,397</td>
</tr>
<tr>
<td>2011</td>
<td>3,771</td>
<td>2,290</td>
</tr>
</tbody>
</table>

Source: Central Information Technology Center, Royal Thai Police, www.police.go.th

Notably, violence against women in Thailand exists not only at home, but also in their workplaces. Similarly, a number of NGO reports emphasise that the prevalence of violence against children in Thailand, including sexual violence against female children, is not only at home but also includes episodes of child abuse by teachers in school.41

Apart from rape, sexual harassment is also currently a challenging problem in Thai society. A 2006 survey collected data from 3,139 young people aged between 15 and 24 living in Bangkok and neighbouring provinces, including Nonthaburi, Pathumthani, and Samutprakan. It found that about 66% of female youths and 26% of male youths had experienced myriad forms of sexual harassment.42 Perpetrators of unwelcome sexual behaviour in public buses, trains, aircrafts, public areas, or neighbourhoods are often male strangers. In schools, universities, or workplaces, teachers or superiors are usually the criminals.43

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34 See Xu, Kerley and Sirisunyaluck, "Understanding Gender and Domestic Violence From a Sample of Married Women in Urban Thailand,” 792.
39 Ibid.
While same-sex sexual harassment may be observed in Thailand, existing literatures and researches, however, affirm that the largest number of sexual harassment happen between men and women. Major victims of sexual harassment in Thai society are young women, ranging from students to working women. In particular, women employed as factory workers, house cleaners, flight attendants, bus hostesses, singers, celebrities, waitresses, and service women in entertainment places find themselves vulnerable to sexual harassment. Male harassers can be women’s supervisors, teachers, co-workers, peers, subordinates and clients. This confirms the claim that sexual harassment is an indicator of women’s powerlessness in a male-dominated society.44

During the past several years, local media have reported many cases of sexual harassment in schools, universities, and workplaces. In 2008 alone, 16 cases of sexual offenses in educational institutions classified as acts of sexual harassment were brought to public attention by the media. Eleven out of the 16 cases happened to secondary school pupils, while three cases were found among primary school girls and boys, while the remaining two happened to female university students. In workplaces, men in power often misuse their authority. They may seek sexual favours from female subordinates in exchange for job promotion. This exchange takes place in the context of an unequal power relationship between the superior and the subordinate, pushing women to endure sexual harassment, as they are afraid of a negative response.46

**Corporal Punishment**

A number of research studies have revealed the nature and extent of corporal punishment in the home. A UNICEF survey of nearly 500 children in southern Thailand found that 38% had direct experience of violent punishment like beating with a stick or belt; 8% said this happens often. Moreover, a study funded by the National Health Foundation found that punishment of children in schools included hitting students with open palms, fists, clothes and blunt objects, kicking, applying heated materials and slapping the face. Up to 60% of the teachers surveyed supported the use of corporal punishment.48

**b. Root Causes of Violence and Aggravating Practices**

**Historical and Cultural Roots**

Unequal power relations between men and women in public and private life are accepted and understood in Thai society as patriarchy and men’s control over women.49 Violence against women may be viewed both as a means and a consequence of women’s subordination. This points to the role of culture in justifying violence against women, as well as economic inequities that perpetuate women’s vulnerability and limit women’s ability to counter violence.50 Thai family structure historically has been patriarchal, and wives are expected to place their own self-interests behind those of their husband and children.51 Moreover, a woman’s experience of violence is shaped by many factors, such as economic status, race, ethnicity, class, age, sexual orientation, disability, nationality, religion and culture.52

In a cultural context, root causes are also influenced by religious beliefs. Thai culture is predominantly Buddhist and there is a strong focus on order, harmony, and responsibility within a family context. These Buddhist doctrines provide a normative basis for gender inequality. Thai women are widely described as bearers and supporters of Thai Buddhism, who provide routine support for monks and temple activities; they are often portrayed as normally inferior and barred from being ordained as monks. Women are forbidden from direct or indirect contact with monks because of their ‘lower karma’. Thai women

44 Ibid.
46 Thaweesit and Boonmongkon, *Sexuality Education and Sexual Harassment*.
50 Ibid.
51 Kerley, Kent R. *et al.* “Exposure to Family Violence in Childhood and Intimate Partner Perpetration or Victimization in Adulthood,” 338.
52 Ibid.
are taught to suffer bravely so that they can be reborn as a man in the next life. These clearly show that women's status in Thai Buddhism is secondary to that of men. Women are encouraged to be selfless, nurturing, devoted to their husbands, and prepared to make sacrifices for the well-being of their family.

Social Roots of the Problem

Alcohol, drugs, and gambling have close relation to violence and are also causes of violence on women and children in Thai society. Domestic violence perpetrated by husbands, lovers or relatives often involve abuse of alcohol and drugs. Similarly, violence against children resulting in emotional complications and behavioural problems involves the use of drugs, alcohol, and gambling.

c. Impact of Violence

Violence against women and children is now recognised as a serious human rights abuse, which threaten the fundamental rights of the victims of violence. Violence does not only affect the rights of the victims but also affects their well-being, livelihood, and life quality as a whole. Violence against women and children, domestic violence in particular, comprises physical, psychological and emotional/verbal abuses. Physical abuse is the actual, attempted, or threatened use of any physical force with the intent to injure, control, hurt, or make the victims afraid of the abusive male partner. Psychological abuse is threatening and intimidating behaviours and emotional/verbal abuse reflects behaviours intended to diminish a woman's self-esteem and to undermine her self-confidence. Violence not only affects the health of the victims but also carries social and economic impacts on society.

Health Impacts

Violence causes higher risk of poor physical, reproductive and mental health; social and sexual dysfunction; alcohol and drug abuse; suicide attempts. Violence against women during pregnancy has been associated with various obstetric risks, including late entry into prenatal care, increased smoking and substance abuse, vaginal infections, kidney infections, miscarriage-abortion, premature labour, foetal distress, bleeding in pregnancy and inadequate weight gain by the mother. The health impact from violence against pregnant women is not only on women themselves, but also contributes to low birth-weight, preterm delivery, and foetal growth retardation of their babies.

The consequences of sexual violence not only affect physical health but also include sexual health. In most cases, sexual violence is considerably less prevalent than physical violence; physical violence often accompanied sexual violence. Thailand, however, is an exception where women reported more sexual than physical partner violence. Therefore, in many of the Thai cases, violence affects sexual health, which may be the cause of HIV infections. In 2011, 10,097 persons were estimated to be newly infected with HIV/AIDS. This number amounts to 26% of female persons living with HIV/AIDS (PLHA) (2,633 cases) in Thailand. Interestingly, their husbands infected these women with HIV/AIDS.

Social Impacts

As social impacts, violence prevents women and children from full social, economic and political participation. It leads to stigmatization and transmission of violence to future generations. Notably, in some cases, violence may cause misbehaviours of children in society, as some parents...
encourage their child to buy cigarettes and alcohol, or some parents with gambling problem praise their child when he/she gambles and wins.62

Economic Impacts

Apart from health and social impacts, violence also has economic impacts on society. Economic cost would be costs of services such as the provision of health care or victim support and the judicial process, lost earnings, output and tax revenue and the intangible costs of human suffering.63

2. De Jure State Responses

a. Bases of State Responsibility

International Level

Thailand ratified the CEDAW and OP-CEDAW. As a party to the CEDAW and its protocol, the government has to implement the obligations under the CEDAW as a guideline for formulating policies and plans relating to women, as well as laws and regulations to eliminate all forms of discrimination, including violence against women. Of the seven original reservations to the CEDAW, five reservations have been withdrawn, while two remain in effect i.e. Article 16 relating to marriage and family relations.64

Although the CEDAW does not include specific provisions on violence against women, nevertheless, the General Recommendation No. 19 of the CEDAW Committee in 1992 interpreted the term 'discrimination' in Article 1 of CEDAW to include:

… [v]iolence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.65

To protect future generations, Thailand ratified the CRC with a reservation on the right of the refugee child in Article 2266, OP-CRC-SC and OP-CRC-AC. Within Article 2 of the CRC guarantees that the rights of the child shall be respected and ensured without discrimination. In addition, Article 19 provides that all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse shall be protected. Even the term 'violence' is contained in provision of Article 19; nonetheless, the General Comment No. 13 of the CRC Committee in 2011 define the term 'violence' in Article 19 that:

‘[v]iolence’ is understood to mean ‘all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse’ as listed in article 19, paragraph 1, of the Convention. The term violence has been chosen here to represent all forms of harm to children as listed in article 19, paragraph 1…

Regional Level

Apart from international level as stated earlier, all ASEAN countries, including Thailand adopted and signed the Declaration on the Elimination of Violence Against Women in the ASEAN Region (ASEAN DEV AW) during the 37th ASEAN Ministerial Meeting held in June 2004 in Jakarta, Indonesia. The Declaration strengthens regional cooperation, collaboration and coordination for the purpose of eliminating violence against women in the region, either individually or collectively. In this regard, the ASEAN DEV AW recognises that:

[v]iolence against women both violates and impairs their human rights and fundamental freedoms limits

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their access to and control of resources and activities and impedes the full development of their potential.

Thus, Thailand is obligated to eliminate discrimination against women, including gender-based violence according to CEDAW General Recommendation No. 19, and to protect children from violence pursuant to CRC General Comment No. 13. To comply with these obligations, Thailand issued a number of legal measures.

b. National Policies Against Violence

Legal Measures

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) addresses issues regarding violence against women and children in a number of Sections. It guarantees the protection of human dignity and rights and liberties. Section 4 states that:

The human dignity, rights and liberties and equality of the people shall be protected.

Section 30 enshrines equality and states that:

All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights...

Section 40(6) guarantees the right in judicial process. It provides that:

[a] child, youth, woman, senior person or the disabled or handicapped person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in cases relating to sexual violence …

Section 52 provides for the protection of the rights of children, youth and family members, that:

Children and youth shall enjoy the right to survive and to receive physical, mental and intellectual development according to their potentials in a suitable environment, with due regard to their participation.

Children, youth, women and family members shall have the right to receive protection against violence and unfair treatment from the State and shall have the right to medical treatment or rehabilitation upon the occurrence thereof.’

Additionally, Section 81 also stipulates that:

The State shall pursue directive principles of State policies in relation to legislation and the administration of justice; as follows … (5) support the operation of organisations in the private sector providing legal aids to the public, in particular to those affected by family violence.

Apart from the Constitution, Thailand also enacted a number of domestic laws regarding the issue of violence against women and children as follow:

Laws relating to Domestic Violence

The Protection of Victims of Domestic Violence Act B.E. 2550 (2007) is a specific legislation relating to violence against women and children in particular. The Act has been enacted in Thailand since November 12, 2007. The Act addresses definition of domestic violence, which is defined as:

[a]ny action intended to inflict harm on a family’s member’s physical, mental or health condition and any use of coercion on unethical domination to compel a family member to commit, omit or accept any unlawful act, except for that committed through negligence.’

The Act aims to protect family members, which include spouses, former spouses, persons who live and cohabit together or used to do so as husband and wife without marriage registration, legitimate children, adopted children, family members and dependents living in the same household.67 The definition of domestic violence in the Act contains both physical and mental violence experienced by the members of the family. Interestingly, a complaint of domestic violence is not limited to only being filed by the victim, but allows anybody who sees or has information about domestic violence situation to file the complaint as a public duty of everyone.68

Furthermore, the Act imposes a fine of up to 6,000 baht (approximately USD 200) or up to six months’

68 Ibid., Section 5.
imprisonment or both for persons who commit acts of domestic violence. It also provides authorities, with court approval, the power to prohibit offender from remaining in their homes or contacting family members during trial. The law implements designs measures to facilitate the reporting of domestic violence complaints and reconciliation between the victim and the perpetrator. This law restricts media from reporting on domestic violence cases in the judicial system. Moreover, to resolve the problem of violence, the State Council has proposed a draft Act on the Prevention and Resolution of Domestic Violence to introduce additional laws to protect women from violence or amend existing laws in gender-responsive ways. In addition, currently, a draft of Gender Equality is under consideration by the Government and steps are being taken to ensure a more effective enforcement of the Protection of Victims of Domestic Violence Act.

Concerning Sexual Abuse Laws

Regarding the sexual offenses in Thai criminal law, the Penal Code addresses sexual harassment mainly as sexual offenses under the criminal law. Serious forms of sexual harassment are recognized in the Code under categories such as sexual assault, indecent acts, rape or attempted rape. However, the term sexual harassment does not exist as such in the provisions of the Penal Code. Some sections are relevant to sexual harassment, especially offenses under Title IX: Offences relating to sexuality. Some provisions found here regard rape (Section 276), indecent acts (Section 278), and distribution or exhibition of obscene materials (Section 287).

In 2007, the definition of rape under Section 276 of the Penal Code was amended to cover rape of any sex, all types of sexual penetration, and criminalization of marital rape and imposes more severe penalties on offenders who engaged in all forms of rape and sexual abuses, as follows:

Whoever has sexual intercourse with other person, being in the condition of inability to resist, by committing any act of violence or by making such another person misunderstand himself or herself as another person, shall be punished with imprisonment of four to twenty years and fined eight thousand to forty thousand baht.

The sexual intercourse according to the first paragraph means committing of doer’s sexual desire by using doer’s sexual organ, for committing other person’s sexual organ, anus or oral cavity, or using any things for committing against other person’s sexual organ or anus.

If the offence according to the first paragraph has been committed by carrying of using any gun of explosive or by participation of person in the nature of gang raping a girl of a boy in the same matter, the offender shall be punished with imprisonment of fifteen to twenty years and fine of thirty thousand to forty thousand bath or imprisonment for life.

In addition, this new provision removed the previous distinction under section 276 of the Penal Code, which had limited rape to sexual intercourse between a man and a woman who is not his wife, thus allowing a husband to rape his wife with impunity and women suffering from sexual violence could not take legal action against her husband.

The fourth paragraph of new Section 276 also criminalizes marital rape:

[I]f the offence according to the first paragraph has been committed between spouses and the spouses desire to cohabit, the court may punish by the punishment lighter than described in the law as it may be considered of determine some conditions for case of punishment according to the judgement provided by the court and any party of the spouses does not desire to cohabit anymore and desire to divorce, that party shall inform the court and the court shall inform the public prosecutor to proceed with suing for divorce for them.

According to the law, if the victim of rape is a minor who is between thirteen and fifteen years of age, whether the sexual intercourse was with or without the consent of the victim, the offender shall be imprisoned for four to twenty years and shall pay a fine ranging from 8,000–40,000 baht.

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69 Ibid., Section 4.
71 ESCAP, Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, 34.
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(approximately USD 260-1,300). If the victim is under thirteen years of age, regardless of consent of the victim, the offender shall be imprisoned for seven to twenty years and shall pay a fine ranging from 14,000–40,000 baht (approximately USD 450-1,300) or shall be imprisoned for life.

Regarding sexual harassment, the Penal Code that has been in use since 1956 has been applied to deal with sexual offenses. Verbal forms of sexual harassment may fall under the defamation provisions in Section 326 and those on sexual insult in Section 393; nevertheless, in all of the sections mentioned herein the term 'sexual harassment' has never been clearly addressed in the provisions of the Penal Code as such.

Although there is no offence of sexual harassment in the Penal Code, Section 16 of the Labour Protection Act B.E. 2541 (1998) stipulates that sexual harassment is prohibited in this manner:

It is forbidden for an employer or a person who is in overall charge of staff, a supervisor, or an inspector to sexually harass employees who are women or children.

Additionally, the Civil Service Act B.E. 2551 (2008) stipulates that sexual harassment as a prohibited act. Further, the Civil Service Regulations Act on the Acts of Sexual Violation and Harassment B.E. 2553 (2010) defines five types of behaviour deemed to be sexual harassment in the workplace as follow:

1. Sexual or physical contact, such as kissing, holding or touching certain parts of the body;
2. Sexualised talk, such as criticising or joking about body parts and telling dirty jokes to an unwilling audience;
3. Sexual gestures, such as looking at others in a sexual manner;
4. Communication with sexual content such as sending letters, messages or e-mails with pornographic content; and
5. Other actions deemed sexual and disturbing to others.

Laws Related to Corporal Punishment

In Thailand, corporal punishment is lawful at home, persons with parental authority over children has the right to impose reasonable punishment for the purpose of discipline. According to Section 1567(2) of the Civil and Commercial Code:

A person exercising parental power (natural guardian) has the right: … (2) To punish the child in a reasonable manner for disciplinary purposes; …

However, at schools, corporal punishment is an unlawful act under the Ministry of Education Regulation on Student Punishment B.E.2548 (2005) and the National Committee on Child Protection Regulation on Working Procedures of Child Protection Officers Involved in Promoting Behaviour of Students B.E.2548 (2005).

Administrative Measures

Thailand has Plans and Strategies for the 'World Fit for Children': the National Policy to Stop Domestic Violence against Child and Women and the National Plan and Policy on the Prevention, Suppression and Combating Domestic and Transnational Trafficking in Children and Women.

Furthermore, Thailand runs a month-long public service campaign to Stop Violence against Children and Women throughout each November, coinciding with the annual International Day for the Elimination of Violence against Women on November 25. Additionally, for this nationwide campaign, the government further works with media and awards television programming and advertising that promote gender equality. Thailand’s NGO community is also active in prevention campaigning.

Moreover, the government is continuing to expand and strengthen its successful national policies against violence on women and children by running a programme of One Stop Crisis Centre (OSCC) in all public hospitals to handle cases of violence against women as well as children. The OSCC is a multidisciplinary unit providing comprehensive services for victims of violence in Thailand. An OSCC is equipped with not only medical doctors and nurses, but also representatives from the police department, the office of attorney, emergency home and social workers from the MSDHS.

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74 The Penal Code, Section 277, amended by the Thai Penal Code Amendment Act (No.19), 2007
75 Ibid.
76 ESCAP, Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, 34.
An OSCC usually assumes multifunctional roles, e.g., as a call centre to receive reported cases of violence against women; a coordinating centre with other units, e.g. police station, the court or the ministry, if needed; and a centre for violence against women information, mental support and advice, along with the physical treatments.77

Recently, Prime Minister Yingluck Shinawatra delivered the National Policy in Public Health Policy concerning the violence against women and children:

‘Improving people's quality of life…reduce acts of violence against children and women,’ and 'improving laws that protect women from domestic violence.'

In addition, the Policy of the current government also emphasises assistance for victims of violence that:

increasing the number and improving the quality of one-stop crisis centers that provide 24-hour assistance to children and women that are victims of domestic violence.78

**c. Assessment of State Policies**

*Implementation of International Obligations*

Thailand has been carrying out public education campaigns about the negative consequences of all treatment of children, promoting positive non-violent forms of discipline. In addition, the ‘draft Act on the Prevention and Resolution of Domestic Violence’ is a significant positive policy. However, the CEDAW Committee continues to be concerned about the prevalence of violence against women and girls and inadequacy of the punishment for perpetrators in the Act. Additionally, it noted that the ‘draft Act’ focuses on recommendation and family unity to the detriment of the right of women to live free from violence.79

Moreover, retaining reservations to Article 16 has been noted by the CEDAW Committee as being contrary to the object and purpose of the CEDAW.80

**Sexual Abuse Laws**

Even though the Civil Servant Regulations Act prohibits sexual harassment, NGOs claimed that the legal definition of harassment was vague and prosecution of harassment claims difficult.81 The Civil Service Commission’s sexual harassment and bullying hotline was shifted to the supervision of the Bureau of Disciplinary Standards during the year. It is noted that, during the time of transition and regulation drafting, they did not accept complaints. Most of the prior complaints were dismissed, as the petitions were unsigned, and the remainder was forwarded to the relevant agencies for internal investigations.82

The penalty imposed by law for rape is minimal. The Penal Code imposes imprisonment of four to twenty years and fines ranging from 8,000–40,000 baht (approximately USD 250 – 1,250). Children under 10 years old are not subject to criminal punishment.83 Those between 7 and 14 are not liable to any punishment either; instead the law gives the court the option to use juvenile procedures, depending on the children's behaviour and environment and other mitigating circumstances.84 Those youths between 15 and 17 years of age may have to face criminal punishment, but the court may use its discretion to reduce the sentence.85

**Laws Relating to Corporal Punishment**

Corporal punishment at home for the purpose of discipline is lawful pursuant to Article 1567(2) of the Civil and Commercial Code. Corporal punishment at school, however, is unlawful under the Ministry of Education Regulation on Student Punishment and the National Committee on Child Protection Regulation on Working Procedures of Child Protection Officers Involved in Promoting Behaviour of Students. In fact, corporal punishment continues to be used. A study funded by the National Health Foundation in 2006 found that punishment of children in schools included hitting

77 Thailand National UPR Report, 12.
80 Ibid.
82 Ibid.
83 The Penal Code, Section 73.
84 Ibid., Section 74
85 Ibid., Section 75.
students with open palms, fists, clothes, and blunt objects, kicking, applying heated materials and slapping the face, with up to 60% of the teachers surveyed supporting the use of corporal punishment.  

Moreover, under article 61 of the Child Protection Act, corporal punishment is lawful in alternative care settings. An owner, guardian of safety, and staff of a nursery, remand home, welfare centre, safety protection centre and development and rehabilitation centre must not mentally or physically assault or impose harsh punishment on any child under their care and guardianship except where such acts are reasonably applied for disciplinary purpose in accordance with the regulations specified by the Minister. Article 65 of the Act provides for punishment of children, which must be carried out reasonably for disciplinary purposes.  

The CRC Committee notes in its concluding observations in 2006 that corporal punishment is not compatible with the provision of the CRC and is not consistent with the requirement of respect for the child's dignity as specifically required by Article 28, paragraph 2 of the CRC. It urges Thailand to prohibit by law all forms of corporal punishment in the home and in all alternative care settings. 

3. Implementation, Monitoring and Prevention

   a. Implementing and Monitoring Mechanisms

To implement and monitor the measures dealing with violence against women and children, the Office of Women's Affairs and Family Development under MSDHS has established the Coordinating Centre for the Act of Protection of Victims of Domestic Violence B.E. 2550 and has dedicated 5-10 staffs or civil servants to work for the centre. The centre's main functions are to promote recognition and knowledge about the act for concerned units or organisations and the public by means of organising seminars and provide trainings for officers, as well as coordinate actions among concerned units or organisations in public, private sectors and civil society.  

In addition, the Operation Centre for the Protection of Victims of Domestic Violence has been established through a regulation of the Act of Protection of Victims of Domestic Violence since 2007 under the Ministry of Social Development and Human Security. The mandates are to provide immediate services for domestic violence victims; to coordinate, support and follow-up the practice of temporary protective orders; to coordinate with concerned officer/court regarding case settlement; to coordinate with local networks and administrative authorities and to collect data and information on domestic violence and report to the Office of Women's Affairs and Family Development.

The Bureau of Health Systems Development Department of the Ministry of Public Health has been established to oversee information systems of some 300 hospital-based One Stop Crisis Centre units, as described above. The Department of Prevention and Suppression of Crimes Concerning with Women and Children of the Royal Thai Police has been established to handle cases of violence against women. The Centre for the Protection of Children, Youth and Women was also established in the Royal Thai Police to assist children, youth and women who have been assaulted and sexually abused. This centre has adopted a more human rights and victim-centred approach, taking into account the vulnerabilities of the victims and their best interests. In addition, the Rights and Liberties Protection Department of the Ministry of Justice, was established in 2002 to protect victims of human rights violations including victims of domestic violence.

   b. Complaints Process

Responsibility for the administration of criminal law in Thailand is shared by several organisations: the Royal Thai Police, Office of the Attorney General, the Courts of Justice, the Ministry of Justice (Department of Probation and the Central observation and Protection) and the Ministry of Interior (Department of Corrections).

86 GIEACPC, Thailand Briefing for the Human Rights Council Universal Periodic Review.


89 Ibid.

90 Ibid.
In criminal case such as rape or other sexual abuse cases, the victim has to submit the complaint before the inquiry officials. After an arrest, the arrestees are required to be taken promptly to a police station, where the arrest warrant is read and explained to them. According to the Criminal Procedure Code, investigation is conducted by the inquiry officials, who are mainly the police.

In the case of domestic violence, complaints can be made not only by the victim, but also by anybody who sees or has information about a domestic violence situation. The Protection of Victims of Domestic Violence Act states that it is the public duty of everyone to report domestic violence.

When a complaint is filed, the Act shortens the legal process so that the police have to investigate the complaint immediately and the public prosecutor has to file the case before the court within 48 hours. The court can force the offender to pay compensation to the victim and/or prohibit the perpetrator from returning to the house or getting in close contact with the victim.

c. Protection and Rehabilitation

The Protection of Victims of Domestic Violence Act provides legal grounds for the development of rehabilitation programmes for perpetrators of violence against women. The Act grants the court authority to assign rehabilitation, counselling, probation, public service, or parole to offender and/or to force the offender to pay compensation to the victim.

The Ministry of Social Development and Human Security has established a 24-hour hotline service also known as the Prachabodi Centre (hotline telephone number is ‘1300’). The centre’s principle functions is to receive reports on cases of violence, then coordinate with the organisations/units concerned, notably the Department of Social Development and Welfare, and the Provincial Office of Social Development and Human Security. The agencies will coordinate in directing the witnesses/victims/survivors of violence to appropriate services i.e. medical treatments, legal services or other forms of assistances. Moreover, the service is available for all victims of all forms of violence regardless of their nationalities.91

Additionally, the Department of Social Development and Welfare of the MSDHS has established free shelters called ‘Emergency Home for Children and Family’. The shelters are available in Bangkok and every province. Target groups include women and children who are victims of violence, sexual harassment, negligence, exploitation, orphans and women with unwanted pregnancy.92 The Association for the Promotion of the Status of Woman has also established Emergency Homes, which house more than 300 women. The target groups include women and children who are victims of domestic violence and women with unwanted pregnancy.93

The Department of Social Development and Welfare of the MSDHS has allocated an annual budget for rehabilitation/empowerment programmes for women and children who are victims of violence at the Kredtrakarn Centre for Women and Girls’ Protection and Career Development, located in Nontaburi province. The Centre provides compulsory education for women and girls, as well as career training in various areas e.g. culinary skills, hospitality services, and production of handicrafts.94

d. Prevention Strategy

The Office of Women’s Affairs and Family Development, together with partner organisations, organises an annual campaign each November as the Campaign Month Ending Violence against Women, designating the November 25 as the national ‘Ending VA W’ day. The campaign is launched at the beginning of the month of November every year, and is carried out throughout that month. The main message of the campaigns to promote public awareness of violence against women as a serious social problem in Thailand which has detrimental effects on the family, community, as well as on society as a whole.95

The Office of Women’s Affairs and Family Development has coordinated with, and requested cooperation from the media i.e. the country’s main television channels, newspapers and radio programmes to broadcast spots, news pieces and articles, which includes statistics on violence against women. The campaign includes organisation of national seminars and a popular campaign.


92 Ibid.

93 Ministry of Foreign Affair, “Thailand’s policies and initiatives on the prevention of violence against women.”

94 Ibid.

95 Ibid.
In addition, the MSDHS continues to develop a community-based system, operating in all regions of the country, to protect women from domestic violence. The programme focused on training community on women's rights and abuse prevention to increase community awareness of these problems.96

4. Role of Non-State Actors

a. Assistance to Victims

According to the US Department of State Reports on Human Rights Practices of 2009, there are emergency hotlines, counselling services and temporary shelters that are supported by non-governmental organisations in Thailand.97 According to a Bangkok Post news article on August 21, 2010, reporting on the high level of domestic violence cases in Thailand’s Upper North provinces, also indicates that there are 10 branches of the Friends of Women Foundation set up across the country that help women and children victims of domestic violence.

b. Prevention Programs

In 2009, following the success of the 'Say NO' campaign in mobilizing youth voices, UNIFEM (now UN Women) initiated a Regional Programme to End Violence Against Women by Addressing the Normative Dimensions of Gender-Based Violence. This Programme was piloted in Thailand through initiatives with students in Thai schools as well as international schools and universities.98

Additionally, UNIFEM collaborated with the Office of the Basic Education Commission at the Ministry of Education to develop the joint programme 'Youth Say NO to Violence Against Women in Thailand'. The objectives of this programme are, firstly, to build knowledge and understanding of Thai youth about the perceptions, attitudes and behaviours that justify violence against women and children and to gain the support and buy-in of teachers and school administrators to help implement the programmes with youth. Secondly, to organise student-led school-based activities geared toward raising awareness and reducing violence against women and children and finally, to analyse 2008 Basic Education Curriculum and provide recommendations on integrating VAW modules into learning.99

c. Monitoring and Cooperation

NGO Networks play an important role in protecting and assisting children and women who are victims of all forms of violence. Those NGOs have worked in hand with the state agencies in the protection and prevention of violence against women, a multi-stakeholder partnership that has been proven over time to be very effective in combating violence against women in Thailand. The example of such cooperation are the development of an on-line database of violence against women (http://www.violence.in.th), the organising of national, regional and provincial seminars on violence against women -related topics, as well as the promotion of a national campaign on violence against women by setting November as the Campaign Month for Ending Violence against Women and Sunday as Family Day Campaign.100

5. Progress Indicators and Challenges

Although the Penal Code prohibits sexual violations, i.e. rape, indecent acts, and distribution or exhibition of obscene materials, and the Civil Servant Regulations Act prohibits sexual harassment, in reality, there are some obstacles to eliminating violence against women as well as children. These obstacles include lack of political will, structural gender inequality, anti-women’s rights and political backlash (in some cases influenced by various cultural or religious fundamentalism), controversy over strategies and approach, inadequate and uneven data, inadequate resources and the need for coordinated and multifaceted efforts by government, non-governmental organisations and other actors.101

According to the Penal Code, rape is illegal and the Code permits authorities to prosecute rape cases, and the prosecution process begins. Nonetheless, the Juvenile

97 Ibid.
100 Ministry of Foreign Affairs, “Thailand’s policies and initiatives on the prevention of violence against women.”
101 ESCAP, Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, 11 – 12.
Observation and Protection Department reported that sexual violence in Thai society was increasing gradually. Importantly, some youths probably have the attitude that rape is an acceptable action in his group, or among his peers. Hence, the attitude on rape and other sexual abuse is a challenge in combatting violence against women in Thai society.

Conflict in the southernmost provinces of Narathiwat, Yala and Pattani is also a challenge because it affects women and children both directly and indirectly. Regarding indirect effect of violence, the data submitted by the Society for Threatened People, an NGO in special consultative status, shows that the health of pregnant women in the southernmost provinces has sharply deteriorated due to violence. The number of women dying in childbirth due to pregnancy complications has skyrocketed because the widespread violence prevents the women from getting sufficient prenatal care. The lack of health personnel and the violent attacks have forced hospitals to cut down their outreach services to the bare minimum. Many pregnant women are suffering from malnutrition, stress and anaemia, leading to an extremely low-weight of new-borns. While the national birth weight is 2.5 kg, many new-borns in the South weigh as low as 800 grams at birth, which results in many illnesses. Many of them die before their first birthday. The infant mortality in southern Thailand is 30% higher than the national average.

6. Recommendations for Further Study

Violence against Women Sex Workers

Violence against female sex workers, both physically and sexually, by clients or brothel supervisors is one of the major problems in Thailand. A study in 2007 of female sex workers highlighted that 15% of women had experienced violence in the week before the survey. In addition, sex workers who experienced violence find that if they report any crime, even very violent crimes like rape, they are threatened with arrest on prostitution charges and frequently turned away from the police station. They also find that they struggle to have complaints taken seriously as well. Unable to seek help from police and local authorities for fear of being prosecuted or unfairly judged due to stigmatization, sex workers have to tolerate these abuses, which also make them vulnerable to HIV.

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C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

Over the past century, rampant poverty and political instability has marred the ASEAN region and has undoubtedly led to the infiltration of organised criminal networks seeking to exploit vulnerable men, women, and children. \(^{105}\) Exploitation of women and children has become a substantial problem in Thailand, which takes many forms of exploitation i.e. forced labour, child soldier, illegal migration for the purpose of forced labour, and trafficking in persons for sexual purposes such as prostitution in the sex industry. Women and children are often lured into commercial sex and forced into prostitution at the hands of their captors. \(^{106}\)

Human Trafficking

Thailand is a source, transit and destination country for trafficking of children and women for sexual purposes and labour, including forced begging. As a country of origin, a lot of Thai women and children, including hill tribe women and girls are trafficked for sexual exploitation, in particular, within the country women were trafficked from the impoverished Northeast and the North to Bangkok. However, internal trafficking of women appeared to be on the decline, due to prevention programs and better economic opportunities. On the other hand, a number of women and children are trafficked to Japan, Malaysia, South Africa, Bahrain, Australia, Singapore, Europe, Canada and the United States for sexual and labour exploitation is increasing gradually. \(^{107}\)

As a transit country, criminals have used Thailand as a gateway for trafficking victims to various countries, including Malaysia and Hong Kong. A number of women and girls from Burma, Cambodia, and Vietnam transit through Thailand's southern border to Malaysia for sexual exploitation primarily in Johor Bahru, across from Singapore. Burmese, Khmer, Laos and ethnic minority girls have also been reportedly trafficked in border areas and into major urban centres and through Thailand to third countries such as Malaysia, Japan and destinations in Europe and North America. \(^{108}\)

As a destination country, Thailand is a target for trafficking women and children to be exploited from the countries close to its borders such as Laos, Myanmar, Cambodia, and China, including Russia and Uzbekistan, for sexual and labour exploitation. \(^{109}\) Children are trafficked for commercial sex and forced labour in begging, fishing, and fish processing. Many Burmese victims voluntarily migrate to Thailand and are later coerced into working in agriculture, factories, construction, commercial fisheries industries, begging, or as domestic workers. The number of migrants in Thailand is increasing annually; migrants (including ethnic minorities and stateless people) are at a greater risk of being trafficked than Thai nationals. \(^{110}\)

Undocumented migrants remain particularly vulnerable to trafficking, due to their economic status, education level, language barrier, and lack of knowledge of Thai law. Trafficked migrants in Thailand have been found employed in maritime fishing, seafood processing, low-end garment production, and domestic work. \(^{111}\)

Statistically, the data collected by the Anti-Human Trafficking Operation Centre of the Mirror Foundation shows the number of human trafficking cases as follow:

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106 Ibid., 105 – 106.


109 Aikapin Chatchom, “Human Trafficking in Southeast Asia: Prevention and Suppression in Thailand” (paper presented at the ALIN International Academic Conference on Asia’s Emerging Laws in the Digital Age, Faculty of Law, Chulalongkorn University, Bangkok, Thailand, December 6–7, 2007).

110 The number of refugees and displaced person from Myanmar (with estimated 135,000 official and unofficial residents) are now living in nine border camps for displaced persons from Myanmar in Thailand. They are sometimes considered under the umbrella of ‘migrants’; see Andy West, Children on the Move in South-East Asia: Why child protection systems are needed (London: Grasshopper Design Company, 2008), 5 – 6.

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Table 4: Statistics of human trafficking cases in Thailand during 2008-2011, collected by the Mirror Foundation

<table>
<thead>
<tr>
<th>Year</th>
<th>Fisheries</th>
<th>Begging</th>
<th>Prostitution</th>
<th>Others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>27</td>
<td>49</td>
<td>8</td>
<td>2</td>
<td>96</td>
</tr>
<tr>
<td>2009</td>
<td>138</td>
<td>98</td>
<td>12</td>
<td>2</td>
<td>288</td>
</tr>
<tr>
<td>2010</td>
<td>48</td>
<td>158</td>
<td>17</td>
<td>3</td>
<td>243</td>
</tr>
<tr>
<td>2011</td>
<td>38</td>
<td>134</td>
<td>15</td>
<td>0</td>
<td>189</td>
</tr>
</tbody>
</table>

Source: Mirror Foundation, http://www.notforsale.in.th/

Worst Forms of Child Labour

Generally, Thai labour law prohibits employment of children under the age of 15.112 Nevertheless, one exception exists for children 13 to 15 years old who have parental permission to perform agricultural work during school breaks or non-school hours as long as the employers provide a safe work environment. Children aged 13-15 and 15-18 are not to be employed in prohibited occupations, or under conditions that do not meet standards set out under Thai labour law (which currently varies between the two groups), or in circumstances not covered by Thai law (for example as homeworkers or in agriculture).

Thailand has been successful in reducing child labour past 15 years of age due to positive measures on social and economic development and a reduction in population growth. The number of child labourers in Thailand has decreased to 510,000 in 2010, compared to 580,000 in 2006 and 640,000 in 1996.113 However, some forms of child labour persist. The synthesis report of Thammasat University in 2006 on Assessing the Worst Forms of Child Labour in Selected Provinces of Thailand: Chiang Rai, Tak, Udon Thani, Samut Sakhon, Songkla and Pattani, which is a comprehensive research conducted in six selected provinces of Thailand, shows that children in those provinces experienced worst forms of child labour as described by ILO Convention No. 182.114

The data from 2,744 child labourers in six selected provinces of Thailand shows that a very high proportion of all the child labourers were exposed to hazardous working conditions such as dust and smoke (40%), noise (26%), chemical substances (26%) and 'moral harms' (15%). Furthermore, many children faced various forms of abuse by employers such as; physical confinement (15%), physical punishment (8%), general harassment (20%), sexual harassment (7%), rape (1%) and verbal humiliation (15%). In general, child labourers were paid less than adults even if they carried out the same tasks. Half of the child labourers surveyed was paid less than 2,000 baht (approximately USD 65) per month. This is roughly half of the daily legal minimum wage in Thailand.115

Prostitution and Sex Tourism

Child prostitution, which is a form of worst form of child labour pursuant to the ILO Convention No. 182, remains a significant problem in Thailand. It appears in various forms: from forcing girls (and less commonly boys) from neighbouring countries and local hill tribes into prostitution, ‘debt-bondage’ into brothels, to living on the streets with their peers, and voluntarily selling sex when opportunity arises.116 According to the Ministry of Social Development and Human Security, the general trends show a decline in a number of Thai children trafficked into the local sex industry. Instead, they are being trafficked aboard, to Japan and Australia via Malaysia and Hong Kong.117 With this trend, however, is an increase in the number of foreign children trafficked to Thailand for sexual exploitation.118 Boys and girls from Cambodia, China (Yunnan Province), Lao PDR,

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112 Labour Protection Act B.E. 2541 (1998), Section 44.
115 Ibid.
117 Ibid.
118 Ibid.
Myanmar, and Vietnam, as well as ethnic minority groups living in northern Thailand, for example hill tribe people, are trafficked to larger Thai cities for sexual exploitation.

Consistent with the UNICEF, an estimated 1.8 million children (mainly girls but also a significant number of boys) enter the multi-billion dollar commercial sex trade annually in Southeast Asia. In addition, the estimated number of child prostitutes in Thailand varies depending on the source of the figures and the method of estimation. Remarkably, among those statistics, an estimate of 60,000 children under 18 are involved in prostitution, and 75,000 children under the age of 16 are involved in the sex industry, working in brothels, bars, and nightclub.

The sex industry contributes more than USD 22 billion annually to Thailand's gross domestic product. This statistic underscores why the sex industry is so entrenched in Thai culture. Commercial sex has become a multibillion business, more lucrative than the drug trade. As a result, Thailand has become a destination country, receiving women from other Asian and non-Asian countries.

Child sex tourism is defined as the commercial sexual exploitation of children by persons who travel from their own country to another. Trends show that Thailand is one of the most popular countries of destination for child sex tourism, where sex tourists are attracted mainly because child prostitutes can be obtained cheaply and easily. In Thailand, sex tourism takes place in a variety of ways: the ago-go bars of the Patpong and Nana areas in Bangkok and Pattaya; and in many regions of the country. The islands, especially Phuket, are hot spots for sex tourism. Children, including men and women, are readily available in sex establishment and are approached directly in the street by tourists seeking sexual contact.

**Child Soldiers in the Southern Thailand**

With regard to child soldiers, there were no reports of persons under the age of 18 conscripted or recruited into government armed forces. However, the scale and exact nature of children's involvement in non-state armed groups remains unclear. The separatist group in southern Thailand recruited teenagers under the age of 18 to carry out attacks by using Islamic schools to indoctrinate ethnic Muslim–Malay children with a separatist agenda. There is evidence that children have been targeted for recruitment by non-state armed groups and used by them in a variety of roles, including direct participation in hostilities.

Furthermore, the report of the Working Group on Justice for Peace on ‘Human Rights under Attack’ shows that the Ruam Thai Team, which is a group of people formed by residents in Yala, Pattani, Narathiwat and some districts in Songkhla, has reportedly expanded its defence force training to include 300 children with some as young as 8-10 years old. The group began to provide weapons

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125 Ibid.

126 Ibid.

127 IIMA and VIDES, “Joint Statement on The Situation on the Rights of the Child in Thailand.”


and training for residents in the South in 2005 in order to defend themselves against the insurgents. In addition, this group was involved in an attack in May 2007 in Kolomudo village, which left five youths dead.

Moreover, research by Child Soldiers International (CSI) and Justice for Peace Foundation (JFD) in 2010 also demonstrated a pattern of unlawful recruitment and use of children by Chor Ror Bor, one of the village defence militias established in the south by the Ministry of Interior.133

b. Root Causes of Exploitation

Social Causes

Focusing on social factors, during the latter part of the 20th century, Thailand saw the creation of rural-based poverty, mainly resulting from export-led policies for industrial growth. Poverty frequently correlates with illiteracy, limited employment opportunities, poor qualification and bleak financial circumstances. Thus, poverty-stricken families can become desperate for money, and children may become at risk to procurement agents for the child sex industry.134 The increase of materialism and consumerism among some Thai families, caused by globalization of the economy, media and the influx of consumer goods, may have led some parents to view their daughters as a quick and convenient method of making money to buy consumer goods. Due to the free movement of people, goods and services across international borders, globalization has resulted in the increase of trafficked children for the purpose of commercial sexual exploitation.135

Economic Causes

According to the organisation End Child Prostitution Pornography and Trafficking UK, there are 800,000 to 900,000 hill tribe people living in the border region of northern Thailand, who live in extreme poverty and who do not have citizenship cards.136 Because of lack of citizenship, they do not have access to government services such as education and health care. Hence, they are extremely vulnerable to exploitation and trafficking both within and outside the country. In addition, individuals from neighbouring countries, as well as from further away such as Uzbekistan and Fiji, migrate to Thailand for reasons including fleeing poverty.137 For Thai families, some poor families themselves prostitute their own children or sell their children into the sex trade.

Cultural Causes

Cultural factors also play an important role in exploiting women and children for sexual purpose in Thailand. There are regional and ethnic aspects contributing to the occurrence of child prostitution. In some ethnic minorities, prostitution is deemed acceptable through the concept of karma and merit making in Theravada Buddhist society. With this belief, a girl can show gratitude and gain merit by raising money to support her family, and with the rising demand for females in the growing sex industry, daughter can fulfil this cultural mandate by working as prostitutes.138 In addition, in many cases, child prostitution may also exist as a family trade where children live with their parents and sell sex as part of the household economy. In this sense, prostitution may be the best choice available for individual children who believe it to be morally acceptable.139 Thus, gender discrimination also works in tandem with poverty in cultural norm.

Political Causes

Government undertaking and policies, in particular, educational policies, can put children at risk of prostitution, for instance, women have less educational and work opportunities than men. In addition, for survival, children from impoverished families are forced to drop out of school in order to help their parents earn a living. Consequently, they must find means of earning a living. Due to lack of

135 Ibid.
137 Ibid.
education and low salaries, educational policies may leave some children with little or no other alternative, but to enter prostitution to earn money. When children enter the ‘labour pool’ early in life, their fate is sealed and they are likely to remain in the cycle of poverty and illiteracy. This leads to an ever-ready supply of child labour, a situation that fuels the child sex trade. The growing demand for child sex tourism is another contributing factor. Importantly, many children along Thai borders do not have, or have lost, their birth certificates (and/or family documents), which are necessary for initial school enrolment and to obtain legal employment.140

c. Impact of Exploitation

Exploitation of women and children violate fundamental rights of women and children. The Report of the Gender Equality and Empowerment Section, UNESCAP, shows that exploitation affects health and social dimensions.141

Health Impacts

Statistics show that sexual exploitation increases the risk of contracting diseases from sexual activities such as tuberculosis and, in particular, transmission of HIV/AIDS, besides being in danger of becoming pregnant and seeking backstreet abortion.142 Statistically, in 2007, 12,000 to 17,000 children (aged 0-14) and 400,000 to 860,000 adults aged 15 and older are living with HIV143. This represents an increase from the 2001 estimate of 7,500 to 14,000 Thai children living with HIV.144

According to experts of the Thai Working Group and the 2005-2025 Asian Epidemic Model Project for HIV in Thailand, unprotected sex is a major cause of HIV/AIDS infection. Statistics show that in 2010, Thailand had 1,148,117 persons living with HIV/AIDS (PLHA).145 Majority of AIDS patients (93.95%) are in productive age (15-59 years old) with the ratio of female PLHA and male equivalent to 2:1.146 Importantly, most of PLHA acquired the virus through unprotected sex (84.17%).147

In addition, a study on child prostitution in Thailand shows that because of poor living conditions, child prostitutes are also at high risk of mental illness, substance abuse, and violence--including injuries, rape and death.148

Social Impacts

Exploitation prevents women and children from full social, economic and political participation. In fact, due to poverty, many children as young as 13 years old abandon school before having completed compulsory junior secondary education to be employed in informal labour. The majority of them belong to vulnerable groups. They usually work as countrymen, bricklayers or industrial workers.149 Furthermore, because child prostitutes can be obtained cheaply and easily, sexually active children are also at a high risk of complicated pregnancies. Such pregnancies could lead to backstreet abortions. When the pregnancy is not terminated, there is a risk of the ‘chain effect’ where mothers tend to be at risk of perpetuating the behavioural cycle of physical, emotional or sexual abuse with their children.150 Moreover, HIV positive children are stigmatized and find it difficult to attend schools in the community they belong. The government does not monitor this situation; neither does it set up effective mechanisms to reduce stigmatism in the community and in schools.

2. De Jure State Responses

a. Bases of State Responsibility

International Level

In line with the UDHR, the principles of equality, non-

discrimination, and equal protection of the law are bind Thailand (B.2.a). Thailand ratified the CEDAW and OP-CEDAW. Article 6 of the CEDAW obligates the State party to suppress of exploitation of women as follows:

State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Regarding exploitation of children, Thailand ratified the CRC, OP-CRC-SC and OP-CRC-AC. Article 19 of the CRC provides that all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse shall be protected against. In addition, Article 34 of the CRC stipulates the obligations to protect children from exploitation that:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

The OP-CRC-SC provides the definitions of sale of children, child prostitution and child pornography. Article 2 states that:

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.’

In addition, according to Article 3 of the OP-CRC-SC, Thailand has to ensure that sale of children, child prostitution are fully covered under its criminal laws.

Aside from the OP-CRC-SC, Thailand also ratified the OP-CRC-AC. According to the obligations under this Protocol, Thailand has to take all measures to ensure that no children under the age of 18 is recruited by the Thai armed forces and could be used in armed conflict and no children take direct part in hostilities in accordance with obligations stated in the Protocol as:

Article 1
States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.’

Article 2
States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.’

Thailand is also obligated to ensure decent work in accordance with international labour standards as it has agreed to the Declaration on Fundamental Principles and Rights at Work set by the ILO in 1988, as well as ratified the labour conventions issued by ILO

Among 14 ILO Conventions, Convention No. 182 spotlights on the urgency of action to eliminate as a priority the worst forms of child labour, without losing the long-term goal of the effective elimination of all child labour. According to this Convention, Thailand shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. In addition, Article 3 the Convention defines the term of ‘worst form of child labour’ as:

For the purposes of this Convention, the term the worst forms of child labour comprises:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt
bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.'

In addition, Convention No. 138 ensures that children do not start working too young by setting the age at which children can legally be employed.

Furthermore, the ILO's mandate on gender equality is to promote equality between all women and men in the world of work. This mandate is grounded on ILO Conventions of particular relevance to gender equality – the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100), Workers with Family Responsibilities Convention, 1981 (No. 156) and the Maternity Protection Convention, 2000 (No. 183). Among these ILO Conventions, Thailand ratified ILO Convention No. 100; therefore, the country has the obligation to promote equal remuneration for all male and female workers.

Regional and Bilateral Level

The problem of human trafficking is not only one of significance in Thailand, but also manifests as a major problem challenging all countries in the Greater Mekong Sub-region (GMS). Thailand is serious about strengthening cooperation against human trafficking through bilateral and multilateral agreements among countries in the Mekong Sub-region, which is susceptible to human trafficking.151 The following four bilateral and multilateral MOUs have been signed:

(1) MOU between Thailand and Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victim of Trafficking in 2003. This MOU leads to formulating the cooperation projects in 3 areas; 1) return and reintegration, 2) prosecution process guidelines and 3) information sharing.


(4) MOU on Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) signed in 2004.152

(5) MOU between the MSDHS and the International Organization for Migration on Cooperation to Prevent Trafficking in Persons and to Assist Vulnerable Persons in Risk of being Trafficked in 2007.

(6) MOU between Myanmar and Thailand on Cooperation to Combat Trafficking in Persons, especially Women and Children in 2009.

In addition, Thailand is in the process of initiating similar bilateral MOUs with China and Japan. In 2006, a Joint Task Force on Counter Trafficking in Persons between Thailand and Japan was established and the two countries are reviewing the draft Standard of Procedures on Protection, Assistance, Repatriation and Reintegration of Victim of Trafficking in Persons.


152 Jayanguta, “The Thai Government’s Repatriation and Reintegration Programmes,” 236

Kitti Jayangakula
b. State Policies Against Exploitation

Legal Measures

The Constitution addresses issues regarding exploitation of women and children in a number of sections. Section 4 guarantees the protection of human dignity and rights and liberties, Section 30 enshrines the equality and the protection of the rights of children and youth from unfair treatment under Section 52 as stated above (see B.2.b).

Apart from the Constitution, Thailand also has a number of domestic laws regarding the issue of exploitation of women and children. In 1997, the Penal Code Amendment Act (No.14) B.E. 2540 (1997) amended a number of Sections of the Penal Code to criminalise human trafficking for sexual purpose. Section 282 of the Penal code defines sexual offences to include the procurement or trafficking of boys or girls under 18 years old for the purpose of sexual gratification regardless of consent that:

Whoever, for sexual gratification of another person, procures, lures, or traffics a man or woman for an indecent sexual purpose, even with his or her consent, shall be punished with imprisonment of one to ten years, and a fine of two thousand to twenty thousand baht.

If the commission of the offence in the first paragraph is committed against a person over fifteen years but not yet over eighteen years of age, the offender shall be punished with imprisonment of three to fifteen years, and a fine of six thousand to thirty thousand baht.

If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment of five to twenty years, and a fine of ten thousand to forty thousand baht...’

Further, the procurement, lure, traffic, or bringing of a man or woman for an indecent sexual purpose committed by using deceitful means, threats, physical assault, immoral influence, or mental coercion by any means and by the offender is punished according to Section 283 and Section 284 of the Penal Code.153

In addition, the Penal Code Amendment Act (No.14) also added two more Sections of 283 bis and 312 ter, which provide that:

Section 283 bis Whoever brings a person over fifteen years but not yet over eighteen years of age for an indecent sexual purpose, even with the consent of that person, shall be punished with imprisonment not exceeding five years, or a fine not exceeding ten thousand baht, or both.

If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment not exceeding seven years, or a fine not exceeding fourteen thousand baht, or both...

Section 312 ter. Whoever, for gaining illegal benefit, receives, sells, procures, lures, or traffics a person over fifteen years but not yet over eighteen years of age, even with the consent of that person, shall be punished with imprisonment not exceeding five years, or a fine not exceeding ten thousand baht, or both.

Further, the procurement, lure, traffic, or bringing of a man or woman for an indecent sexual purpose committed by using deceitful means, threats, physical assault, immoral influence, or mental coercion by any means, the offender shall be punished with imprisonment of five to twenty years, and a fine of ten thousand to forty thousand baht.

• If the commission of the offence in the first paragraph is committed against a person over fifteen years but not yet over eighteen years of age, the offender shall be punished with imprisonment of seven to twenty years, and a fine of fourteen thousand to forty thousand baht, or life imprisonment.

• If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment of ten to twenty years, and a fine of twenty thousand to forty thousand baht, or life imprisonment, or death penalty.

• Whoever, for sexual gratification of another person, receives the person who was procured, lured, or trafficked as provided in the first, second, or third paragraph, or aids or abets in the commission of such offence, shall be punished with the punishment accordingly provided in the first, second, or third paragraph as the case may be.’

Section 284 provides that:

• Whoever brings another person for an indecent sexual purpose, by using a deceitful mean, threat, physical assault, immoral influence, or mental coercion by any mean, shall be punished with imprisonment of one to ten years, and a fine of two thousand to twenty thousand baht.

• Whoever conceals the person who was brought away as provided in the first paragraph shall be punished with the same punishment as the offender who brought that person away.

• The offence in this Section is the compoundable offence.

153 Penal Code, Section 283 provides:
• Whoever, for sexual gratification of another person, procures, lures, or traffics a man or woman for an indecent sexual purpose, by using
If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment not exceeding seven years, or a fine not exceeding fourteen thousand baht, or both.’

Laws on Human Trafficking

In 2008, the Prevention and Suppression of Human Trafficking B.E. 2551 (2008) was promulgated. The Act provides a comprehensive approach in addressing the issue of human trafficking and makes punishment of traffickers more severe and protection of victims, including regular and irregular migrants, more effective. In addition, the Act is targeted at preventing, circumventing, and suppressing a wider range of activities related to human trafficking, including the procurement or trafficking of persons into or out of Thailand for prostitution, sexual exploitation, production/distribution of pornography, slavery, forced labour or services, begging, organ amputation for commercial purposes, or any other forms of exploitation. A definition of exploitation in Section 4 of the Act, which is taken from the Optional Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, stipulates that:

Exploitation means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.

Victim protection under the Act covers all persons, regardless of their gender or nationality. Victims can claim compensation from offenders for damage caused by human trafficking and will be provided with shelter and other necessities including physical, psycho-social, legal, educational and healthcare assistance. The Act also ensures that all trafficked survivors are considered and treated as victims, not criminals.154

Apart from the Anti-Trafficking in Persons Act, Thailand has a number of domestic laws dealing with human trafficking issue, for instance, the Child Protection Act, B.E. 2546 (2003) provides for protection of children from all forms of abuses, exploitation, violence and gross negligence. It is clearly stipulated that any child below the age of 18 is protected by the State. A person is forbidden to force, threaten, induce, encourage, consent to, or act in any other way that results in the exploitation of a child or constitutes an act of torture, physically or mentally, against the child.

The Witness Protection Act, B.E. 2546 (2003), encourages women, child and adolescent victims (survivors) to be a witness or an informant in tackling trafficking ring or organized crime. Any victim who becomes a witness will be guaranteed the right to protection, proper treatment, and necessary and appropriate remuneration from the State as provided by law. The Protection of Victims of Violence in Family Act B.E. 2550 (2007) protects everyone in the family, especially children and women, from all forms of abuse and exploitation. The Promotion of Child and Youth Development Act B.E. 2550 (2007), contributes directly to the promotion of programmes and activities for children and youth at all levels. The Act helps empower and prevent them from becoming victims of all forms of exploitation. Additionally, the Employment of Aliens Act B.E. 2551 (2008) ensures that migrant workers who are issued a work permit will then receive various welfare and labour law protection entitlements in accordance with the Labour Protection Act, B.E. 2541 (1998). The Act also imposes heavier penalties on employers who engaged in human trafficking and forced labour.

Laws Relating to Child Labour

Labour rights are mainly protected by the Labour Protection Act B.E. 2541 (1998). There are relevant provisions dealing with specific labour issues such as working hours, remuneration, child labour, female labour, sick and maternity leave, dismissal as well as termination of employees and welfare and social security of employees. Regarding child labour, the Act prohibits the employment of a child under 15 years old (Section 44). To employ a child below the age of 18 years, an employer has to notify the labour inspector (Section45) and an employer is required to give a child labour a rest period of one hour for every four hours he has worked (Section 46).

Also, an employer should not ask a child employee below 18 years to work overtime or on holidays (Section 48). Additionally, child labour below 18 years are not allowed

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154 Prevention and Suppression of Human Trafficking B.E. 2551 (2008), Section 7.
to perform dangerous works such as rolling as well as stamping metal and works dealing with unsafe chemicals and poisonous microorganisms (Section 49). Moreover, child labour below the age of 18 years is also strictly prohibited from certain establishments such as gambling centres, slaughterhouses, dance clubs, and centre where liquors and other related beverages are served (Section 50). Above all, an employer is required to pay the remuneration or benefits of child employees only to child employees and not to any other persons other than the employees (Section 51).

In addition, a number of laws prevent child labour, such as the National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children B.E. 2539 (1996); the Ministerial Regulation concerning Wage Rate for Employment B.E. 2547 (2004); the Ministerial Regulation concerning Labour Protection in the Agriculture B.E. 2548 (2005); the Child Protection Act B.E. 2546 (2003); and the Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008).

**Laws Concerning Prostitution and Sex Tourism**

Regarding prostitution, especially child prostitution, the Penal Code Amendment Act (No.14) B.E. 2540 (1997) imposes heavier penalties to whoever commits a sexual offence against children, as stated earlier. Specifically, the Prevention and Suppression of Prostitution Act B.E. 2539 (1996) is the central legal framework prohibiting prostitution. Section 4 of the Act defines the prostitution as:

> [s]exual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not imposes heavier penalties to whoever procures, lures, compels, threatens children for the purpose of prostitution.

In addition, the prohibition of child prostitution is stipulated by Section 8 of the Act that:

Any person who, in order to gratify his or her sexual desire or that of another person, has sexual intercourse or acts otherwise against a person over fifteen but not over eighteen years of age in a prostitution establishment, with or without his or her consent, shall be liable to imprisonment for a term of one to three years and to a fine of twenty thousand to sixty thousand baht.

If the offence under paragraph one is committed in relation to a child not over fifteen years of age, the offender shall be liable to imprisonment for a term of two to six years and to a fine of forty thousand to one hundred twenty thousand baht.

If the act under paragraph one is committed in relation to one’s own spouse, and not to gratify the sexual desire of another person, the offender is not guilty.

Moreover, Section 9 provides that:

Any person who procures, seduces or takes away any person for the prostitution of such person, even with her or his consent and irrespective of whether the various acts which constitute an offence are committed within or outside the Kingdom, shall be liable to imprisonment for a term of one to ten years and to a fine of twenty thousand to two hundred thousand baht.

If the offence under paragraph one is committed against a person over fifteen but not over eighteen years of age, the offender shall be liable to imprisonment for a term of five to fifteen years and to a fine of one hundred thousand to three hundred thousand baht.

If the offence under paragraph one is committed in relation to a child not over fifteen years of age, the offender shall be liable to imprisonment for a term of ten to twenty years and to a fine of two hundred thousand to four hundred thousand baht.

If the offence under paragraph one, two or three is committed by means of fraud, deceit, threat, violence, the exercise of undue influence or coercion against her or his will in any manner whatsoever, the offender shall be liable to a one-third heavier penalty than that provided in paragraph one, two or three, as the case may be.

Any person who, in order to bring about prostitution, admits a person known to him or her as having been procured, seduced or taken away under paragraph one, two, three or four, or supports the commission of such offence shall be liable to the penalty provided in paragraph one, two, three or four, as the case may be.
Furthermore, there are a number of domestic laws that provide protection to women and children from sexual exploitation. For instance, the Labour Protection Act B.E. 2541 (1998) protects female and child employees from sexual exploitation. The Immigration Act B.E. 2522 (1997) prevents any alien whose behaviour is believed to have connection with commercial sexual exploitation from entering the country and the Money Laundering Control Act, B.E. 2542 (1999) prohibits transaction of money obtained from the commission of an act of sexual exploitation.

**Administrative Measures**

Thailand has been using various administrative measures to assist, protect and rehabilitate victims both physically and mentally, including proactive coordination with overseas agencies and creating networks for the assistance and protection of children and women with relevant government agencies, private sectors, international organisations, and volunteers.\(^{155}\)

A Cabinet Resolution on June 14, 2005 approved the establishment of the Operation Centre on Human Trafficking at three levels – provincial, national and international. The main functions of this centre are to coordinate the concerned organisations among the public sector, the private sector and communities, to protect and assist victims of trafficking and to develop the policy, campaign and information in this matter. The members of the centre committee include experts and representatives from relevant government, non-government organisations and international organisations. The government established 75 Provincial Operational Centres on Prevention and Suppression of Human Trafficking (POCHT) throughout the country to work collaboratively with relevant governmental agencies, NGOs and communities at provincial, national and international levels.\(^{156}\) Moreover, in the 2010 fiscal year, the government allocated a budget of more than THB 30 million for these centres to implement preventive measures against human trafficking.\(^{157}\) In 2009–2010, the government arranged 18 trainings for 975 competent officials. These programs are aimed at enhancing knowledge and skills of these officials in order to effectively implement duties according to the Anti-Trafficking in Persons Act.\(^{158}\)

On May 11, 2010, the Second National Policy, Strategy and Measures on Prevention and Suppression of Trafficking in Persons (2011-2016) were approved by the Cabinet. It serves as guideline for both government and non-government agencies to cooperate in combating human trafficking. This National Policy also supports prevention, suppression, assistance and protection, recovery and reintegration mechanisms at all levels: communities, provincial, national and international.\(^{159}\)

Correspondingly, in 2011, the Department of Labour Protection and Welfare of Ministry of Labour introduced the National Plan and Policy for the Elimination of the Worst Forms of Child Labour (2009-2014) as a master plan to protect child labour in accordance with non-discrimination and human right standards pursuant to the ILO Convention No. 182.\(^{160}\)

Additionally, from 2003–2008, Thailand initiated 11 domestic MOUs related to human trafficking to ensure effective coordination and implementation in accordance with relevant legislations and policies. The MOUs provide a set of clear guidelines on operational coordination and action among agencies responsible for assisting both Thai and foreign victims, from fact-finding, prosecution, rehabilitation to repatriation and reintegration. The domestic MOUs are as follows:


2. MOU on the Procedural Cooperation between Government and Non-Government Agencies Working with Cases of Trafficking in Women and Children B.E. 2546 (2003),

3. MOU on the Operational Guidelines of Non-Governmental Agencies Concerned with Cases of Trafficking in Women and Children B.E. 2546 (2003),

\(^{155}\) Akapin, “Human Trafficking in Southeast Asia”.  
\(^{157}\) MSDHS, “Thailand TIP Report 2010.”  
\(^{158}\) Ibid.  
\(^{159}\) Ibid  


Apart from provincial cooperation domestically, Thailand and Lao PDR have reached a provincial-level agreement, between Ubon Ratchathani of Thailand and Saravan of Laos, to jointly combat cross border crime, ranging from drug trafficking and the hiring of illegal immigrants to the flesh trade.

c. Assessment of State Policies

Human Trafficking

According to the TIP Report of the US State Department, despite the implementation of policies and programmes designed to respond to trafficking in persons, the situation of trafficked persons in Thailand did not improve enough and the government does not fully comply with the minimum standards for the elimination of trafficking.\(^\text{161}\)

The government continued implementation of its human trafficking law and conducted awareness-raising activities on human trafficking. The government continued to work on its implementation of regulations that will allow trafficked victims to temporarily live and work within Thailand, though victims generally continue to be detained in government shelters. The Thai government reported increase in trafficking prosecutions and convictions, but as of May 2011, there was insufficient data available to determine whether each of these could be categorized as human trafficking convictions.\(^\text{162}\)

The Thai prime minister chaired meetings with labour and civil society organisations to coordinate anti-trafficking efforts, which led to the development of the Thai government’s second six-year National Policy Strategy on human trafficking for 2011-2016.

Despite these significant efforts, the government has not shown sufficient evidence of increasing efforts to address human trafficking over the previous year, particularly in the areas of prosecuting and convicting both sex and labour trafficking offenders, combating trafficking complicity of public officials, and victim protection. The 2011 Trafficking in Persons (TIP) Report released by the US State Department, listed Thailand under the ‘Tier 2 Watch List,’ whereas it had previously been listed as ‘Tier 2’ nation. As a Tier 2 Watch List nation, it means that the country was making significant efforts to address the problem of trafficking but had not yet fully complied with the minimum standard for the elimination on trafficking. In addition, the TIP Report especially noted that the Thai government's failure to prosecute cases of human trafficking by law enforcement officials. Authorities reported investigating two cases of complicity involving four officials, including at the police colonel level, though there were no convictions or sentences of complicit officials during the year.\(^\text{163}\)
It is noted that the government’s ‘Nationality Verification and Granting an Amnesty to Remain in the Kingdom of Thailand to Alien Workers Programme’ offered inadequate legal rights to Burmese and other migrant workers and bound their immigration status to Thai employers, effectively leaving workers without legal recourse or protection from forced labour.

**Child Soldiers**

Thailand is a Party to the OP-CRC-AC and according to the Military Service Act B.E.2497 (1954), every Thai male is required to enlist in the military reserve force at the age of 18. At the age of 21, they are screened for physical disabilities and recruited for two years of military service as private soldiers. However, neither the Penal Code nor the Child Protection Act explicitly criminalises the recruitment of children under the age of 18. To complete the obligation under the OP-CRC-AC, the NGO Group for the CRC pointed out that Thailand needs to take measures to implement Article 4 of the OP-CRC-AC, especially in relation to recruitment of children for taking part in hostilities by NSAGs.  

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

According to aforementioned policies against exploitation of women and children, a number of special organs have been designed to respond to the implementation and monitoring of the policies. The Department of Social Development and Welfare, the Ministry of Social Development and Human Security is responsible for providing shelters, medical, rehabilitation, protection, informal education, occupational training and assistance to young girls working in commercial sex and difficult circumstance through its Occupation Assistance Programme.

The Women, Child and Youth Development Division and Department of Community Development have been transferred from the Ministry of Interior to the Ministry of Social Development and Human Security. This new structure is designed to help broaden the government’s efforts to build the capacities of women's groups and women’s development committees at both the village and district level. This structure also provides for the operation of early childhood development centres.

In addition, pursuant to the Anti-Human Trafficking Act, the Coordinating and Monitoring of Anti-Human Trafficking Performance Committee was set up to prepare and monitor the performance of the implementation and coordination plans of the agencies concerned.

Moreover, the National Human Rights Commission (NHRC) is an independent body that promotes and protects human rights in the country. The NHRC is also supposed to be implementing measures to monitor and address trafficking of women and children in cooperation with other National Human Rights Institutes in the Southeast Asia region, in accordance with the MOU of the Southeast Asia National Human Rights Institutes. Furthermore, under the Commission, the Sub-Committee on Child, Youth and Family was appointed to be responsible for the implementation of the CRC and its optional protocols. The Sub-Committee has been holding periodical meetings with relevant agencies to keep abreast of the progress and constraints in the implementation of the CRC and its optional protocols. It also conducts visits, receives complaints and conducts investigations and commissions researches and studies in order to make recommendations on policies and practices on child rights.

b. Complaints Process

The Penal Code states that police must take records of complaints, investigate and send a complete report to prosecutors. Alternatively, complaints about violations of children's rights can be sent to the NHRC. It is the Commission's duty to examine and propose remedial measures for acts which violate human rights and which are not being litigated in the court or upon which the court has already passed a final order or judgment. The complaints could either be submitted in person or by registered mail to the Office of the National Human Rights Commission, or to any of its members, or via a private organisation.

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Upon receiving the complaint, the Office of the National Human Rights Commission shall, without delay, notify the petitioner or the representative. The notification shall be made no later than three days after the date the complaint is received.

c. Protection and Rehabilitation

The government demonstrated mixed efforts to protect foreign and Thai victims of trafficking. The Thai law protects identified victims from being prosecuted for acts committed as a result of being trafficked. However, adult trafficking victims identified by authorities were sometimes detained in government shelters for several years. Foreign victims could not opt to reside outside the shelters or leave before Thai authorities were prepared to repatriate them. The Thai government opened three additional trafficking shelters for men, who were recognised under the Anti-Trafficking Act in 2008 as potential victims. The government refers victims of trafficking to one of nine long-stay regional shelters run by the Ministry of Social Development and Human Security, where they receive psychological counselling, food, board, medical care, and legal assistance.

Foreign adult victims of trafficking identified by authorities continued to be detained in government shelters and typically cannot opt to reside outside a shelter or leave before Thai authorities are prepared to repatriate them. The trafficking law contains a provision for granting foreign victims the right to seek employment while awaiting conclusion of legal processes, and the Thai government passed a new regulation in May 2011 to implement this provision.

The government passed new regulations that will allow foreign victims to temporarily live and work within Thailand. Because of this detention practice, foreign victims of trafficking are not afforded the same opportunities as other foreign nationals who seek and receive permission to work in Thailand. There were regular reports of foreign trafficking victims who fled shelters, likely due to slow legal and repatriation processes, the inability to earn income during trial proceedings, language barriers, and distrust of government officials. There were reported instances in which victims opted not to seek designation as trafficking victims due to systemic disincentives, such as long stays in shelters during lengthy repatriation and court processes. NGOs reported that some individuals were trained by labour brokers on how to lie to government officials to prevent being identified as victims. While Thai law protects victims from being prosecuted, some victims were likely punished due to the lack of effective victim identification procedures and authorities’ efforts to arrest and deport immigration violators.

Foreign trafficking victims are not offered legal alternatives to their removal to countries where they may face hardship or retribution. Though the Anti-Trafficking Act contains a provision for granting foreign victims the right to seek employment while awaiting conclusion of legal processes, the Thai government does not appear to have provided victims with this right. During the year, the government revised and redistributed systematic trafficking victim screening procedures to guide law enforcement and other front line responders in the process of victim identification.

d. Prevention Measures

Thailand places great importance on preventative measures, recognising that deprivations of education and occupation opportunities as well as the incidence of poverty are key factors that cause women and children to fall victim to trafficking. Currently, the Thai Government is employing several strategies to prevent sexual exploitation of women and children such as poverty reduction, policies on promoting economic empowerment of women, especially those in the rural areas. It has education policies to ensure the right of all children born in Thailand to free basic education of at least 12 years according to the National Education Act B.E. 2542 (1999), and to require all children born in Thailand to attend nine-year compulsory education pursuant to the Compulsory Education Act B.E. 2545 (2002).

167 Ibid.
168 Ibid.
169 Ibid.
To prevent sex tourism, the Tourism Authority of Thailand (TAT) and the Ministry of Tourism and Sports have joined efforts by taking strict measures against travel and transportation agencies involved in sex tourism. Additionally, police officers under the Police Command for Elimination of Wrongdoing against Children, Youth, and Women, have been designated to carry out surveillance and investigation, and to notify the Tourist Police of any suspected cases of child-sex tourism.\textsuperscript{171}

In addition, the Ministry of Labour to prevent exploitation of children in the labour market, has a preparedness programme prior to entry into the labour market; public education on the prevention of child labour; and remedial measures, targeting employers, employees, child workers and students. These aim to raise awareness on exploitation of child labour, legal punishment and responsibilities.

Additionally, the government made notable efforts to prevent human trafficking through collaboration with international organisations and NGOs. Some prevention efforts include the involvement of the Prime Minister and Members of the Cabinet. While some activities aimed to raise awareness on trafficking within Thai society as a whole, others attempted to raise awareness among targeted high-risk industries. Throughout 2010 and early 2011, it reached more than 3,000 people from high-risk groups, as well as approximately 2,000. NGOs noted that awareness of human trafficking and labour rights grew, both among high-risk populations and among government officials. The government made increased efforts to educate migrant workers on their rights and their employers’ obligations to them.

In 2010, the government announced plans to collect additional funds from migrant workers undergoing nationality verification in order to underwrite the cost of deporting undocumented migrants. This could further increase workers’ debt.\textsuperscript{172} The government reportedly distributed USD 200,000 from its fund to assist trafficking victims and finance anti-trafficking activities - only a small portion of the government’s overall fund to assist trafficking victims.

In April 2010, the Thai government published its own report on the trafficking situation, its efforts to address it, trafficking statistical data, and recommendations on how to improve its operations. The government reported that random interviews with Thai migrants at overland border-crossing checkpoints prevented 171 potential victims of trafficking or other exploitation from traveling. Authorities also reported ‘labour checkpoints’ at international airports, though the government did not report identifying any potential or confirmed trafficking cases through these efforts.

Accordingly, the MSDHS has been conducting an extensive campaign through all forms of media about the new law and its severe penalties. Trainings and seminars on the new law have been organized continuously. The Thai Government also declared June 5 of every year a National Anti-Human Trafficking Day to raise awareness of trafficking and sexual exploitation nation-wide.

The government conducted awareness-raising campaigns targeting tourists’ demand for child sex tourism, but did not make any other efforts to reduce the demand for commercial sexual acts or forced labour. Thailand is not a party to the 2000 UN TIP Protocol.

4. Role of Non-State Actors

a. Assistance to Victims

At present, assistance to victims of commercial sexual exploitation and trafficking follows five steps,\textsuperscript{173} NGOs play a great role in every step, namely: rescue, orientation, court procedure and victim Protection, recovery and reintegration. One of the NGOs that play a major role to assist the survivors of human trafficking is the Paveena Foundation for children and women. The Foundation aims to help children and women who are victims of crime or have experienced cruelty of different types, and to provide rehabilitation programmes both physically and spiritually; to help children and women who have no shelter and protection to be able to stay by themselves; to develop professional skills among poor and underprivileged children; and to promote

\textsuperscript{171} Ibid.


Thai traditional activities. Thousands of people in trouble have contacted the foundation for help regarding cheating, being deceived into prostitution, rape, brutality, etc.

The Association for the Promotion of the Status of Women under the Royal Patronage of HRH Princess Soam Sawali has been the largest NGO providing emergency homes for women and children for more than 20 years. It has reached out to more than 40,000 people suffering from violence, HIV infection, AIDS and unwanted pregnancy. In addition to food, shelter and the necessities of survival, the Association provides consultation and vocational training, as well as courses for youths and nurseries for preschool children. The Foundation for Women (FFW) provides information, support, referral and emergency assistance to individual women affected by gender-based violence, particularly domestic and sexual violence. It cooperates with organisations in countries of destination in assisting women and children and preventing human trafficking. It also provides social and legal assistance to Thai and non-Thai women and children who are victims of national and cross border trafficking. FFW advocates for the rights of trafficked women and children, and cooperates with other organisations to defend their rights such as the right to compensation and civil remedies.

b. Prevention Programs

A number of campaigns in cooperation with NGOs to prevent exploitation of women and children have been promoted. A regional campaign to fight child trafficking in Southeast Asia, known as Asia against Child Trafficking (ACTs), was launched in 2001. The campaign is aimed at raising awareness and empowering communities to protect children from trafficking. In addition, the local NGOs from the region, including a number of local Thai organisations also participate in this on-going campaign.

The UNICEF has forged co-operation at the national and international levels for capacity building and establishment of child protection systems in 25 provinces of Thailand to reduce poverty and vulnerability of children. In 2007, the child protection system was piloted in six provinces affected by the Southeast Asian Tsunami. The objective is to protect children from abuse, neglect and all forms of exploitation, focusing on close cooperation between the public and private sectors.

The Ministry of Labour in cooperation with the ILO organised activities to prevent and find solutions to the trafficking problem, which include the Mekong Project to Combat Trafficking in Children and Women (TICW). TICW focuses on the improvement of working standards and protection of labour among 6 countries of the Mekong region. Further, the Sub-regional Advisory Committee focuses on awareness raising, training and handicap skills development, and capacity building for management of labour migration and prevention of trafficking in children and women for labour exploitation.

Several international NGOs, UN agencies and foreign countries have provided support financially and technically to the local projects related to the elimination of sexual exploitation in Thailand. There are a number of campaigns run by NGOs to prevent and protect vulnerable groups in Thailand namely. The Hotline Center Foundation is an anonymous telephone consultation service that can provide good suggestions to reduce emotional stress and helpful information. The Foundation organises training courses by consultants from various organisations on the HIV/AIDS issue. It runs campaigns on various issues via newspaper, magazine, radio and television. The president of the foundation estimates that the Center provides services to at least 30,000 cases annually. Approximately 65% of its clients were women. The Women’s Friend Foundation has been working hard to promote awareness of the unfair treatment of women by collaborating with many agencies to improve the social conditions of women, provide legal consultation for women in cases such as rape, harassment, unwanted pregnancy and discrimination. It offers training courses to sensitize those who are on duty related to violence (such as female police) to the presence of gender inequality.

The Education Means Protection of Women Engaged in Recreation or EMPOWER is an organisation that works with women in the entertainment sector. Their staff teaches them to know and protect their basic rights, to have other vocational skills and to attend academic classes. The main objectives are to train commercial sex workers to protect themselves, to be self-reliant, and to have more inner strength in order to be able to make their own decisions in solving various problems. EMPOWER also works on prevention of HIV/AIDS and distributes condoms, free of charge, to its members. It offers mobile classes at night on Thai and foreign language, and other professional skills.

174 Ministry of Foreign Affairs, “Answer to questionnaire on the protection of children from sexual exploitation.”

c. Monitoring and Cooperation

Thai NGOs are actively campaigning to solve major social problems of health, society, culture, politics and human rights. Most of their actions are challenging and gathering new ideas to solve these problems, and questioning existing systems and structures not functioning well for people's rights and welfare. NGOs have important roles in stirring up wide public interest in specific problems and initiate many activities, which have an impact on policies and social development.

In 2005, in Thailand, there were 580 organisations, 229 of which were governmental, while 331 were private organisations involved in helping children in trouble. NGOs’ focus on protection of children’s rights according to the Children’s Rights Act, including promotion of community organisations and support for family development, increased participation by children and networking. The functions include: keeping track of the situation and finding facts on children's conditions; investigating and reporting the violation of children's rights; helping children whose rights are violated; publicizing and distributing knowledge on children's rights and the works of international organisations; assembling all people concerned with children's rights and promoting proper policies; and recommending and extending help to children to claim their rights.176

5. Progress Indicators and Challenges

**Child Soldiers**

Regarding child soldiers, even though there were no reports concerning child soldier in Thailand; nevertheless, the situation in southern Thailand evidences that children and women were affected by NSAGs, including direct participation in hostilities. Moreover, Thailand currently host more than 15,000 refugees and asylum seekers from Myanmar, with numbers increasing each year as people flee armed conflict. These populations include children escaping from recruitment into the Myanmar state armed forces or NSAGs, who are at risk of refoulement due to inadequate protection by the Thai authorities. In addition, several Myanmar NSAGs have reportedly recruited and used child soldiers in Thailand.177

**Sex Tourism**

In this digital age, the Internet has facilitated the recent rise of child sex tourism by providing a convenient marketing channel. Websites provide potential child sex tourists with pornographic accounts and information on how to procure child prostitutes. The easy availability of information on the Internet strongly favours child pornography online and facilitates child abuse.178

**Human Shields**

The use of women and children as human shields to prevent authorities entering their villages has repeatedly occurred in the conflict in southern Thailand. In 2007, the Asia Report of International Crisis Group shows that villagers refuse to help police and they sometimes guard hostages or prevent officials from entering their villages by forming human shields of women and children.179 Furthermore, the Guardian on May 17, 2010, reported of ‘Thai protesters using children as shields’ during the political conflict in Bangkok.

6. Recommendations for Further Study

**Child Labour**

One main problem on exploitation of children in Thailand is child labour. As stated earlier, the manifestation of all four worst forms of child labour pursuant to the ILO Convention No. 182 are present in Thai labour industry. Furthermore, according to a study on the extreme forms of child labour in Thailand of the Institute for Population and Social Research, Mahidol University in 2010, the number of child labourers in worst forms of slavery or practices similar to slavery and work, which causes harm to health, safety or morals of children, has decreased steeply. As for child prostitution and the use of child for illicit activities, while the government concluded that the situation has improved, NGOs pointed out that the problems remain steady.180 Thus, for further study, focusing on the worst forms of child labour is necessary.

176 Ibid.


178 IIMA and VIDES, “Joint Statement on The Situation on the Rights of the Child in Thailand.”


Another emerging challenge is the luring for sexual exploitation via chat rooms in the Internet. According to a study conducted by an academic institution, two% of Internet users in Thailand aged between 15-24 years used chat room to meet unknown persons. Thirteen% of them then engaged in sexual activities with such individuals, ignoring the risk of falling prey to sexual exploiters and ending up eventually on child pornography websites. This kind of problem requires involvement and cooperation from the family, school and to relevant national agencies. To address it properly would require many pieces of legislation, including the Internet and Computer Act.181 Hence, this is a challenging issue for further study on the sexual exploitation of women and children.

### D. ABUSE AND DISCRIMINATION IN MIGRATION

As a middle-income country, Thailand is not only an origin and destination of large numbers of international migrants, but also a country of transit for asylum-seekers, victims of trafficking and irregular migrants.182 For the last two decades, the Thai migration policies allowed for yearly registration of migrants who illegally entered the country to temporary live and work in the country while awaiting repatriation.

#### Table 5: Estimate foreign population residing and working in Thailand, approximately end of 2009

<table>
<thead>
<tr>
<th>Category</th>
<th>Stay</th>
<th>Stay and work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional skilled and semi-skilled worker</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreigners with work permits</td>
<td>100,338</td>
<td></td>
</tr>
<tr>
<td>Diplomats and officials</td>
<td>6,148</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>106,486</td>
<td></td>
</tr>
<tr>
<td>Other temporary stay</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stay with Thais</td>
<td>14,946</td>
<td></td>
</tr>
<tr>
<td>Stay with Thai wife</td>
<td>11,381</td>
<td></td>
</tr>
<tr>
<td>Stay with resident families</td>
<td>1,098</td>
<td></td>
</tr>
<tr>
<td>Retirement</td>
<td>28,509</td>
<td></td>
</tr>
<tr>
<td>Others (including medical treatment and study)</td>
<td>65,175</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>121,109</td>
<td></td>
</tr>
<tr>
<td>Tourist and transit visa extension and visa changes</td>
<td>92,014</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>92,014</td>
<td></td>
</tr>
<tr>
<td>Students</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Higher education (2010)</td>
<td>19,052</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>19,052</td>
<td></td>
</tr>
<tr>
<td>Other regular</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residents awaiting nationality</td>
<td>233,811</td>
<td></td>
</tr>
</tbody>
</table>

182 ‘Irregular migrant’ refers to foreigners whose immigration or work status is not authorized. There are a number of ways that migrant workers can enter an irregular status:

- they may enter the country clandestinely or without approval;
- they may enter the country with a valid document, such as a visa or day-pass, but stay longer than permitted;
- they may be in the country legally but working without permission;
- they may have been working with permission but their status has changed, as when the work permit expires or the migrant changes employers.


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181 Ministry of Foreign Affairs, “Answer to questionnaire on the protection of children from sexual exploitation.”
### Table 6: Registered migrant workers in Thailand from Cambodia, Lao PDR, Myanmar, by type of work and nationality, December 2009

<table>
<thead>
<tr>
<th>Type of work</th>
<th>Total three nationalities</th>
<th>Cambodia</th>
<th>Lao PDR</th>
<th>Myanmar</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>1,314,382</td>
<td>124,761</td>
<td>110,854</td>
<td>1,078,767</td>
</tr>
<tr>
<td>Fishing</td>
<td>56,578</td>
<td>14,969</td>
<td>1,800</td>
<td>39,809</td>
</tr>
<tr>
<td>Seafood process</td>
<td>136,973</td>
<td>6,020</td>
<td>1,180</td>
<td>129,773</td>
</tr>
<tr>
<td>Agriculture</td>
<td>221,703</td>
<td>24,085</td>
<td>18,035</td>
<td>179,583</td>
</tr>
<tr>
<td>Construction</td>
<td>220,236</td>
<td>32,465</td>
<td>12,635</td>
<td>175,136</td>
</tr>
<tr>
<td>Agricultural process</td>
<td>65,305</td>
<td>6,635</td>
<td>3,677</td>
<td>54,993</td>
</tr>
<tr>
<td>Meat processing</td>
<td>8,852</td>
<td>442</td>
<td>792</td>
<td>7,618</td>
</tr>
<tr>
<td>Recycling</td>
<td>13,172</td>
<td>2,215</td>
<td>1,360</td>
<td>9,597</td>
</tr>
<tr>
<td>Mining, quarrying</td>
<td>1,843</td>
<td>61</td>
<td>35</td>
<td>1,747</td>
</tr>
<tr>
<td>Metal sales</td>
<td>12,556</td>
<td>995</td>
<td>2,191</td>
<td>9,370</td>
</tr>
<tr>
<td>Food sales</td>
<td>54,225</td>
<td>4,483</td>
<td>13,074</td>
<td>36,668</td>
</tr>
<tr>
<td>Soil business</td>
<td>5,879</td>
<td>689</td>
<td>322</td>
<td>4,868</td>
</tr>
<tr>
<td>Construction materials</td>
<td>11,441</td>
<td>1,003</td>
<td>1,296</td>
<td>9,142</td>
</tr>
<tr>
<td>Stone processing</td>
<td>3,543</td>
<td>229</td>
<td>263</td>
<td>3,051</td>
</tr>
<tr>
<td>Garment business</td>
<td>49,501</td>
<td>1,739</td>
<td>6,121</td>
<td>41,641</td>
</tr>
<tr>
<td>Plastic business</td>
<td>16,954</td>
<td>1,341</td>
<td>2,673</td>
<td>12,940</td>
</tr>
<tr>
<td>Paper business</td>
<td>2,569</td>
<td>139</td>
<td>399</td>
<td>2,031</td>
</tr>
<tr>
<td>Electrics</td>
<td>2,595</td>
<td>152</td>
<td>342</td>
<td>2,101</td>
</tr>
<tr>
<td>Transport</td>
<td>9,996</td>
<td>2,502</td>
<td>601</td>
<td>6,493</td>
</tr>
<tr>
<td>Trade</td>
<td>42,814</td>
<td>4,778</td>
<td>7,565</td>
<td>30,471</td>
</tr>
<tr>
<td>Car repair and services</td>
<td>5,631</td>
<td>376</td>
<td>1,276</td>
<td>3,979</td>
</tr>
<tr>
<td>Fuel and gas</td>
<td>3,439</td>
<td>281</td>
<td>777</td>
<td>2,381</td>
</tr>
<tr>
<td>Education, foundation, association</td>
<td>837</td>
<td>36</td>
<td>67</td>
<td>734</td>
</tr>
<tr>
<td>Household</td>
<td>129,790</td>
<td>6,578</td>
<td>21,267</td>
<td>101,945</td>
</tr>
<tr>
<td>Other</td>
<td>238,350</td>
<td>12,548</td>
<td>13,106</td>
<td>212,696</td>
</tr>
</tbody>
</table>

Source: Office of Foreign Workers Administration, Department of Employment, Ministry of Labour, Statistics on Foreigners Obtaining Work Permit during 2009 (Bangkok, Ministry of Labour, 2010)

Migration is seen as an adult activity that concerns men and women; children generally have been included in this concern only as particular aspects of the problems of adult migration, whether as victims of trafficking and exploitation or as being affected by the movement of their parents. It was shown in a 2009 report that the number of children in Thailand has been steadily decreasing over the past ten years. Of the 63.5 million people in Thailand, 15.46 million (24.86%) were children below 18 years of age.


184 Huguet, Chamratrithirong and Richter, “Thailand Migration Profile,” 11.
age, with another 200,000 children of migrant workers aged below 15 years born in Thailand and registered with the Committee of the Alien Workers Management under the Ministry of Labour.\textsuperscript{186} Thailand is also seen as the primary destination in the GMS for trafficking, with most survivors (and migrants) being from Myanmar, Lao PDR and Cambodia.\textsuperscript{187} Similarly, according to a survey of the Social Environment Research Consultant, conducted by interviewing 538 migrants in 76 communities in six provinces of Thailand, 41% of migrants from Laos, Myanmar and Cambodia were under 18 at the time of first migration, and the average age was just under 15 (an age vulnerable to exploitation).\textsuperscript{188}

\textbf{1. Description of the Problem}

\textbf{a. Prevalence of Abuse and Discrimination in Migration}

A number of field surveys and the available research concerning migrant labour show that migrant children are being hired to work in various types of jobs such as in agricultural work and on fishing boats; migrant girls and young women are being hired as domestic workers. Besides migrant children who come to sell their labour, there are some children engaged in the sex trade because they were lured or forced to come to work in Thailand. In addition, there is another group of migrant children who come in to be beggars or to sell small items in the street.\textsuperscript{189} Migrants are perhaps more victims of crimes, such as smuggling and trafficking of broker syndicates and gangs, than perpetrators themselves.\textsuperscript{190}

\section*{Abuse Against Migrant Workers}

A significant number of regular and irregular migrant workers in Thailand are often forced to do heavy and difficult work for low wages, and are placed in unsafe or unsanitary work environments. Most migrants are unable to access proper health care and generally are not protected by Thai labour laws. Importantly, migrants frequently become victims of systematic violence (including torture and killings), extortion, unlawful arrest, detention and other kinds of exploitation in their everyday lives.\textsuperscript{191} Women migrants are more likely to encounter abusive practices than their male counterparts. There have been a considerable number of well-documented reports of physical violence against children and women, but very few arrests have been made in any of these cases.

The vulnerability of women migrants partly stems from the physical and social isolation of their employment. While male migrants usually live and work with other migrants, women migrants often work in jobs in the domestic and service sectors, in which they may have no contact with other migrant women. Female migrants are likely to be trapped by the human trafficking trade and/or physically and sexually abused.

\section*{Sexual Harassment and Rape of Migrant Women}

Apart from the violation of labour rights, woman and child migrant workers frequently become victims of sexual abuse, both by their employers\textsuperscript{192} as well as officials. Police and other officials are known to sexually abuse or violate migrant women by conducting excessive body searches that include groping, demands to disrobe, and even unnecessary and invasive cavity checks. While in detention, migrant women have suffered rape and harassment by officials. The Bangkok Post on March 2, 2011 reported that a Bangkok policeman was jailed for six years for forcing a

\begin{itemize}
\item[187]West, Children on the Move in South-East Asia: Why child protection systems are needed, 9.
\item[189]Vungsiriphisal, Auasalung and Chantavanich, “Migrant Children in Especially Difficult Circumstances in Thailand.”
\end{itemize}
Burmese woman whom he had taken into custody to have sex with him in exchange for being freed without charge.\textsuperscript{193}

Police and immigration officials are reported to cut women's hair as a way of marking migrant women who have been deported, which for women from Myanmar is a denigration of their culture and is personally humiliating.\textsuperscript{194}

Violence against migrant women is under-reported. As migrants' status is reliant on their employer, migrant women fear retribution from their employers, especially for migrant domestic workers who work and live in the private domain of the employer's home. The OSCC in hospitals, which acts as a link to police in reporting rape cases, do not have translators, lack gender matching of reporting officers, and are difficult to access for migrants.

\textbf{Child Labour and Child Beggars}

Although a number of studies report a decline in child labour in Thailand, child labour (particularly of migrant children) remains a major concern. Even though there are no clear data that indicate the number of children of migrants engaged in work activities in Thailand, it is widely believed that a good portion of children of migrants and migrant children are working in some capacity.\textsuperscript{195}

As of September 15, 2008, a total of 12,900 migrants from Cambodia, the Lao People's Democratic Republic and Myanmar aged 15-18 years were holding Thai work permits. Because they have official documents, these children are generally perceived to be working under better conditions than migrant children working without proper documents. Based on various studies on the subject, an estimated 100,000 foreign children are engaged in child labour in 43 provinces that have been granted permission to hire migrant workers. Work conditions are poor. A report on the Worst Form of Child Labour in 6 provinces (Chiangrai, Tak, Udon Thani, Samutsakhon, Songkhla, and Pattani) conducted jointly between the Government and ILO in 2006, found that 35% were children aged below 15 years and 63% worked more than 8 hours per day. Migrant workers were not able to gain access to health care and education services.\textsuperscript{196}

In addition, a study on migrants under the age of 26 years, who were working in fishing and fish processing industries, found that 15% of them were younger than 15 years old.\textsuperscript{197}

Working migrant children are vulnerable to exploitation, overwork, and less pay. Figures from NGOs in border and migrant-concentrated areas confirm cases in which migrant children are mistreated, including being exploited at work, forced to work under hazardous conditions, sexually abused and forced to do sexual work.\textsuperscript{198}

Migrant children who beg or wander the streets selling small items are of particular concern. A UNICEF report estimates that half of the street people in Thailand are migrants, including child migrants. Cambodian children account for a high percentage of the child beggars. Due to their working and living conditions, these children are vulnerable to infectious diseases and face a high risk of accidents. As street children, they are at a significant risk of contracting diseases because of their squalid living and working conditions, lack of nutritious food and limited sleep. In addition, the children are at high risk of being physically and sexually abused, addicted to drugs and forced or lured into inappropriate jobs with limited access to health services.\textsuperscript{199}

\textbf{b. Root Causes of Abuse and Discrimination in Migration}

\textbf{Legal Aspect}

As legal factors, the lack of knowledge about legal protection, assistance and their own rights are the root cause of problems. Their illegal entry into Thailand prevents them from access to legal protection and social assistance because they are afraid to call for help or see the police when they have problems. Their low level of education and working skills do not allow them any choice,


\textsuperscript{196} CRC Committee, "Consideration of the reports submitted by State parties under article 44 of the Convention."

\textsuperscript{197} Jampaklay, "Migration and Children," 99.

\textsuperscript{198} Ibid.

\textsuperscript{199} Ibid.
so they are not in a position to negotiate for appropriate job and wage conditions according to the Labour Protection Act. Moreover, migrant women do not know that they are equally protected by the law as Thai people. This allows employers to easily take advantage of them and put them in risky situations, or to be physically and mentally abused and exploited.200

Social Aspect

The negative impact of capitalism is also considered as a root cause of abuse and discrimination against woman and child migrant workers. Migrant workers receive help from agents to illegally enter Thailand; in turn, the agent will receive financial or other benefits from the migrants. Internet network, mobile phone and cross border trade have been freely exploited for people smuggling. Moreover, many government programmes have financial gain as a primary goal, without considering impact on the well-being of people.

Cultural Aspect

Regarding cultural factors, gender issues in this region influence the exploitation of women and child migrant. Male domination has long prevailed and women and daughters are viewed as assets of a man or father. The daughter has an obligation to pay gratitude to her family. Nowadays, when poverty is a major problem of Thailand’s neighbouring countries, it is inevitable that some women of these countries have to help their family earn money. As a result, many girls and women are sold to work in Thailand in sexual and labour enterprises. 201

c. Impact of Abuse and Discrimination in Migration

Abuse and discrimination against migrant women and children affect the rights of migrants in both health and social dimensions.

Health Dimension

Abuse against migrant women and children particularly affects their fundamental right to health and well-being. Most low-skilled migrants are unable to access proper health care and generally are not protected by Thai labour laws.202 In addition, sexual abuse against migrant women and children affect their physical and sexual health, and may cause of HIV infections.

Furthermore, in the case of migrant street children, they are at high risk of contracting diseases due to their poor living conditions and the dangerous environment in which they stay. They are also at high risk of being involved in accidents.203 There have been many reports of migrants falling victim to systematic violence (including torture and killings). Extortion, unlawful arrest, detention and other kinds of exploitation in their everyday lives are widespread.204

Social Dimension

The quality of life of migrants is being affected in many social aspects, namely: the right to education, the right to obtain nationality and labour rights, for instance.

Abuse and discrimination affects their fundamental rights, especially the right to education. Thailand is implementing an education for all policy. All children must receive 9 years compulsory education and are entitled to receive 12 years basic education under the Constitution. This is reinforced by the 15-year free education programme, from kindergarten to high school, regardless of nationality.205 Non-Thais and persons without a clear legal status, including those belonging to ethnic groups, children of migrant workers, as well as children who unlawfully entered the country are also entitled to 15 years of free education. The education cost per head for these children is allocated at an equal amount to Thai children. Few migrant children, however, have the opportunity to receive higher than a primary school education. Some of them receive a primary-level education but most of them do not receive any formal education at all. Even the children who

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201 Ibid.


203 Vungsiriphisal, Auasalung and Chantavanich, Migrant Children in Especially Difficult Circumstances in Thailand.


were born in Thailand of families that have been living in Thailand for a long time had little opportunity to receive education due to their status as illegal migrants.\textsuperscript{206}

Despite being entitled to free compulsory education, many migrant children do not go to school.\textsuperscript{207} According to the report on accessibility to rights to education of unprivileged children in Thailand, a number of schools still refuse enrolment of migrant children and undocumented children due to various reasons i.e. lack of knowledge and understanding about adopted regulations, budget constraints, and lack of facility and resources to deal with multi-cultural and bilingual classes.\textsuperscript{208}

Regarding the right to obtain nationality, it is difficult for the children of migrants who are born in Thailand to obtain a birth certificate and Thai nationality. The current Nationality Act B.E. 2551 (2008) affirms \textit{jus sanguinis} and denies \textit{jus solis} principles; thus, children born in Thailand to illegal migrants have illegal status. Hence, one of the main problems facing many migrant children is statelessness. This lack of identity and citizenship entitlements has serious implications as they limit future education and work opportunities for these, and exposes them to exploitation.\textsuperscript{209}

Concerning the Protection of Labour Rights, according to the Labour Protection Act B.E. 2541 (1998), both regular and irregular migrant workers are entitled to the same labour protection standards. However, in fact, migrants often receive less than the legally mandated minimum wage for excessively long hours of work and face routine deductions from their salaries.\textsuperscript{210} In many cases, employers refuse to pay workers and then tell the police to arrest them, which then often result in the migrants being deported.\textsuperscript{211} Moreover, many migrant workers fall into semi-forced employment as they are prohibited from leaving their workplace due to the strictness of their employers or debt bondage related to the high costs of unregulated registration/regularization processes often paid by their employers first and then deducted from their salaries over many years.\textsuperscript{212}

2. De Jure State Responses

a. Bases of State Responsibility

\textit{International Level}

As a signatory to a number of major international human rights treaties, Thailand has international obligations to respect human rights of all persons and provide them with basic social services (see 2.B.a). Thailand is also obligated to ensure decent work in accordance with international labour standards as it has agreed to the Declaration on Fundamental Principles and Rights at Work set by the ILO in 1988. Thailand also ratified 14 following labour conventions issued by ILO, namely: ILC Convention Nos.14, 19, 80, 29, 88, 100, 104, 105, 116, 122, 127, 138, 159 and 182 (see 3.B.a).

Even though Thailand has not yet acceded to some of the core labour conventions,\textsuperscript{213} nevertheless, the spirit of those Conventions is found in Thai laws and practices. For instance, the right to associate/assemble is found in the Constitution as well as in the Labour Protection Act, 1998 (2008 Amendment).\textsuperscript{214}


\textsuperscript{206} Ibid.

\textsuperscript{207} West, \textit{Children on the Move in South-East Asia: Why child protection systems are needed;} 9.

\textsuperscript{208} Thai Education Watch Network with collaboration of Action Aid Thailand and NHRC, \textit{“Report of Accessibility to Rights to Education of Underprivileged Children in Thailand September 2007-October 2008.”}

\textsuperscript{209} West, \textit{Children on the Move in South-East Asia: Why child protection systems are needed;} 10.

\textsuperscript{210} Archavanitkul and Hall, \textit{“Migrant Workers and Human Rights in a Thai Context,”} 68.

\textsuperscript{211} Ibid.

\textsuperscript{212} Ibid.

\textsuperscript{213} For example, the Migration for Employment Convention (Revised), 1949 (No.97) (and the Vocational Training (Adults) Recommendation, (No.86)); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) (and the Migrant Workers Recommendation, 1975 (No.151)); the Indigenous and Tribal Peoples Convention, 1989 (No.169); the Private Employment Agencies Convention, 1997 (No.181) (and related document: the Private Employment Agencies Recommendation, 1997 (No.188)).

Regional and Bilateral Level

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was also jointly signed with all other ASEAN members, including Thailand, in 2007. Under the agreement, Thailand has obligations to promote decent, humane, productive, dignified and remunerative employment for migrant workers, as well as to establish and to implement resource development and reintegration programs for migrant workers in their countries of origin. Hence, although the government of Thailand has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, nor the three specific migrant worker standards of ILO i.e., ILO Conventions No. 66 on Migration for Employment Convention, 1939; No. 97 on Migration for Employment Convention (Revised), 1949; and No. 143 on Migrant Workers (Supplementary Provisions) Convention, 1975, the standards contained in these instruments generally overlap with the main rights conventions that already bind the country.

In addition, Thailand has signed bilateral MOUs with the countries of Cambodia, Lao PDR and Myanmar on the ‘Cooperation in the Employment of Workers’ as a plan to regularise cross-border migrant workers in Thailand. Terms of the MOU reaffirm that the right of migrant workers who have entered the country under the MOU are to be protected equally with Thai nationals.

b. National Policies Against Abuse and Discrimination in Migration

Legal Measures

The Constitution (Section 4) stipulates that ‘the human dignity, rights and liberty of the people shall be protected’. This means that the government cannot discriminate against migrants because of their being non-Thai, stateless, or undocumented persons. In addition, Section 30 states that ‘all persons are equal before the law and shall enjoy equal protection under the law’.

Laws Relating to Right to Work

The Alien Working Act B.E. 2551 (2008) and the Immigration Act B.E. 2522 (1979) are two guidelines for immigration. The Immigration Act clearly indicates that when an immigrant enters the country illegally, that is, without a visa and/or acts in breach of the immigration law, he or she may be deported and/or penalised by other sanctions. The Alien Working Act requires an alien to have a work permit to work in Thailand and to work only in activities designated by law by the relevant authorities. Hence, only a small number of skilled workers could be permitted to work in Thailand. The Royal Decree Prescribing Works relating to Occupation and Profession in which an Alien is Prohibited to Engage, B.E. 2522 (1979), prohibits aliens from working in 39 activities.215 In spite of this, Section 12 of the Foreign Employment Act provides flexibility for the authorities to allow migrant workers to work temporarily in some sectors as provided by law and cabinet decisions.216

215 Namely: 1) Labour work except labour work in fishing boats under the next category below. The said work, which is forbidden to aliens, shall not apply to aliens who have entered into Thailand under an agreement on hire of labour concluded between the Government of Thailand and other nations, and also aliens whose status has been prescribed as legal immigrant and who possess a residence certificate under the law governing immigration; 2) Agriculture, animal husbandry, forestry or fishery, except work requiring specialized knowledge, farm supervision, or labour work in fishing boats, particularly marine fishery; 3) Bricklaying, carpentry, or other construction work; 4) Wood carving; 5) Driving motor vehicles or vehicles which do not use machinery or mechanical devices, except piloting aircraft internationally; 6) Front shop sales and auction sale work; 7) Auction; 8) Supervising, auditing, or giving service in accountancy, except occasional internal auditing; 9) Cutting or polishing precious or semi-precious stones; 10) Haircutting, hairdressing, or beautification; 11) Clothing work by hand; 12) Mat weaving or making utensils from reed, rattan, jute, hay, or bamboo; 13) Making rice paper by hand; 14) Lacquer work; 15) Making Thai musical instruments; 16) Niello work; 17) Goldsmith, silversmith, or gold/copper alloy smith work; 18) Stone work; 19) Making Thai dolls; 20) Making mattresses or quilts; 21) Making alms bowls; 22) Making silk products by hand; 23) Making Buddha images; 24) Knife making; 25) Making paper or cloth umbrellas; 26) Making shoes; 27) Making hats; 28) Brokerage or agency except in international trading; 29) Professional civil engineering concerning design and calculation, systemization, analysis, planning, testing, construction supervision, or consulting services, excluding work requiring specialized techniques; 30) Professional architectural work concerning design, drawing/making, cost estimation, or consulting services; 31) Dressmaking; 32) Pottery; 33) Cigarette rolling by hand; 34) Tour guiding or conducting; 35) Street Vending; 36) Hawking of goods & Thai type-setting by hand; 37) Unwinding and twisting silk by hand; 38) Clerical or secretarial work; 39) Providing legal services or engaging in legal work, except arbitration work; and work relating to defense of cases at arbitration level, provided the law governing the dispute under consideration by the arbitrators is not Thai law, or it is a case where there is no need to apply for the enforcement of such arbitration award in Thailand.

Laws Concerning the Protection of Labour Rights

Apart from above laws, Thailand has also enacted a number of domestic laws regarding the issue of the right of workers to receive security and welfare. The Labour Protection Act B.E. 2541 (1998) is the main law specifying the rights and duties of both employers and employees, with provisions for minimum standards to which all employees must adhere regarding all aspects of employment, including working days, holidays, leave, wages, overtime, work safety and environment, welfare, as well as employment of women and children. Under the Act, all workers are protected regardless of race, nationality or any other status.\(^217\) Hence, all employees working in Thailand are able to enjoy protection under the Labour Protection Act, including migrant workers. If the migrant workers are not registered with the Department of Labour Protection and Welfare, the Department will coordinate with relevant agencies, especially the Department of Employment, the Immigration Office, or the Royal Thai Police to provide assistance as appropriate.\(^218\)

The Labour Protection Act provides protection to all employees, including migrant workers. However, the Act excludes the protection to the agricultural work, marine fishing, the loading or unloading of goods on and from maritime vessels, work to be performed at home and transportation (Section 22). The rights of domestic workers and agricultural workers are protected under the Ministerial Regulation on the Protection of Home Workers B.E. 2547 (2004) and the Ministerial Regulation on the Protection of Agricultural Workers B.E. 2548 (2005). However, these are not effective enough since there is no enforcement mechanism. There is no job security and no fair wage. Some jobs are risky and hazardous, with longer work hours than the labour standard. In addition, the worker could not access the Social Security Fund and other relevant public services.\(^219\)

Even domestic workers are unable to enjoy the protection under the Ministerial Regulation of 2004, however, after 2010, domestic workers are able to enjoy the protection under the Home Workers Protection Act B.E. 2553 (2010); this Act provides that wages should not go lower than the Labour Protection Act, as well as the responsibility of the hirer (employer) on health and safety of the work.

Thailand also has a number of domestic laws, which provide for the protection of women and children, including migrant women and children such as the Social Security Act B.E. 2553 (2010); the Child Protection B.E. 2546 (2003); and the Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008).

c. Administrative Measures

Policy on Regularization

The government has created and adopted a number of policies to ensure that everyone could access all basic rights; the State’s obligations are also in line with the rights-based approach. The approach includes respecting human rights; prohibiting all forms of violation; and providing maximum available resources to support rights-bearer.\(^220\)

The Policy on Regularization of Migrant Workers provides leniency regarding employment of migrant workers, allowing migrant workers and accompanied persons aged over one year to be registered and granted temporary stay in Thailand. In addition, Thailand entered into MOUs with Lao PDR, Myanmar and Cambodia concerning the employment and legal entry of migrant workers. Furthermore, revisions were made to legislation concerning labour protection and migrant workers in 2008 to grant more leniency and enable migrants to engage in lawful employment and access social welfares. A fund was established to facilitate the return of migrants to their countries.

Policies on Education for Child Migrants

The Ministry of Education Regulation on Proof of

\(^{217}\) Thailand National UPR Report, 8.


Admission of Students into Educational Institutes (2004) and the Cabinet Resolution on Education for Unregistered Persons (2005) provides the right to education of all children in Thailand without legal status.221 These regulations set operational guidelines related to the management of education for children in Thailand. All educational institutions are duty bound to admit children of school age to study in their institutes, with or without evidence of civil registration, by using birth certificates or letters of certification of birth, or other proof issued by government authorities, or documents, which are accepted by the Ministry of Education. In the event the afore-mentioned evidence is missing, parents, caretakers, or non-governmental organizations can present personal history records of persons and children, or the educational institute concerned can conduct an interview to note down details related to the personal history of the child concerned.

### d. Assessment of State Policies

**The Protection of Domestic Workers**

Even though domestic workers are able to enjoy the protection under the Home Workers Protection Act B.E. 2553 (2010), which provides protection on wage, health, and safety of the work, the Civil Society and Human Rights Coalition of Thailand claims that the Act failed to address the promotional aspect as proposed by the informal sector networks. In addition, the definition of ‘Home based work’ is confined to the industrial sector; ignoring ‘contract farming’ in agriculture sector, which is actually another form of ‘home-based work.’ Those involved in contract farming, therefore, cannot be protected by this new Act.222

**The Protection of the Rights of Migrant Workers**

Thailand’s migration policies are said to have been strongly shaped by national security ideologies. The policies target control rather than administration, and are intertwined with notions of sovereignty. Threats against the basic rights of migrants stem from the Thai state’s view of them as security threats. From a human rights perspective, this policy is centred on maintaining structures and rules that permit close and continuous control of migrants while effectively discouraging them from exercising their rights to freedom of assembly, association, expression and movement.223

In 2010, the ILO’s Committee of Experts on the Application of Conventions and Recommendations strongly criticized the Thai government for its denial of work accident compensation from the Social Security Office’s (SSO) Workmen’s Compensation Fund (WCF) to migrants from Burma. The denial breaches its obligations as a signatory to ILO Convention 19. The ILO’s ruling supports a 2-year campaign by unions and human rights groups demanding revocation of this discriminatory policy. The ILO’s report concludes:

The Committee notes with deep concern the situation of some 2 million workers from Myanmar, many of whom are described by State Enterprise Workers’ Relations Confederation as being in ‘a social zone of lawlessness’ where they are not protected by the laws of Thailand or Myanmar […] Taking into account the gravity of the situation, the Government should instruct the SSO to take positive and urgent measures lifting restrictive conditions and facilitating access of migrant workers to the WCF irrespective of their nationality.224

In addition, even though the rights of migrant workers in Thailand have been guaranteed and are protected in several legal provisions, the International Trade Union Confederation (ITUC) states in its Report for the WTO General Council Review of the Trade Policies of Thailand (2011) that Thai law does not allow broad categories of employees the right to organise and collectively bargain. Employers make use of many anti-union practices including lockouts, dismissals, unfavourable work assignments, and reductions in work hours of union members in order to limit union membership and activities. Furthermore, Thailand has not ratified ILO Convention No. 111 (Concerning Discrimination in Respect of Employment and Occupation) and the law does not adequately protect women from gender discrimination. Many groups


223 Human Rights Watch, “From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand.”

face discrimination in various aspects of employment, including in hiring and remuneration.225

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

A number of ministries and departments are responsible for the implementation and monitoring of migration policy, including the Ministry of Labour, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Public Health, the Ministry of Education, the Ministry of Social Development and Human Security, and the Immigration Bureau.

Focusing on the protection of labour rights, however, the Department of Labour Protection and Welfare of the Ministry of Labour is directly responsible for the promotion of labour protection. In addition, the National Human Rights Commission of Thailand (NHRC) also deals with the abuse or discrimination on migrants. The institution aims to promote the integration of migrants, prevent racism and xenophobia and to promote ratification of relevant international instruments and create the harmonisation of national legislation, through public campaigns and public education.

b. Complaints Process

Similar to Thai nationals, migrants are able to enjoy their right to access to justice as guaranteed by the Constitution. Migrants can either submit their complaints on abusive practices to the Department of Labour Protection and Welfare of the Ministry of Labour or within other rights systems, or file their cases before the courts. However, migrants’ lack of information or awareness of their human and labour rights, plus inability to speak Thai, are major obstacles. Hence, another channel for migrant workers to submit complaints, which is more accessible, may be through the NHRC. Notably in the past, the NHRC has accepted many complaints from migrant workers. However, more recently, such mechanisms have become less accessible.226

c. Protection and Rehabilitation

Since early 2006, NHRC has been co-organising systematic activities with the International Organisation for Migration (IOM) and the Ministry of Labour entitled ‘Awareness-Raising on Migrant Rights and Welfare for Government Officials, Employers, Migrants and Host Community Members in Thailand.’ This project aims to raise awareness and to promote the rights and obligations of Burmese migrants in Thailand in a proactive and sustainable manner at central, provincial and local levels. A number of migrant well-being awareness workshops were carried out for the target audiences, especially Thai host communities and authorities. Law enforcers have been familiarized with the role and situation of migrants, particularly the protection of their basic rights in accordance with Thai laws and international standards. Members of Sub-commission on Ethnic Issues and staff members of NHRC have been appointed to be members of Project Steering Committee and generally devote their capacity and potential as specialists and resource persons.

Annually, the NHRC, with the collaboration of the Department of Employment, also provides some training and orientation programs for Thai people who want to work abroad. The tailor-made activities have been designed in order to apply all practical knowledge and experiences with the human rights protection and promotion skills. Currently, the Participatory Action Research on ‘Thai Women Rights in case of Migration to Abroad’ is being conducted within two specific countries, Germany and Japan, by the collaboration between NHRC and some intellectual activists.

d. Prevention Measures

The NHRC periodically visits detention centres, as well as observing the deportation and expulsion of migrants. Some human rights training programs are provided to the patrol police, detention and correction officers as well as the relevant authorities.227

A number of Sub-commissions, within the line of this activity, have been appointed to promote and protect human rights of these specific issue e.g. Sub-commission on Prisoners and Detainees Rights. They often visit a number of country-wide prisons and detention centres


227 Pinkaew, “Good Practices to Protect Migrant Workers in Thailand.”
for conveying the ideas of anti-torture and degrading acts as well as good practices for detention and correction officers. A series of roundtable discussions were held with the Department of Correction and some relevant authorities to find ways to suspend, abolish and amend some relevant laws.

In 2006, NHRC proposed the operational guidelines for pregnant prisoners and detainees. Subsequently, the Cabinet adopted the Resolution on December 26, 2006, granting a detainee or prisoner who delivers a child temporary suspension of punishment for up to 3 years to look after her child. Ultimately, the relevant Criminal Procedure Code (Section 246) was amended in line with these guidelines. This amended provision could be a safeguard for all relevant detainees and prisoners, including some irregular migrants.228

4.  Role of Non-State Actors

a. Assistance to Victims

Because of lack of information, legal knowledge as well as the inability to speak and understand Thai language, NGOs and lawyers’ associations routinely provide legal assistance to migrants to help the victim voice their complains through the legal system or stand up for their labour rights.

Many NGOs participate in this mission; for example, in the cases of children, NGOs, which have notification centres are the Center for the Protection of Children’s Rights Foundation, Foundation for Child Development and the Child Protection Foundation. These organisations collaborate with the concerned agencies for further assistance.

b. Prevention Programs

Education is one factor in preventing future abusive and discriminating practices. Education for migrant children is provided by both the State and NGOs. Education is provided in various forms and settings. There are schools managed by the State in which ethnic and migrant children are integrated into mainstream classrooms, as well as privately-run schools predominantly targeting ethnic and migrant children. In addition to these, there are special schools and 50 Rajaprajanugroh schools229 under royal patronage in 42 provinces nationwide in which these children can be admitted. Education provided by NGOs in educational centres varies in form, methods and curricular.230

The Prevention of HIV/AIDS Among Migrant Workers in Thailand Project (PHAMIT), funded by the Global Fund to Fight AIDS, TB and Malaria (GFATM), is a collaborative project of eight NGOs: Raks Thai Foundation (the Principal Recipient), Center for AIDS Rights (CAR), World Vision Foundation of Thailand, PATH, Stella Maris Center, MAP Foundation, Empower (Chiang Mai), and Pattanarak Foundation. PHAMIT partners are working in over twenty provinces throughout Thailand in partnership with the Ministry of Public Health and local health providers, to prevent the transmission of HIV/AIDS and to improve the quality of life among migrant workers, their families and sex workers.231

c.  Monitoring and Cooperation

The NGOs play a great role in monitoring and cooperating with the State’s implementation of migrant policies. The Thailand Burma Border Consortium, or TBBC, is an example of an umbrella organisation that is composed of locally based INGOs dedicated to the Refugee situation. The TBBC is a consortium of 12 international organisations from 10 different countries which support adequate standard of living in camps by providing services and food, engaging in research to address root causes of the current situation, and implementing programs in the field through refugees, community-based organisations and local partnerships.

5.  Progress Indicators and Challenges

Implementation of International Obligations

In practice, the government’s existing mechanisms and systems are not effective in providing protection to migrant workers. No clear policy has been set at the ministerial level or departmental level that specifically targets protection

228 Ibid.

229 Rajaprajanugroh schools operates mainly in the highland, border areas, remote and problematic areas in which ethnic children and migrants from neighbouring countries are highly concentrated.

230 See CRC Committee, Consideration of the reports submitted by State parties under article 44 of the Convention – Combined third and fourth periodic reports of States parties due in 2009: Thailand, September 14, 2011.

for vulnerable migrants. Consequently, the legal service centres to assist migrants are inadequate, especially in cases when migrants fall victim to abusive practices, accidents, disabilities, or unemployment. One concern that continues to stand out is that registered migrants and their families are not entitled to work accident compensation from the MOL’s Workmen Compensation Fund (WCF). Their exclusion is a breach of ILO Convention 19, on equality of treatment (Accident Compensation) 1925, which Thailand ratified in 1968.

Migration and National Security

Thailand’s migration policies are centred on maintaining structures and rules that permit close and continuous control of migrants while effectively discouraging them from exercising their rights to freedom of assembly, association, expression and movement.232 Because of national security, the Alien Employment Act, 2008 regulates what work regular migrants can do and what work irregular migrants are allowed to do.

In addition, the abusive practices against migrants are systemically rooted in the lack of a rights-based approach to formally manage the flows of migration. Moreover, the failure to regulate irregular migration flows is widely seen as an important factor that contributes to the increasing vulnerabilities of irregular migrants, who are often exposed to discrimination, exploitative conditions and abuse.233 Therefore, this has led to more systematic corruption and networks of unregulated brokers, resulting in increasingly severe rights abuses in Thailand.

Migration and Education

Even though both State and NGOs provide education to migrant children, the following problems regarding the organisation of education for children of ethnic minorities and migrants remain: delay in the implementation of the regulations concerned; unclear coordinating mechanisms both at the local and national levels; lack of systematic database causing delays in the disbursement of subsidies; and unresponsiveness of the education provided to the reality of these children.234

Migration and Health

Irregular migrants and those accompanying regular migrant workers who do not have the right to obtain health insurance cards are able to access public healthcare services as long as they can pay for them.235 This challenges Thailand to provide all migrants accessibility to basic health services, with attention to the specific needs of female migrants. Means should be in place to reduce language and culture barriers to access the health service, including access to require vaccines and medicines should also be ensured.236

6. Recommendations for Further Study

Illegal Migrants

Thailand is not a party to the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees. In fact, Thailand faced the problem of specific ethnic minorities being deported as ‘illegal economic migrants’, which could be considered as refoulement.237 In December 2009, a group of 4,000 ethnic Hmong from Lao P.D.R., of which 158 people had been officially recognized as refugees by the UNHCR, were forcibly repatriated as illegal economic migrants. In addition, Rohingya boat people have been denied recognition as refugees and the Thai military has reportedly pushed boatloads of men back to sea without engines, proper water, food or shelter. In January 2009, one group of 78 males, of which 12 were under age 18, were incarcerated as illegal migrants and languished in jail where two (one age 15 the other age 19) died of poor health.238 Their future remains unclear because the government does not have any concrete policy for this group. Because of their stateless status, their rights remain

232 HRW, “From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand.”
233 Archavanitkul and Hall, “Migrant Workers and Human Rights in a Thai Context.”
234 Vungsiriphisal, Auasalung and Chantavanich, Migrant Children in Especially Difficult Circumstances in Thailand.
238 Ibid.
grossly violated and the UNHCR has no access to them. The status of illegal economic migrants and the protection of those people are very challenging to a non-State party to the Refugee Convention and its protocol as Thailand.

**De Jure Stateless Persons**

According to Article 1 of the 1954 Convention relating to the Status of Stateless Persons, a stateless person is one who is not recognized as a national by any state under the operation of its law. In Thailand, a category of de jure stateless persons refers to people who have no personal legal status in a civil registration system of Thailand or of any other countries due to a lack of any proof or document to verify their nationality. There are approximately 2.5 million stateless persons residing in Thailand. Some of them have been examined and documented through civil registration, according to the Nationality Act (2008) and the Civil Registration Act (2008). Thailand has begun the process of categorizing stateless persons under the refugee group classification by providing them with birth certificates upon birth. However, there are groups that have yet to be examined, with no progress in the determination of their status. These groups are vulnerable to violations of numerous rights, including access to health-care, employment, higher education, ability to travel freely to any parts of the country, and land and property ownership. Hence, the rights and the protection of the rights of stateless persons in Thailand is a significant issue for further study.


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Vietnam

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

by

Huong Le Thu
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**Formal Name**: Socialist Republic of Vietnam (Cong Hoa Xa Hoi Chu Nghia Viet Nam)  
**Capital City**: Hanoi

### Table 1: General data

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<th>Category</th>
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| **Population**                  | Male: 42,036,891  
Female: 43,752,682  
Both sexes: 85,789,573  
(2010 projections)⁴       |
| **Life expectancy**             | Male: 69.72  
Female: 74.92  
Both sexes: 72.18  
(2011)²      |
| **Age structure**               | Children (0-14 years): 25.2%  
Working age (15-64 years): 69.3%  
Elderly (65 years and over): 5.5%  
(2011)³      |
| **Sex ratio**                   | At birth: 1.117 male(s)/female  
Under 1.1 male(s)/female  
15-64 years: 0.99 male(s)/female  
65-over: 0.62 male(s)/female  
Total: 0.99 male(s)/female  
(2011)⁴      |
| **Religions**                   | Buddhist (9.3%), Catholic (6.7%), HoaHao (1.5%), Cao Dai (1.1%), Protestant (0.5%), Muslim (0.1%), none (80.8%)  
(1999 census)⁵ |
| **Ethnic groups**               | Kinh [Viet] (85.7%), Tay (1.9%), Thai (1.8%), Muong (1.5%), Khmer (1.5%), Mong (1.2%), Nung (1.1%), others (5.3%)  
(2009 census)⁶ |
| **Functional literacy rate**    | Male: 96.1%  
Female: 92%  
Both sexes: 94%  
(2009 census)²      |
| **Net enrolment ratio in secondary schools** | Male: 70%  
Female: 64%  
(2005-2009)⁸      |
| **Migration rate**              | Net: -0.35 migrant(s)/1,000 population (2011)⁹ |
| **Number of citizens working overseas** | 3,700,000 (2001-2007)¹⁰  |
| **Number of foreign workers in country** | 74,000 (2011)¹¹      |
| **Percentage of female-headed households** | 26.8 % (2004)¹² |

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3 Ibid.  
4 Ibid.  
5 Ibid.  
6 Ibid.  
7 Ibid.  
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor force participation rate</td>
<td>Male: 76%</td>
</tr>
<tr>
<td></td>
<td>Female: 68%</td>
</tr>
<tr>
<td></td>
<td>Both sexes: 71.90% (2009)</td>
</tr>
<tr>
<td>Unemployment rate</td>
<td>4.4% (2010)</td>
</tr>
<tr>
<td>Proportion of unpaid family</td>
<td>4.3% (as of July 2010)</td>
</tr>
<tr>
<td>workers</td>
<td></td>
</tr>
<tr>
<td>Fertility rate</td>
<td>1.91 children born/woman (2011)</td>
</tr>
<tr>
<td>Maternal mortality rate</td>
<td>56 deaths/100,000 live births</td>
</tr>
<tr>
<td></td>
<td>(2008)</td>
</tr>
<tr>
<td>Infant mortality rate</td>
<td>Male: 21.27 deaths/1,000 live</td>
</tr>
<tr>
<td></td>
<td>births Female: 20.48 deaths/1,000 live births</td>
</tr>
<tr>
<td></td>
<td>Both sexes: 20.9 deaths/1,000 live births (2011)</td>
</tr>
<tr>
<td>Legal definition of “child”</td>
<td>Vietnam’s 2004 Law on Child Protection, Care and Education (Law on Child Protection) defines children as under 16 years of age.</td>
</tr>
<tr>
<td></td>
<td>Vietnam’s Civil Code (article 20) defines a child as anyone under 18.</td>
</tr>
<tr>
<td>Age of majority</td>
<td>Eighteen (18) years of age.</td>
</tr>
<tr>
<td>Marriagable age</td>
<td>The legal age for marriage in Vietnam is 18 years old for women and 20 years old for men.</td>
</tr>
<tr>
<td>Age of consent (also referred</td>
<td>Eighteen (18) years of age.</td>
</tr>
<tr>
<td>to as legal age for sexual</td>
<td></td>
</tr>
<tr>
<td>activities)</td>
<td></td>
</tr>
<tr>
<td>Age of criminal responsibility</td>
<td>Vietnam’s Penal Code of 1997 (revised in 1999) defines the age of criminal responsibility to be 14 (for criminal offenses) but 12 for administrative offenses.</td>
</tr>
<tr>
<td>Minimum age of employment</td>
<td>According to Vietnam’s Labor Law, 18 years old is the minimum age for employment; however, children as young as 15 can be employed under certain circumstances.</td>
</tr>
<tr>
<td>Minimum age for military</td>
<td>There is a compulsory military service for all males that are 18 years of age and above. Females who have reached this age may volunteer for any duty military service.</td>
</tr>
<tr>
<td>recruitment and participation</td>
<td>The conscript military service obligation is 2 years. For navy, it would be 3 to 4 years.</td>
</tr>
<tr>
<td>National poverty line (in</td>
<td>Urban areas: 500</td>
</tr>
<tr>
<td>thousand dongs per capita per</td>
<td>Rural areas: 400 (2010)</td>
</tr>
<tr>
<td>month)</td>
<td></td>
</tr>
</tbody>
</table>

17 Ibid.
18 Ibid.
<table>
<thead>
<tr>
<th>UN Conventions and Reports</th>
<th>Signature</th>
<th>Ratification or Accession</th>
<th>Last Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on Rights of the Child</td>
<td>26/02/1990</td>
<td>28/02/1990</td>
<td>10/05/2000</td>
</tr>
<tr>
<td>Convention Concerning the Minimum Age for Admission to Employment (ILO 138)</td>
<td>29/07/1980</td>
<td>24/06/2003</td>
<td></td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights</td>
<td></td>
<td>24/09/1982</td>
<td>03/04/2001</td>
</tr>
<tr>
<td>Convention Against Trans-national Organized Crime</td>
<td>13/12/2000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: UNICEF


Vietnam is divided into 56 provinces; 5 centrally-governed cities are at the same level as provinces. Measuring 2,000 km from North to South, Vietnam has a long coastline and ¾ of the country made up of hills and mountainous areas. The geography of Vietnam plays an important role in terms of ethnic diversity and the standard of living across the country. Geographical conditions affect not only national development, (e.g. distribution of wealth and opportunities), but also are significant factors for certain phenomena, such as migration, trafficking, and marriage migration.
A. Overview

“Women are half of the society. If women are not liberated, then half of humankind is not liberated.”

Vietnam is situated in the Indochinese Peninsula and is a member of the Association of Southeast Asian Nations (ASEAN). Due to the geographical length of the country, Vietnam is very diverse in terms of climate, geographical features, culture, and social customs. With multi-ethnic structure and multi-religious practices, Vietnam boasts of cultural richness, but also faces challenges of inequality in protection and implementation of human rights across the country.

Vietnam went through many centuries of wars and conflicts. In fact, the Indochinese war was one of the longest conflicts in contemporary history. In 1975, North Vietnam and South Vietnam were unified and formed the Socialist Republic of Vietnam. The post-war period was marked with economic hardship and under-development. The aftermath of the war shattered the country's economy and infrastructure. It left behind tremendous problems with Agent Orange victims, unexploded landmines, and bombs. Increasing poverty and hunger made the Government adopt a reform policy. The Doi Moi (Renovation) reforms were introduced in 1986, bringing significant economic, social, and cultural changes starting with development of a market economy.

Positive Trends after the Reforms

In recent years, Vietnamese efforts in poverty reduction and achieving other Millennium Development Goals have been recognized and praised internationally. From ranking as one of the poorest countries in the world in the 1980s, Vietnam in the 1990s managed to sustain national economic growth at 6-7%. It managed to reduce poverty from 70% in the mid-1980s to 58% in 1993 and down to 14% in 2008. It has maintained growth rate at 5-7% throughout the last decade. Most of the changes that Doi Moi brought, such as economic and social empowerment, participation in economic activities, political life, mobility, internationalization by acceding to international Conventions, had a positive effect on gender equality.

Vietnam was one of the first countries that ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and one of few countries that actually completed the 5th and 6th CEDAW reports. The Second Periodic Report on CEDAW concluded, “the Government of Vietnam has exerted great efforts to implement its commitment to the Convention. The efforts have been clearly reflected in the renovation of the political system and the development of its legal system in order to create an appropriate and sustainable political and legal basis as well as effective institutions to ensure women’s enjoyment of their rights as enshrined in the Convention.”

Negative Impacts of Modernization

Although formidable progress in socio-economic development has occurred due to modernization reforms, some groups, such as children, women, and, particularly, ethnic minorities, have become more vulnerable due to growing gaps.

Open borders and mobility of human resources increase vulnerability of women and children to trafficking, both cross-border, as well as internally. Social transformation has also created more opportunities for men to be mobile and engage in sexual relationships outside of marriage than in the pre-Doi Moi era. A number of social problems such as trafficking in persons, forced labour, sexual exploitation, child prostitution, child pornography, and even drug abuse have been reported as alarmingly increasing in recent years. Observers agree

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30 Ho Chi Minh.
34 “CEDAW 2nd Periodic Review,” P. 65
that the reforms along, with the Asian economic down
turn, have had a negative impact on the status of women
in Vietnam. Due to rising demands for double income
in households, women are expected to contribute financially
to the family’s economy. Increasing participation of
women in formal employment has created a competitive
professional environment for women. At the same time,
they are still regarded as primary care givers of the children
and family. While working hours outside of home have
increased for women, hours spent on chores have not
proportionally decreased or been equally distributed with
their husbands. Facing double expectations of full-time
professionals and housewives is burdensome and lead to
stress, as well as challenges to women’s health.

Gender Perspective

Historical conditions have built a certain national
character and specific conditions for women’s
development. The wars in fact empowered women, as they
had to take leadership in decision-making in their own
households as well as in society while men were on the
battlefields. Therefore, female participation in country’s
economy has been impactful throughout the history of
Vietnam. At the foundation of the Socialist Republic of
Viet Nam, women’s role in society was recognized as
equal to men in all respects. President Ho Chi Minh said:
“Women are half of society. If women are not liberated,
then half of humankind is not liberated.” Hence, both1946
and 1992 Constitutions reaffirmed women’s rights equally
in political life and society.36

However, gender equality remains a concern for Vietnam,
despite the rapid social and economic development.
Although, the Vietnamese legal system has guaranteed
gender equality in all forms, gender discrimination still
occurs on the cultural and societal basis. In fact, deeply rooted
gender bias in favour for men is still true regardless of region,
religion, ethnicity or marital status. A study conducted by
the Vietnamese Women’s Union on the perception of
gender equality showed that 76.4% of respondents of Kinh
ethnicity (the main ethnic group in Vietnam) agreed on
male superiority over female.37 That perception involves such
issues as preference of boy over girl babies, more investment
in education for boys than girls, property inheritance
favouring sons than daughters, preference of male employees
over female, and gender-based disparity in salaries, as well as
household division of chores etc.

Economic and Political Participation

An assessment by the Asian Development Bank on the
gender situation concluded that “in many areas, Viet Nam
leads the Asia Pacific region on gender equality indicators.”38
In terms of economic participation, Vietnam not only
ranks one of the highest in the region, but also in the world,
with 85% of men and 83% of women between age of 15 and
60 participating in economic activities in 2002.39

In the comparative context within the region, some
Vietnamese indicators on gender equality (e.g. political
participation in national parliaments) are optimistic.
According to the UN Human Development Index (HDI)
and Gender Development Index (GDI), Viet Nam ranks
105/177 and 91/157 respectively. Vietnam is also in
the list of countries that have established the Gender
Empowerment Measure (GEM) and ranks 52/93 on it40.

In terms of proportion of wage between men and women,
Vietnam also presents positively in comparison to certain
Asian countries:

<table>
<thead>
<tr>
<th>Country</th>
<th>Vietnam</th>
<th>China</th>
<th>Indonesia</th>
<th>Thailand</th>
<th>Malaysia</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>2,964</td>
<td>2,026</td>
<td>5,976</td>
<td>4,434</td>
<td>9,452</td>
<td>12,889</td>
</tr>
<tr>
<td>Female</td>
<td>2,026</td>
<td>2,964</td>
<td>3,961</td>
<td>2,259</td>
<td>5,784</td>
<td>6,075</td>
</tr>
<tr>
<td>Ratio</td>
<td>68.4</td>
<td>66.3</td>
<td>66.3</td>
<td>51.6</td>
<td>61.2</td>
<td>47.2</td>
</tr>
</tbody>
</table>

Source: ADB, “Viet Nam: Gender Situation Analysis,” citing UNDP
Human Development Report, 2005

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36 “CEDAW 2nd Periodic Review.” P. 29
37 Vietnam Women’s Union, “Report on the Gender Equality Situa-
tion in Vietnam: For Addressing Regulations of Gender Equality
38 ADB, “Viet Nam: Gender Situation Analysis,” in Strategy and Pro-
gram Assessment (Asian Development Bank, 2005). P. 15
39 Ibid. P. 15
40 United Nations, “Universal Periodic Review, 5th Session,” in Hu-
man Right Council (Geneva2009). P. 11
41 ADB, “Viet Nam: Gender Situation Analysis.” P. 4
Yet, there are still evidences of gender gap. Despite relatively high participation in national bodies, women rarely reach the highest position in the top leadership. This is due to the cultural and social context, which designates women as home-keepers who thus bear a heavier burden of coping with both professional work and domestic work at the same time. Many women indicate themselves that they do not aspire for top leadership positions, because family matters would distract them from their professional responsibilities.

<table>
<thead>
<tr>
<th>Rank</th>
<th>Country</th>
<th>%women</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Viet Nam</td>
<td>27</td>
</tr>
<tr>
<td>2</td>
<td>Timor - Leste</td>
<td>25</td>
</tr>
<tr>
<td>3</td>
<td>Lao's People's Dem. Rep</td>
<td>23</td>
</tr>
<tr>
<td>4</td>
<td>China</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>Singapore</td>
<td>16</td>
</tr>
<tr>
<td>6</td>
<td>Philippines</td>
<td>15</td>
</tr>
<tr>
<td>7</td>
<td>Korea, Rep. of</td>
<td>13</td>
</tr>
<tr>
<td>8</td>
<td>Indonesia</td>
<td>11</td>
</tr>
<tr>
<td>9</td>
<td>Cambodia</td>
<td>10</td>
</tr>
<tr>
<td>10</td>
<td>Malaysia</td>
<td>9</td>
</tr>
<tr>
<td>11</td>
<td>Thailand</td>
<td>7</td>
</tr>
<tr>
<td>12</td>
<td>Mongolia</td>
<td>7</td>
</tr>
<tr>
<td>13</td>
<td>Samoa (western)</td>
<td>6</td>
</tr>
<tr>
<td>14</td>
<td>Fiji</td>
<td>6</td>
</tr>
<tr>
<td>15</td>
<td>Vanuatu</td>
<td>4</td>
</tr>
<tr>
<td>16</td>
<td>Papua New Guinea</td>
<td>1</td>
</tr>
<tr>
<td>17</td>
<td>Tonga</td>
<td>0</td>
</tr>
<tr>
<td>18</td>
<td>Solomon Island</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: ADB, Viet Nam: Gender Situation Analysis, February 2005

Despite efforts in education about gender equality principles, a history of multiple wars that empowered women, and some influences of matrilineal tradition, Vietnam remains a male-oriented society under influence of Confucian values. It is reflected in political participation scheme. The number of women in politics is relatively high, and they occupy different levels of representation. Nevertheless, the top level of decision makers (Secretary of Party, Chairperson of People’s Committee, Chairman of People’s Council) is 100% reserved for men.

**Gender and Population**

Vietnam faced the problem of a baby boom after the end of the war in 1975. Coupled with economic difficulties as a result of post-war conditions, the government came up with a strategy on population and family planning in 1993. Due to the birth rate reduction policy, each family is recommended to limit itself to two children. The Vietnamese government has been effective in achieving its goals of population control and as a matter of fact, Vietnam received in 1999 the UN Population Award. Currently, under Clause 10 of Vietnam’s Population Ordinance 09/2008/UBTVQH12, families should be limited to one or two children only.

<table>
<thead>
<tr>
<th>Year</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>100</td>
<td>104-106</td>
</tr>
<tr>
<td>2007</td>
<td>100</td>
<td>111</td>
</tr>
<tr>
<td>2008</td>
<td>100</td>
<td>112</td>
</tr>
<tr>
<td>2009</td>
<td>100</td>
<td>111</td>
</tr>
</tbody>
</table>

Source: Researcher’s compilation based on UNFPA Viet Nam: “Recent Change in the Sex Ratio at birth in Vietnam: a Review of Evidence”

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42 *Ibid.* P. 53


Abortion and Reproductive Rights

Some reports have drawn attention to the birth control campaigns as a violation of women’s reproductive rights. “Abortion is provided free of charge in cases where women become pregnant whilst using clinical contraceptive measures (IUSs, sterilization, contraceptive injections or implants) and if they have family planning cards.”47 It is difficult to obtain complete data about the abortion rate, the data from the Ministry of Health from 2002 indicated that 46% of total pregnancies were terminated.48

The State provides subsidies for abortion, demanding relevant details about women’s contraceptive methods. Vietnam is listed among five countries with the highest rate of abortion, with an official rate of 500,000 to 600,000 cases annually.49 Teenage abortion accounts for 20% of total cases. Maternal health is a serious issue, as statistics show that on average seven women die from pregnancy or childbirth per day, although the data varies greatly depending on the region. Highlands and remote areas, including ethnic minorities regions have significantly higher number of such incidences.50 Gender-based violence, violation of women’s reproductive rights, marital rape, and other exploitation of women and girls are often “unacknowledged or unpunished, sending a message that these forms of discrimination against women are socially acceptable.”51 Population regulation and son preference leads to abortion practices. Furthermore, abortion, often conducted in para-medical services, can lead to serious health threats or even death to the mothers. While abortion is not legally prosecuted, the law does underline and punish gender preferences of new-born babies:

Any mother who, due to strong influence of backward ideology or special objective circumstances, kills her newborn or abandons such baby to death, shall be sentenced to non-custodial reform for up to two years or to between three months and two years of imprisonment.52

Country’s Legal Basis

The Universal Periodic Review stated that “[t]hroughout the history of struggles for national independence and freedom, the people of Viet Nam have always treasured the sacred value of human rights, notably the rights to self-determination, the freedom to decide one’s own fate and the right to live in dignity.”53 The Constitutions from 1946, 1959, 1980, and 1992 (amended in 2001) fully recognized and guaranteed human rights. Since 1986, Vietnam has promulgated and amended around 13,000 laws and by-law documents, in which civil and political rights are elaborated54.

The legislation of the Socialist Republic of Vietnam envisions equality between men and women. There is no legal justification for gender discrimination, and the government has paid attention to legally provide women with equal rights. In fact, the legal base for gender equality is relatively strong. Not only does Vietnam have the Law on Gender Equality and various policies addressing the issue, but any act that would hamper women and discriminate them in any way can be punished according to Article 130 of the Penal Code, “Those who use violence or commit serious acts to prevent women from participating in political, economic, scientific, cultural and social activities shall be subject to warning, non-custodial reform for up to one year or a prison term of between three months and one year.”


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48 ADB, ”Viet Nam: Gender Situation Analysis.” P. 38. Following UNDP data
54 Ibid. P. 5
are responsible for the protection, care and education of children.” The protection and promotion of children's rights have been also incorporated into economic and social development strategies and plans, such as the 2001-2010 National Plan of Action for Vietnamese Children.\(^\text{55}\)

**The Gap between Policy and Reality**

While recognizing the Government’s commitment to human rights issue, the UPR also identified difficulties and challenges that the legal system needs to meet. “The Vietnamese legal system in general, and in the field of human rights in particular, still contains inconsistencies and overlapping and conflicting at several points, leading to difficulties, even misinterpretation in application and enforcement at the grass-roots level.”\(^\text{56}\)

Moreover, as UPRs observed, Vietnam does not have a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Neither has Vietnam established a monitoring body on human rights, nor a child’s rights monitoring body as recommended by the Convention on Child’s Rights.\(^\text{57}\)

While the Socialist Republic of Vietnam has a strong base of legal provision for gender equality, in practice, “there is a critical gap between policy and implementation.”\(^\text{58}\) This gap is reflected in the budget limitations, limited human resources in gender equality analysis, and also by the persistence of gender stereotypes, which are still strong in Vietnamese communities.

Although Vietnam has received substantial help from international organizations and NGOs related to the gender mainstreaming programs, there is a “general feeling that the lack of cohesion between different government, donor and civil society stakeholders about the priority issues is causing gender to fall off the policy agenda in Vietnam.”\(^\text{59}\)

Furthermore, societal discrimination still occurs and women do not always receive equal treatment. Some cultural factors contribute to the continuing gender inequality or practices that could be seen as violating women’s rights from the international perspective. For example, despite Constitutional provisions for equality both in public and private spheres, gender-based discrimination is still frequent. Education is one apparent example, where school drop-out rate is disproportionate for girls. This is a particularly serious problem for the children of ethnic minorities. Their enrolment rate for primary education is 80%, while for secondary is only 45%.\(^\text{60}\) In terms of land ownership, in theory, women are entitled to have the same rights of inheritance; however, in practice they often depend upon their male relatives to access the land. That creates difficulties in the cases of divorce or widowing. Culturally-rooted practices are also a factor. In some ethnic groups, such as Hmong, arranged marriages (often of very young girls), and even marriage by kidnapping, still occur.\(^\text{61}\) The Law on Marriage and the Family determines that the minimum age for women is 18 and 20 for men. In some ethnic minorities, there are cases of girls getting married at the age of 15. Ethnic minorities require more attention, as they often suffer from isolation, following traditional customs and practices, rather than enjoying the equal opportunities that urban women have. Ethnic women often are more exposed to such discrimination because of limited access to education, employment, or less legal assistance in cases of domestic violence.\(^\text{62}\)

**Character of the Country Report**

This Country Report recognizes positive trends in developing gender equality in Vietnam. However, to serve its purpose, it focuses on highlighting the existing challenges and short comings in our knowledge required for comprehensively assessing women’s and children’s rights. It aims at drawing attention to the cases where legislative frameworks are not comprehensive, and protection and prevention mechanisms are not tailored to the existing needs. An identification of existing gaps in the legislative framework and its implementation, and in the available data and analysis of the situation of women and children in Vietnam is necessary to formulate recommendations for further research and data collection.

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\(^{55}\) Ibid. P. 10

\(^{56}\) Ibid. P. 16


\(^{58}\) ADB, “Viet Nam: Gender Situation Analysis.” P. iv

\(^{59}\) Ibid. P. 1

\(^{60}\) UNICEF, “UNICEF & The Children of Viet Nam.”

\(^{61}\) Bourke-Martignoni, "Violence against Women in Vietnam."P.13

\(^{62}\) Ibid. P. 14
While noting the short comings in national policies, legal loopholes, as well as gender-biased social and cultural practices, it is important to bear in mind that the Vietnamese government has made serious efforts to overcome them. According to the Review on the Implementation of the Beijing Platform for Action, from 2000-2003, Vietnam issued 52 laws, ordinances and other legal documents with consideration of the gender perspective, (which includes the Law on Election of Deputies to the National Assembly, Law on Election of Deputies to the People’s Council, Labour Code, Ordinance on Population and Ordinance on Prevention of Prostitution etc.). A UN Women assessment of best practices in domestic violence legislation in ASEAN countries, indicated: “A good example is to be found in the Vietnamese law that includes forced child marriages in its definition of domestic violence.

In many cases, abuses and discrimination are repercussions of a lack of common awareness of existing laws and provisions or of incomplete implementation. This suggests a serious gap existing between the legislative provision and collective knowledge about them. Apart from the legal knowledge gap, available statistics and studies on the issues of violence, exploitation, trafficking, and migration pose a challenge to information dissemination and raising awareness about these issues.

Some NGOs, particularly international ones, find it difficult to collaborate with local authorities in obtaining relevant information for dissemination.

Studies before 2000 indicated that the statistical system in Vietnam is unsynchronized, not systematic, and lacks technical equipment, human resources and funding. After over a decade, synchronized statistics and their availability still pose challenges to the researcher; however there has been certain progress in systematizing the research. This report hopes to contribute to knowledge-dissemination for relevant stakeholders.

The Communist Party has “revolutionized the role of women in family and society and accorded Vietnamese women many rights that women in many developing and developed countries are still fighting for, including provisions for participation in government, generous maternity benefits and the right to make reproductive decisions.”

Previously, Vietnamese legal system was based on feudal system, which embraced Confucianism spirit of patriarchal values. Given such gender-biased context, the Communist Party emancipated women, guaranteeing them equal rights with men in all aspects of social and family life in the Constitution of 1945, later confirmed in the Constitution of 1992. Despite the legal base of equality, there are still gaps that remain. Across this study, poverty is found at the root base for many social issues, including domestic violence, exploitation, human trafficking, and labour or marriage migration. While Vietnam has made remarkable improvements in poverty reduction, the issue still remains a severe problem, particularly in rural areas, where 90% of Vietnam’s poor live.

This report has been compiled based on available resources from governmental database, reports from United Nations agencies, World Bank, Asian Development Bank, NGOs reports, and academic publications. The Baseline Study reveals an insufficient current understanding of many issues due to incomplete accessibility of data, particularly in terms of accurate and aggregated statistics. This difficulty highlights the call for further studies.
B. VIOLENCE

1. Description of the Problem

Violence, be it physical, economic, emotional, or sexual, against women and children poses a serious problem in Vietnam. Violence against women, particularly in the context of domestic violence, “is one of the most important causes of family break-downs, separations, divorces, infidelity, homelessness, prostitution, and trafficking in women and children.”68 Although the government has recognized the issue and made commitments to promote gender equality and end violence against women by ratifying several core international human rights treaties, there is still much to be done.

Statistical studies on domestic violence have been conducted, but there is no comprehensive nationwide study on domestic violence and violence against women.”No nationally representative study dedicated to GBV with internationally validated methodology had been done before 2010.”69 To date, most studies about Gender-based Violence (GBV) in Vietnam addressed the context of domestic violence (DV). These studies indicate that there is strong linkage between the prevalence of DV and the level of education and economic status. A study from 1999, with representative samples from an urban and a rural area each from Hanoi (the North), Hue (the Central) and Ho Chi Minh City (the South), came up with the following findings:

Table 6: Frequency of abuse by self-ranked income levels

<table>
<thead>
<tr>
<th>Self-Assessed Income Ranking</th>
<th>Verbal Abuse</th>
<th>Beating</th>
<th>Forced Sex</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worse off</td>
<td>86%</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Average</td>
<td>82%</td>
<td>13%</td>
<td>16%</td>
</tr>
<tr>
<td>Better off</td>
<td>74%</td>
<td>10%</td>
<td>18%</td>
</tr>
</tbody>
</table>

Source: "Gender-based Violence: the Case of Vietnam”70

From late 2009 to mid-2010, a study conducted by the General Statistics Office of Vietnam and the United Nations–Government Joint Programme on Gender Equality (UN JP) found that 32% of ever-married women aged 15-49 had experienced physical violence by a partner, and 10% had experienced sexual violence. The lifetime prevalence of physical violence was 34%. Emotional abuse was as high as 54%. The statistical data show that violence varies among the regions and education levels of studied groups. Gender-based violence (GBV) is present both in the cities and rural areas. Women of Kinh, Muong and Hoa ethnicity faced the highest rates of GBV.71

GBV remains a serious and complex problem due to the burden of social norms. Unwillingness of women to report it makes the issue “silent”, and therefore, even more dangerous, as no assistance can reach the un-reported cases. Eighty-seven per cent (87%) of the studied sample never sought any legal or formal services in regards of experienced abuse.72 Moreover, the domestic nature of the problem makes it more sensitive to deal with. Traditional values of harmonious family and also the perception of male superiority add to the difficulty in addressing the issue.

Violence is reported to occur both to women (in many cases, even when they are pregnant) and to children in the family. It occurs in different ways, for example when a husband uses acid to punishment his out of jealousy or simply vents his anger upon her due to alcohol abuse, frustration, indebtedness, aggression etc.

Most of the literature on both GBV and DV in Vietnam distinguish the three prevailing types of violence: physical, sexual, and emotional violence. In practice, however, they rarely occur separately from each other. The following graph shows the result of overlapping forms of abuses from a survey in 2010.

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71 Rasanathan and Bhushan, “Gender-based violence in Viet Nam: Strengthening the response by measuring and acting on the social determinants of health.” P.1
a. Prevalence of Violence

Gender-Based Violence and Domestic Violence

Gender-based violence occurs not only in the context of family. It might take collective forms of violence, e.g. in some rural communities, women are punished in public by the community for alleged adultery. Despite the fact that such practices are illegal, women accused of unfaithfulness are publicly humiliated or even marked to suffer public shame.

The following section focuses on gender-based violence in the context of the family. Domestic violence is discussed in the categories of physical, emotional and sexual abuse. As the statistics suggest, the GBV and DV remain a serious problem in Vietnam, to such an extent that 50-70% of divorces are linked to the domestic violence.74 In 2005, for example, 60.3% of divorces (39,730 cases) were caused by domestic violence.75

Existing statistics are believed to be under-estimations.76 Moreover, GBV is often not a focus for health officials and policymakers. The traditional perception of keeping “harmony” in the family prevents women from recognizing, exposing the problem, and seeking legal (considered “external”) assistance. Also because of that social stigma, cases of violence remain under-reported.

In addition to the problem of under-reporting, statistics are incomplete, and available studies offer different estimations over various periods of time and various groups, often without specification on the criteria or nature of violence. One study over the period of 1990 to 1998 quotes 11,630 cases of domestic violence in 18 provinces and cities of Vietnam.77 A national study and several small-scale studies indicate relatively high numbers of recorded abuses.78 It needs to be underlined, that available records do not represent the actual situation due to the “silent nature” of the problem, as well as due to the lack of access to many groups, particularly minorities and people inhabiting mountainous areas.

A study conducted by the UN Gender Programme Coordination Group (Gender PCG) showed that physical abuse is the most frequently reported, with 16-37% women experiencing physical violence. Emotional violence is as high as 19-55%.79 While sexual violence was recognized as a serious problem in Vietnam, that study did not provide data on it. Another source presented a slightly different, but equally alarming, statistics. A National Study on Domestic Violence against Women in Vietnam released on 25 November 2010 found that 32% of ever-married women reported having experienced physical violence in their life and 6% of them indicated experience within past 12 months. Ten per centre ported physical violence from family members other than a partner. Sexual violence by husbands was reported by 10% of studied women, 4% experienced it within past 12 months.

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73 Ibid. P. 18

74 Although there are no exact data, existing reports indicate various numbers of the percentage. This number was quoted from Bureau of Democracy US State Department, Human Rights and Labour, “2007 Country Report on Human Rights Practices. Vietnam ” (2008).


78 Rasanathan and Bhushan, “Gender-based violence in Viet Nam: Strengthening the response by measuring and acting on the social determinants of health.”

When combining data for physical and sexual violence, 34% of women reported that they experienced both types of violence by their husbands in their lifetime, and 9% within past 12 months. Prevalence of emotional violence is as high as 54% experienced in their lifetime, and 27% in past 12 months. All women who experienced physical and sexual violence also reported emotional violence. Hence, all three kinds of violence yield a high rate of 58% in their lifetime, and 27% in past 12 months. One in four women with children under 15 years old reported that their children have been physically abused by her partner and more than half of abused women reported their children witnessed the violence. Half of the domestic violence survivors never told anyone about the violence before the research.

Figure 2: Prevalence of physical violence by husbands among ever-married women; by age. Vietnam 2010

![Graph showing prevalence of physical violence by husbands among ever-married women by age in Vietnam 2010.]

Emotional and psychological violence is recognized to occur, but it is in fact the hardest to measure, particularly in Vietnamese traditional society. A study from 2006 over 2000 married women showed that 25% of them experienced emotional violence in their families. Another study from 2009 indicated that 55% of 883 married women experienced emotional abuse. Criteria included within the definition of emotional or psychological violence may vary from being belittled, verbal insults, humiliation, intimidation, frightening on purpose, to threats of being hurt/punished etc. Thus, there appears to be a difficulty in identifying emotional abuse because of the social acceptability of certain behaviours of husbands towards wives, such as shouting, swearing, threatening, or cursing; hence, they are not reported as abuse.

In the Vietnamese patriarchal tradition, a married woman moves in with the husband’s family after the wedding. Therefore, often, she needs to deal with the pressure from living with in-laws. Emotional abuse from parents in law, or even the husband’s extended family, is reportedly common. Her behaviour, habits, and household skills are often the source of criticism from the entire family. Particularly if a woman has not succeeded in delivering a son, she is likely to face severe emotional mistreatment. Some economic factors have been included into emotional violence. These include the husband’s negligence to contribute to the care of the family, prohibiting the wife from participating indecision-making on financial expenses, or demanding his permission to make expenditures.

Figure 3: Forms of domestic violence experienced among ever-married women (in life-time and over past 12 months)

![Graph showing forms of domestic violence experienced among ever-married women in Vietnam 2010.]

Available studies about domestic violence indicate the prevalence of marital violence. It was noted that a significant rate of violence occurred during women’s pregnancy. The proportion of women ever-pregnant who experienced physical violence at least in one pregnancy was 5%, and the highest number was among those who had no schooling. Statistics from the same study indicated that about 60% of women who experienced

81 General Statistics Office of Viet Nam, “Keeping silent is dying: Results from the National Study on Domestic Violence against Women in Vietnam.” P.15
82 Mai, “Why the silence? Reason why women who experience domestic violence in Viet Nam do not seek outside support.” P. 18
83 Ibid. P. 18
84 Diane Gardsbane, “Gender-Based Violence. Issue Paper.” P. 56
85 General Statistics Office of Viet Nam, “Keeping silent is dying: Results from the National Study on Domestic Violence against Women in Vietnam.” P. 18
physical or sexual violence by husbands had heard about the law on domestic violence. However, the qualitative interviews showed that the knowledge they had about that law is very limited, and even local authorities did not have enough information about the law on domestic violence or about the problem in general.86

While traditionally prescribed roles for women and men are often pointed out to be the explanation for domestic violence, abuses also occur in situations beyond cultural stereotypes. The statistics from 1999, quoted above, which assessed representative groups from each of three regions in Vietnam, showed that women who are the main breadwinners in the families are often victims of DV as well.

Table 7: Main earning provider and types of domestic violence

<table>
<thead>
<tr>
<th>The main income earner is:</th>
<th>Wife n=67</th>
<th>Husband n=224</th>
<th>Both n=310</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband neglects wife</td>
<td>84</td>
<td>75</td>
<td>73</td>
</tr>
<tr>
<td>Husband uses strong words</td>
<td>81</td>
<td>75</td>
<td>63</td>
</tr>
<tr>
<td>Husband yells at wife</td>
<td>69</td>
<td>57</td>
<td>42</td>
</tr>
<tr>
<td>Husband prohibits wife</td>
<td>15</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td>Husband uses forced sex</td>
<td>24</td>
<td>19</td>
<td>15</td>
</tr>
<tr>
<td>Husband beats wife</td>
<td>16</td>
<td>20</td>
<td>12</td>
</tr>
</tbody>
</table>

Source: “Gender-Based Violence: The Case of Vietnam”87

In general, women who are the main income earners in the family, according to this study, suffer more frequently from abuse by their husbands. This might be interpreted that men have difficulty in accepting new roles, which cause them frustration when women are the main economic power in the family. The above data are from 1999 and might not reflect current reality or be representative for the whole country due to the selective sample. It is recommended that further detailed studies on the prevalence of domestic violence in the context of main income provider in the household be conducted to have a better understanding on the matter.

Sexual Violence

A survey from 2006 in 8 provinces and cities conducted by the Parliamentary Committee for Social Affairs in Vietnam showed that up to 30% of female respondents said their husbands had forced them into unwanted sex.88 While it is common to condemn men forcing sex on their wives, it is also generally accepted that women should please their husbands’ sexual needs. Women are unwilling to report when it happens. Moreover, there is a perception among majority of women that they are obliged to fulfil husband’s sexual demands, as if sex is his right.89

Sexual harassment within family and in the work place remains a shameful issue and few studies indicate its prevalence. Sexual harassment in schools is beginning to be explored, mostly though media coverage. A study conducted by CSAGA, the Institute for Social Development Studies (ISDS) and Action Aid, found that 15.6% of high school pupils from three schools surveyed were touched in a way that made them uncomfortable and afraid. 4.3% of pupils were forced to have sex within the previous 12 months and perpetrators included their classmates, schoolmates, strangers, neighbours and acquaintances.90

Violence Against Commercial Sex Workers

Prostitution is criminalized in Vietnam. Sex workers are often in conflict with policemen who repeatedly arrest them and force them to undertake rehabilitation in state-run centres. Such conflict prevents sex workers from turning to the police for protection in cases when they become victims of rape. In other words, sex workers often face the situation of having no protection whatsoever, be it legal, social or healthcare.91

Acid Attacks

Although there are numerous news reports on acts of acid splashing, no integrated study or country-wide statistics has been found. Acid attack has been reported as a form of punishment of women for alleged adultery. HCM City hospital recorded 114 acid burn victims between 1994-1997. According to hospitals, about 90% of acid attacks are reported to occur in the context of domestic violence.

86 Ibid. P. 25
88 After: Mai, "Why the silence? Reason why women who experience domestic violence in Viet Nam do not seek outside support."
90 Mai, "Why the silence? Reason why women who experience domestic violence in Viet Nam do not seek outside support."P.17-18
91 Bourke-Martignoni, "Violence against Women in Vietnam." P. 21-25
Many victims suffer serious permanent damage on their faces and bodies. Some of them committed suicide as a result of psychological and physical trauma from acid attack. No more recent data have been gathered. Little information is also available regarding the prosecution and conviction rates or sentencing for these crimes.

**Violence Against Children**

There is abundant literature concentrating on violence against women in comparison to violence against children in the Vietnam. However, it is essential to bear in mind that domestic violence also affects children. UN Vietnam identified that DV is a major reason for children and adolescents to run away from home, leading to homelessness, “street children” and other related dangers.

UN Vietnam also indicated that one in four abused women reported that their children under 15 years old were also physically abused by their husbands. Children of violent couples are often victims of physical and emotional abuse: “More than half of the women who experience physical violence by husbands also report that their children witnessed it at least once.” If a mother does not decide to report violence occurring on her, automatically the cases on her children remain unreported as well. No literature has recorded cases of children independently reporting domestic violence to the authorities. Such a situation creates two fold dangers: 1.) children are not given assistance, be it legal, medical, social or emotional; 2.) childhood experience of parents’ violence raises the risk of having a violent partner in adult life. Statistics show that women, whose mothers were beaten at home, are three times as likely to have husbands who abuse them.

**Figure 4: Prevalence of child abuse by husband, among women with children under 15 years old. (by region, 2010)**

The average age of the child victims of sexual abuse is 12 years old; it is believed that the issue is under-reported. As one source indicates, sexual abuse of girl children has become “a burning issue in Vietnam with the move toward a market economy.” The incidence of child rape among total reported rapes in 1995 was 30%; it grew to 40% in 1997, and 54% in 2000 (865 cases). Sufficient data is not available to evaluate changes in relative reporting rates of sexual violence directed against children and adults.

**Corporal Punishment**

According to a statistical review by UNICEF, 61% of children aged 2-14 experienced minor physical punishment in the home in 2005-2006. Some mothers or caretakers (46%) were found to believe that children need to be physically punished.

More serious violence has also been reported, for example in a comparative study into the views and experiences of children and adults in 8 countries in Southeast Asia and the Pacific, which showed the following results for Vietnam:

At home, punishment by family members included: arm broken, beaten on the buttocks until raw then a mixture of

92 *Ibid.* P. 21
93 General Statistics Office of Viet Nam, “Keeping silent is dying: Results from the National Study on Domestic Violence against Women in Vietnam.” P. 22
94 *Ibid.* P. 22
95 *Ibid.* P. 22
salt and chilli rubbed on the wounds, beaten with a thick stick, ear twisted until torn and bleeding, electrocution with wires, excess labour, kneeling on the spiky peel of durian fruit, standing naked outside the house, standing under the weight of a buffalo yoke, head repeatedly submerged in water, hanging on a tree and beaten until unconscious, hung on an electricity pole, hung on a wall by the hands, hung upside down from a tree, tied next to an ants nest, tied to a bicycle and forced to run along side it, whipped while hanging from a tree.

Punishments by teachers at school included: being confined under a bed, standing in front of class and being denounced by classmates, hit on forehead by a ruler thrown by teacher, hit on head by a box of chalk, not being allowed to eat, stripped naked and beaten on the back, two children forced to slap each other on their cheeks. Of those who were hit, 50% were hit with an implement (34.8% with sticks etc., 15.2% with a whip, lash or belt), 45.5% were slapped with the hand, 4.5% kicked. Of those children who mentioned body parts where they were hit, 26% reported being hit on the head and neck, 27% on the limbs, 11% on the back, 13% buttocks, 5% chest, 4% stomach, and 1% genitalia.

In terms of the settings in which children experienced punishment, the research found that in the home 81% of children experienced physical punishment, 19% emotional punishment, while in school 69% experienced physical punishment and 31% emotional.99

Violence was also reported to have been inflicted against children detained in drug rehabilitation centres. A Human Rights Watch publication claimed that, aside from not being separated from adults and being subjected to forced labour, children were physically punished. A child narrates his experience as follows:

I was beaten and put into a punishment room for fighting. The staff beat me on the arm and back with a truncheon.... Then I went to the punishment room. It was about 6 by 12 meters and when I was in there 41 others were too. It was locked. There was no work and no school. We had no contact with other detainees or relatives.... I was kept there for three months and seven days.100

b. Root Causes of Violence

Root causes of Domestic Violence can be categorized into three groups: (i) socio-economic factors, (ii) cultural-traditional factors, and (iii) issues of sexuality. Violence occurring related to sexuality issues arises due to one of the three major reasons: jealousy, adultery and sexual incompatibility. Economic hardship and cultural-traditional factors are discussed below.

Socio-Economic Factors

Socio-economic hardship is often blamed for the frustration and aggression of men towards their wives. Unfortunately, traditional perceptions of the roles of men and women justify or passively accept such behaviours. Due to deeply rooted patriarchal values, gender inequality is socially accepted, despite the fact that Vietnamese women have always played significant role in building the nation. According to common perception, once a woman is married, she belongs to the husband's family and the man is regarded as the head of a family. A husband is supposed to be responsible for his wife; a husband can punish a woman. Hence, domestic violence is often regarded as an internal family matter. In majority of cases, women do not speak out, considering it shameful and embarrassing. According to the joint study of the UN and Vietnamese Government on Domestic Violence, half of the respondents never told anyone about the physical, sexual and emotional violence they experienced before the interviews.101 Eighty-seven (87%) of abused women respondents never sought any legal or formal help, although a majority (60%) of them was aware of the law on domestic violence.102

Alcohol, gambling, or other substance abuse, are often linked to economic hardship, and are frequent reasons of men's aggression towards their wives. These “social evils” are inter-connected to other root causes of violence (such as indebtedness) in a vicious circle of frustration and anger.

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101 General Statistics Office of Viet Nam, “Keeping silent is dying: Results from the National Study on Domestic Violence against Women in Vietnam.” P.24

102 Ibid. P. 25
Although GBV occurs in all levels of income there appears a strong correlation between economic hardship and violence. As a study sponsored by the World Bank showed, the percentage of verbal abuse, beating and forced sex are higher in the lower-income families. The tendency of decreasing occurrences of abuse is proportional to the rise of family income level. Moreover, although women participate equally in the family income, their economic empowerment does not equal equality in the family. Cases of verbal, emotional, sexual abuse, and prohibitions are noted higher among the families where women are main income earners. Only beating was an exception in this study: the highest number of cases were noted in families where men were the main bread winners.\textsuperscript{103}

\textit{Cultural-Traditional Factors}

Many studies have indicated traditional Confucian values are at the root of gender injustice. The CEDAW Report also indicated that “maltreatment of women also takes roots in male chauvinism.”\textsuperscript{104}

It might be unfair to say that Confucianism tradition is the root cause of gender-based violence. Rather, the misinterpretation of values is used to justify non-action against such abuse. However, as recognized in the Beijing Declaration, “violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement.”\textsuperscript{105}

In the Vietnamese context, there are some cultural patterns that give base to such gender-biased concepts. A Vietnamese researcher, Le Thi Quy, stated that “underlying domestic violence, as well as other forms of inequity between men and women in Vietnam, is a more than 1000 years history of patriarchy that privileges men over women.”\textsuperscript{106}

Another culturally-rooted reason is frustration from not having a son for inheritance, differences in interests and personality are also listed as the causes for occurring domestic violence.\textsuperscript{107}

Such socio-cultural conditions are not favourable for women to seek for help in the occurrence of violence. Social stigma does not encourage them to report or publicize the matter. In one study on domestic violence in 456 couples, 50% of the men admitted they beat their wives, while only 37% women reported being abused.\textsuperscript{108} In traditional societies, women are expected to endure the fact of being abused, and even to accept their husbands’ behaviour. Sadly, to the extreme, women are sometimes even blamed for provoking violence, regarding them as having done something wrong, or not having done things they were supposed to do, which caused their husbands’ anger.

\textbf{c. Impact of Violence}

A statistical health study of women who experienced violence from their partner, shows that their general condition, and mental and reproductive health is “poor” or “very poor” when compared to those who did not experience violence from their partner. Apart from physical discomfort and pain, injuries, and memory problems, and reproductive problems, a relatively high percentage (close to 30\%) of abused women had suicidal thoughts.\textsuperscript{109} There is an apparent disparity (almost 20\%) in suicidal thoughts between women who never experienced violence and those who have experienced abuse.

\textsuperscript{103} Loi et al., “Gender-based Violence: the Case of Vietnam.” P. 8
\textsuperscript{105} Nations, “Platform of Action and the Beijing Declaration, Fourth World Conference on Women.”
\textsuperscript{107} See Helle Rydström, “Encountering “Hot” Anger Domestic Violence in Contemporary Vietnam,” available at http://www.detcivilasam-hallet.se/pages/dokument/rydstrom_encountering_hot_anger.pdf (accessed 13 July 2012), 1. “Domestic violence is tied to a complex field of cultural forces that consists of a patrilineal tradition of ancestor worship, assumptions about females’ versus males’ character, Confucian virtues, and a history of war. Females are expected to encourage household harmony by adjusting themselves and, in so doing, make social life smooth. Males, on the other hand, are assumed to have a hot character, meaning that a male might fly into a rage and even behave violently.”
\textsuperscript{108} Mai, “Why the silence? Reason why women who experience domestic violence in Viet Nam do not seek outside support.”
\textsuperscript{109} General Statistics Office of Viet Nam, “Keeping silent is dying: Results from the National Study on Domestic Violence against Women in Vietnam.” P. 21
Ever experience physical or mental health symptoms, according to experience of violence by husbands, Viet Nam 2010

Although most available statistics underline that abused women are often beaten when pregnant, there is no data on the impact of violence on the babies’ health.

No nation-wide statistics on women committing suicide as a result of DV have been compiled. However, a 2011 UNODC Working Paper states as follows:

A report from the Health Department in Cuu Long (Mekong River Delta) indicates that in 2005, 1,011 patients (out of 1,319) attempted or committed suicide due to domestic violence, resulting in 30 deaths. A report from the Health Department in Tay Nguyen indicates that among 3,944 patients, 715 people attempted or committed suicide, resulting in 27 deaths. Finally, according to the statistics from the Department of Burns in Cho Ray Hospital, for the period from 1994 to 1997, they received 114 cases of burns due to acid splashes, of which 90% cases concerned marital and family problems.

While the Vietnamese Centre for Reproductive and Family Health has noted that no cases of marital rape have been brought before the Vietnamese courts, it found that most documented cases of marital rape have been collected while conducting investigations for divorce proceedings. As a matter of fact, according to the divorce lawyers, marital rape is the underlying but unspoken reason behind many divorces. A high percentage of divorces, although regarded as the worst scenario, are due to domestic violence. Usually, economic uncertainty and social constraints are the main reasons hampering women from deciding to divorce. The US State Department’s Report estimated that approximately two-thirds of divorces were due in part to domestic violence. However, the information does not provide the exact time frame or the geographical scope of the results quoted.

The following statistics are quoted from the Report of NGOs on the Implementation of CEDAW in Vietnam, which based data on the numbers provided by the Supreme People’s Court and the National Assembly Committee of Social Affairs.

Table 8: Domestic Violence as the reason for divorce.

<table>
<thead>
<tr>
<th>Time-frame</th>
<th>Number of cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-2005</td>
<td>186,954</td>
<td>51.3%</td>
</tr>
<tr>
<td>2005</td>
<td>39,730</td>
<td>60.3%</td>
</tr>
</tbody>
</table>

Source: Researcher’s compilation following the “Report of NGOs on the Implementation of the CEDAW in Vietnam”.

2. De Jure State Responses

a. Bases of State Responsibility

Vietnam is signatory to a number of core international human rights instruments:

- Convention on the Elimination of All Forms of Discrimination against Women (1982) and a number of core international human rights treaties that refer to gender-based violence as well as trafficking in persons

110 Ibid. P. 21

• Declaration on the Elimination of Violence against Women in the ASEAN Region (2004).
• Law on Domestic Violence Prevention and Control (2007)

b. National Policies against Violence

Gender-based violence (GBV) is defined by the UN as actions that result in “physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.”115 Vietnam, as a party of the Declaration on the Elimination of Violence Against Women, has demonstrated commitments towards implementing the same.

As previously discussed, the Constitution made gender equality an institutional right since 1946. The Marriage and Family Law (1960) abolished concubinage, polygamy, and forced marriages. The government approved the Law on Gender Equality in 2006, and the Law on Domestic Violence Prevention and Control (DV Law) in 2007. Further Article 12 of the Population Ordinance (2003) stipulates that the Government and authorities at various levels have the responsibility to “implement policies and measures to ensure equality between men and women in all fields... take preventive and reactive measures to eliminate discrimination against women and the violation of women’s dignity.”116 Besides these laws, provisions of the Penal Code and the Civil Code may also be applied to protect women and children from violence.

Specific Provisions of Law:

The Constitution 1992

• Article 63 states that “Male and female citizens have equal rights in all fields: political, economic, cultural, social and the family” (...) “All acts of discrimination against women and all acts damaging women's dignity are strictly banned.”
• Article 71 guarantees citizens the right to “physical inviolability and legal protection of their life, health, honour and dignity.”
• Article 74 provides that the citizens have the right to lodge complaints and denunciation with competent State authorities against illegal acts of State organs, economic bodies, social organizations, units of the people’s armed forces, or any individual.117

Penal Code (Criminal Code) 1999, 2009

• Article 6 of the Law on Criminal Procedure stipulates that “any act causing danger to the life, health, property, honour and dignity of citizens shall be strictly punished by law.”118
• Article 151 of the Penal Code says “ill-treating or persecuting grand-parents, parents, spouses, children, grandchildren and/or fosterers (...) and causing serious consequences or who have already been administratively sanctioned for such acts but repeat their violations, shall be subject to warning, non-custodial reform for up to two years or a prison term of between three months and two years.”119
• Article 110 punishes those who cruelly treat persons dependent on them or commits crimes against aged persons, children, pregnant women or disabled persons; or against more than one person.120

Law on Marriage and Family, 2000,

• Article 19 provides for quality in obligations and rights between husband and wife
• Article 21 provides for respect for honour, dignity and prestige of husband and wife and forbids them from committing acts of ill-treatment, persecution or hurting the honour, dignity or prestige of each other.121

Civil Code 1995,

• Article 33 protects the individual’s right to protection of honour, dignity and reputation
• Article 36 states that husbands and wives are equal in their relations and have the same rights and obligations in all respects within the family and in

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119 Ibid. P. 17
civil intercourse and shall together build a plentiful, durable, harmonious and happy family.122

Legal Definitions of Rape, Forced Sex and Sex with Children:

Article 111, Penal Code- Rape

• Those who use violence, threaten to use violence or take advantage of the victims’ state of being unable for self-defence or resort to other tricks in order to have sexual intercourse with the victims against the latter’s will shall be sentenced to between two and seven years of imprisonment.
• Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:
  - In an organized manner;
  - Against a person whom the offender has the responsibility to look after, educate and/or medically treat;
  - More than one person rapes a person;
  - Committing the crime more than once;
  - Against more than one person;
  - Being of an incestuous nature;
  - Making the victim pregnant;
  - Causing harm to the health of the victim with an infirmity rate of between 31% and 60%;
  - Dangerous recidivism.
• Committing the crime in one of the following circumstances, the offender shall be subject to between twelve and twenty years of imprisonment, life imprisonment or capital punishment:
  - Causing harm to the health of the victim with an infirmity rate of 61% or higher;
  - Committing the crime even though the offenders know that they are infected with HIV;
  - Causing death to the victim or causing the victim to commit suicide.
• Committing rape against a juvenile aged between full 16 and under 18 years old, the offenders shall be sentenced to between five and ten years of imprisonment. Committing the crime in one of the circumstances stipulated in Clause 2 or Clause 3 of this Article, the offenders shall be subject to the penalties specified in such clauses.
• The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.123

Article 112 - Rape against children

• Those who rape children aged between full 13 years and under 16 years shall be sentenced to between seven and fifteen years of imprisonment.
• Committing the crime in one of the following circumstances, the offender shall be sentenced to between twelve and twenty years of imprisonment:
  - Being of incestuous nature;
  - Making the victim pregnant;
  - Causing harms to the victim’s health with an infirmity rate of between 31% and 60%;
  - Against a person whom the offender has the responsibility to look after, educate or medically treat;
  - Dangerous recidivism.
• Committing the crime in one of the following circumstances, the offender shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment:
  - In an organized manner;
  - More than one person rapes a person;
  - Committing the crime against more than one person;
  - Causing harms to the victim’s health with an infirmity rate of 61% or higher;
  - Committing the crime though the offenders know that they are infected with HIV;
  - Causing death to the victim or causing the victim to commit suicide.
• All cases of having sexual intercourse with children under 13 years old are considered rape against children and the offenders shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment.
• The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for from one to five years.124

Article 113 - Forcible sexual intercourse

- Those who employ trickery to induce persons dependent on them or persons being in dire straits to have sexual intercourse with them against their will shall be sentenced to between six months and five years of imprisonment.
- Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:
  - Many persons compel one person to have sexual intercourse with them;
  - Committing forcible sexual intercourses more than once;
  - Committing forcible sexual intercourses against more than one person;
  - Being of incestuous nature;
  - Making the victim pregnant;
  - Causing harms to the victim's health with an infirmity rate of between 31% and 60%;
  - Dangerous recidivism.
- Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and eighteen years of imprisonment:
  - Causing harms to the victim's health with an infirmity rate of 61% or higher;
  - Committing the crime against more than one person;
  - Causing harm to the victim's health with an infirmity rate of 61% or higher;
  - Committing the crime even though the offenders know that they are infected with HIV;
  - Causing death to the victim or causing the victim to commit suicide.
- Committing the crime in one of the following circumstances, the offender shall be sentenced to between seven and fifteen years of imprisonment:
  - Incest;
  - Making the victim pregnant;
  - Causing harms to the victim's health with an infirmity rate of between 31% and 60%;
  - Dangerous recidivism.
- Committing the crime in one of the following circumstances, the offender shall be sentenced to between twelve and twenty years of imprisonment or life imprisonment:
  - More than one person commits forcible sexual intercourse against one person;
  - Committing the crime more than once;
  - Committing the crime against more than one person;
  - Causing harm to the victim's health with an infirmity rate of 61% or higher;
  - Committing the crime even though the offenders know that they are infected with HIV;
  - Causing death to the victim or causing the victim to commit suicide.
- The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.\(^\text{126}\)

Article 114 - Forcible sexual intercourse with children

- Those who have forcible sexual intercourse with children aged from full 13 years to under 16 years shall be sentenced to between five and ten years of imprisonment.
- Committing the crime in one of the following circumstances, the offender shall be sentenced to between seven and fifteen years of imprisonment:
  - Incest;
  - Making the victim pregnant;
  - Causing harms to the victim's health with an infirmity rate of between 31% and 60%;
  - Dangerous recidivism.
- Committing the crime in one of the following circumstances, the offender shall be sentenced to between seven and fifteen years of imprisonment:
  - Causing harm to the victim's health with an infirmity rate of 61% or higher;
  - Committing the crime even though the offenders


\(^{126}\) Ibid.
know that they are infected with HIV.\textsuperscript{127}

Article 256 - Sexual intercourse with juveniles

- Those who have paid sexual intercourses with juveniles aged between full 16 years and under 18 years shall be sentenced to between one and five years of imprisonment.
- Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and eight years of imprisonment:
  - Committing the offense more than once;
  - Having paid sexual intercourse with children aged between full 13 years and under 16 years;
- Causing harm to the victims’ health with an infirmity rate of between 31% and 60%.
- Committing the offense in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:
  - The offense is committed more than once against children aged between full 13 years and under 16 years;
  - The offense is committed even though the offenders know that they have been infected with HIV;
  - Harms are caused to the health of the victim with an infirmity rate of 61% or higher.
- The offenders shall also be subject to a fine of between five million dong and ten million dong.

Article 116 - Obscenity against children

- Those adults who commit obscene acts against children shall be sentenced to between six months and three years of imprisonment.
  - Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and seven years of imprisonment:
  - Committing the crime more than once;
  - Against more than one child;
  - Against a child whom the offender has the responsibility to take care of, educate or medically treat;
  - Causing serious consequences;
  - Serious recidivism.
- Committing the crime with serious consequences or particularly serious consequences, the offenders shall be sentenced to between seven and twelve years of imprisonment.
- The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.\textsuperscript{128}

Sexual Harassment

There is no definition of “sexual harassment” in Vietnamese law. Instead, offences on sexual grounds can be prosecuted under the Penal Code under:

Penal CodeArticle 121 - Humiliating other persons:

- Those who seriously infringe upon the dignity or honour of other persons shall be subject to warning, non-custodial reform for up to two years or a prison term of between three months and two years.
- Committing the crime in one of the following circumstances, the offenders shall be sentenced to between one and three years of imprisonment:
  - Committing the crime more than once;
  - Against more than one person
  - Abusing positions and/or powers;
  - Against persons who are performing their official duties;
  - Against persons who educate, nurture, look after or medically treat them.
- The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.\textsuperscript{129}

Moreover, the Government addressed the cultural practices that discriminate or hamper empowerment of women. Decree 23/2002/ND-CP, promulgated in 2002, on the application of the Marriage and Family Law to ethnic minorities, provides that backward customs and practices that have bad effects on ensuring equal rights for husbands and wives must be eliminated gradually through flexible and strict ways. Methods include encouraging people to erase certain customs and practices that discriminate between son and daughter; forbidding forced marriages between a widow or a widower with another member of the family of the ex-husband or ex-wife without agreement of that person;\textsuperscript{130} strictly


\textsuperscript{129} Ibid. English translation provided by the World Legal Information Institute: http://www.worldlii.org/vn/legis/pc66/s121.html (last retrieved on March 7th, 2012).

\textsuperscript{130} In some ethnic groups, such practice is still common. E.g. in Brau ethnic groups a younger brother who is single or whose wife is dead is entitled to getting married with his sister-in-law if his older
prohibiting commercially motivated wedding requests and acts that hinder marriage or violate women’s dignity; and disallowing customs and practices that allow the man to reclaim property or impose a penalty when divorced.\(^\text{131}\)

The National Strategy and Plan of Action for the Advancement of Women to 2010 follows the first National Strategy to 2000. It has five objectives: (1) achieve women's equal rights in labour and employment; (2) achieve women's equal rights in education; (3) achieve women's equal rights in health care; (4) enhance quality and efficiency of women's performance in the political, economic, cultural and social fields resulting in more women being recommended for and elected to leadership positions at all levels and in all sectors; (5) strengthen efforts to build the capacity of the machinery for the advancement of women.\(^\text{132}\)

Other policies and strategy documents addressing gender equality and GBV include:

- Directive on the Implementation of the Law on Domestic Violence Prevention and Control No. 16/2008/CT-TTG
- Decree 08/2009/ND-CP on Implementing Several Articles of the Law DV Prevention and Control
- Circular for DVL 16/2009/TT-BTY-2009 by MOH
- Circular for DVL 02/2010/TT-BVHTTDL-2010
- Plan of Action on Domestic Violence Prevention and Control of the Ministry of Culture, Sports and Tourism in the 2008-2015
- National Plan of Action for Domestic Violence Prevention and Control, 2010-20 (draft)
- National Targeted Programme on Gender Equality 2011-2015\(^\text{133}\)

\textbf{c. Assessment of State Policies}

Gender equality has been actively promoted in national policies in recent years. It is also one of Millennium Development Goals towards which Vietnam is aiming. State-level legislation addressing gender-based discrimination and violence has been passed. However there are still remaining loopholes to be filled.

A 2009 US State Department report states that there are no known instances of prosecution for spousal rape or sexual harassment.\(^\text{134}\) Although the Law on Domestic Violence Prevention and Control was enforced in 2008, sexual harassment has not yet been addressed in terms of law. Although there is a certain degree of public awareness about the problem of sexual harassment, particularly in the context of the workplace, neither specific legal definitions nor juridical responses were noted on the issue. The act of sexual harassment is not clearly defined, and the prevention of it is not specified in legal documents. There have been some cases reported where women experiencing sexual harassment would approach the Vietnamese Women’s Union for assistance. In serious instances, Art. 121 of the Penal Code, which relates to the “humiliating other persons”, may be used for legal prosecution. However, lawsuits on sexual harassment remain uncommon.

While there is no specific clause defining the term “marital rape” or “spousal rape” in the Vietnamese criminal law, there is a term “forced sex” in the context of marriage in the Penal Code. Article 113 of Penal Code relates to rape in the context of dependency or other forms of relational context, when the perpetrator takes advantage of his position and forces a sexual contact on the person under his care or in other ways dependent on him. Article 2 of the Law on Domestic Violence Prevention and Control also includes “forced sex” as an act of domestic violence. However, women, generally, are said to not be comfortable with reporting sexual violence, especially to male police officers.\(^\text{135}\)

Assessments of the domestic violence law, particularly those by UN Women, are readily available. It has been said that among ASEAN countries, the “widest coverage is provided by the Vietnamese law, which does not include any clause defining survivors or coverage and is gender

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\(^{131}\) Ibid. P. 52

\(^{132}\) ADB, “Viet Nam: Gender Situation Analysis.” P. 63

\(^{133}\) Rasathan and Bhushan, “Gender-based violence in Viet Nam: Strengthening the response by measuring and acting on the social determinants of health.”


neutral.” Article 19(1)(d) of the law provides for the measure of forbidding the person exerting the violence from contacting the victim. UN Women observed that there “appears to be an emphasis on reconciliation in this law” and that it allows community criticism before and after reconciliation by grassroots reconciliation teams. While this may be useful in preventing violence in the long term, “it is not clear how this law allows for the provision of immediate reliefs to survivors of violence.”

Under Article 104 of the Penal Code, husbands who physically injure wives can be charged with the intentional infliction of injury. To raise such a charge, a woman, however, has to be suffering injuries with “infirmity rate” of 11%-30%. Furthermore, criminal sanctions would be applied for repeated acts of violence causing serious consequences; singular cases of violence do not reach the required threshold of seriousness and may go unpunished, or “punished” in a form of warning. As one source indicates, the police would not arrest the perpetrator regardless of the degree of injury the woman suffers, unless the woman makes an explicit request.

There are cases where during proceedings pending divorce the woman still lives in the same house with her violent husband. The new law has included provisions on the grant of immediate interim or temporary relief.

According to the law, divorce for reasons of domestic violence may be granted to women in cases where they have been victims of repeated and severe physical violence. The Law on Marriage and the Family includes a compulsory conciliation process before a divorce can be granted. At that process, many couples are reported to change their minds. Such a system may impede women from asserting their rights.

**Children Specific Issues**

Vietnamese laws prohibit inflicting harm on children in the domestic setting. In the education setting, there are legal provisions regarding protection of students' honour and dignity. Corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions. Ordinance No. 33/CP (1997) on residential schools, which cover children in conflict with the law, provides for children's honour and dignity. However, there is no explicit prohibition against corporal punishment in childrearing, in schools, or as a disciplinary measure. Neither is there an explicit prohibition of corporal punishment in alternative care settings.

It is particularly difficult to address the issue of punishment on children. It is socially accepted that parents have the right and obligation to educate their children. Education is understood also as including physical punishment. Beating disobedient children is commonly regarded as an act of discipline and as a domestic matter; therefore it is difficult to provide intervention. The loophole ought to be filled and definition setting clear boundaries between disciplinary acts and abusive violence should be clarified.

The term “sexual abuse” is not specifically defined by Vietnamese law; however the Law on Protection, Care and Education of Children does state that “all acts of infringing upon children's rights, causing harms to the normal development of children shall be severely punished by law, including maltreating or raping a child.” Any sexual act on a child under 13 years old is considered rape. It is prohibited for adults to have any sexual intercourse with children between 13-16 years old.

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137 Ibid. 20.

138 Ibid.


140 Ibid. P. 19


144 Applicable laws are: Decree No. 163/2003/ND-CP regulating education in commune, ward and town, the Primary Universal Education Law, and Decree 338-HDBT 26/10/1991 on the implementation of the Primary Universal Education Law.

145 Applicable laws are: Law on the Protection, Care and Education of Children (article 7), the Penal Code (article 298), the Code of Criminal Procedure (article 6) and Decree No.114/2006/ND-CP on punishment of administrative violations on population and children (article 21).

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Child pornography, along with child prostitution and child sex-tourism has appeared in recent years, being perceived as a result of the greater opening of the borders to tourism and other foreign visitors. They are dealt with by the Department of Social Evils together with other social problems. However, each of the mentioned issues requires more specific and specifically targeting response mechanisms. Specific legal provisions addressing sex tourism and child pornography have yet to be developed.

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

CEDAW welcomed the adoption of the National Strategy for the Advancement of Women 2001-2010, which was drawn up in accordance with the Beijing Platform for Action. It also welcomed the Action Plan for the Prevention and Suppression of Trafficking in Women and Girls.147 The implementation of The Law on Gender Equality (2006) is being coordinated by the Ministry of Labor, Invalids and Social Affairs (MOLISA). The Ministry of Culture, Sports and Tourism (MOCST) coordinates the implementation of the Law on Domestic Violence Prevention and Control (2007).

However, implementing mechanisms of existing laws, state policies, and other programs remain relatively under developed. Capacity building and training is necessary to implement protection measures at the local levels. There is little available literature on actual assessment and monitoring mechanisms.

b. Complaints Process

Most women experiencing violence do not know whom to approach. A 2010 study indicates that 87% never sought help from formal services or people in authority.148 Usually, they first turn to their family or community members, who are neither trained nor better informed in many cases. Often, even representatives of the police or legal aid are not familiar with the delicate procedure of domestic violence. Only some women reach out to the local representatives of Vietnamese Women’s Union, who assist them with the legal procedure for filing complaints.

Some hotlines have been launched to assist women in urgent matters, but it is reported that victims from rural or remote areas have limited access to such mechanisms. Most of awareness campaigns address the issue of domestic violence and encourage women to publicize the matter rather than suffering silently. However, even those educational programs often do not provide clear step-by-step guidance regarding the complaint process.

In terms of assistance to children, there are even less available reassuring data. The UN factsheet stated: “There is a lack of referral services for abused children and young people as well as services for out-of-home care in Viet Nam.”149

c. Protection and Rehabilitation

Vietnamese law on Domestic Violence mandates that the state shall encourage individuals and organizations to establish domestic violence support and counselling facilities and other services such as health care, legal advice, and provision of shelter. It obliges the state to provide for recording reliable addresses in the community that will render assistance to survivors as well as provide guidance and training on the prevention and control of domestic violence. Finally, this law also obligates the state to allocate budgets to ensure implementation.150

In 2002, the Centre for Women and Development (CWD) was established by the Vietnamese Women’s Union to offer counselling, raise awareness, as well as provide shelters for DV survivors. CWD also operates hot lines for DV victims in major cities.151

There are “Reconciliation Groups” at the community level consisting of local People’s committee, representatives of mass organizations, such as the Women Union and Fatherland Front and the head of villages to assist victims of violence and abuse. However, the existing social stigma still intimidates women from seeking such kind of counselling services, especially as the potential

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148 General Statistics Office of Viet Nam, “Keeping silent is dying: Results from the National Study on Domestic Violence against Women in Vietnam.” P 25
clients might know or interact with counsellors in other contexts and occasions due to their membership in their communities. As the name of these groups indicates itself, it leans towards reconciliation. It advises women on how to keep “family happiness” even when there is violence occurring. There must be a clearer understanding of the distinction between counselling and reconciliation. Vietnamese law on Domestic Violence has an entire chapter entitled “Reconciliation of Conflicts among Family Members”, which reflects traditional concepts of counselling as leading to reconciliation. It is important that the legal system ensures incorporation of provisions on mediation, settlement, and reconciliation to ensure that the security and position of the complainant is not adversely affected. The counsellors, however, do not have professional psychological training; rather they give advice and suggestions based on their own experience and common sense. Therefore, counselling services need to be effectively professionalized and trainings are required to reach out.

d. Prevention Strategy

Prevention strategies have been mostly the domain of quasi-governmental mass organizations, such as the Vietnamese Women’s Union and the National Committee for the Advancement of Women, apart from initiatives by international organizations and donors.

The Vietnamese Women’s Union (VWU), established in 1930, is a mass organization dedicated to the advancement of women. It works on four governmental levels: national, provincial, district, and commune. “Although not strictly a government organization, the VWU has close links with government.” It is estimated that more than 50% of Vietnamese women aged 18 and above are members of the VWU. In 1998 the Government recognized and institutionalized the VWU by stating in Decree 163 that policies related to women and children at all levels should be consulted and involve the VWU. It has been claimed that the VWU plays an “extremely positive role in protecting their members’ legitimate rights and interests.” The Vietnamese Women’s Union is involved in most activities regarding protection, prevention, education, training, rehabilitation, and other forms of support for victims in violence, trafficking, or exploitation. VWU’s activities include poverty alleviation, enterprise development, infrastructure construction, health care, HIV/AIDS prevention, environment, and legal support.

The VWU plays an important role in dissemination of knowledge, taking initiatives on research and publication. For example, its publications include: “Domestic Violence Against Women in Vietnam: Findings of a study in Thai Binh, Lang Son and Tien Giang,” in collaboration with the Market Development Research Centre in 2001; and “A Guide to Assist Trafficked Women and Children” in 2001. It also launched a workshop entitled “For a life without violence against women” in 2002.

The National Committee for the Advancement of Women (NCFAW), an advisory body of the government, was established in 1993 (previously called the Committee for the United Nations Decade on Women). It is a network of the Committees for the Advancement of Women (CFAWs) in all ministries and agencies in 64 provinces of Vietnam. It has consulted with the government on the construction and enforcement of strategies, as well as on the National Action Plan for the Advancement of Vietnamese Women in 2010. Among its mandates are the following:

- Advise the Prime Minister on the formulation of laws and policies related to gender equality and women’s advancement;
- Collaborate with relevant agencies to promote and monitor the implementation of laws and policies related to women at ministries, branches and provinces;
- Collaborate with concerned agencies to disseminate and advocate implementation of laws and policies related to women and CEDAW in Vietnam;
- Act as a focal point in the international cooperation on gender equality and women’s advancement.

152 Women, “Domestic Violence Legislation and its Implementation: An analysis for ASEAN countries based on international standards and good practices.” P. 29
153 ADB, “Viet Nam: Gender Situation Analysis.” P. 61
155 “CEDAW 2nd Periodic Review.” P. 13
156 “CEDAW Combined fifth and sixth Periodic Reviews of State Parties.”
The National Assembly has passed a resolution “Fighting against Domestic Violence” to be a part of the Plan for Socio-Economic Development 2006-2010. Also, the Prime Minister's Strategy for Vietnamese Family Planning for 2005-2010 includes goals to strengthen programs against domestic violence, aiming at reduction of DV by 10-15%.

4. Role of Non-State Actors

a. Assistance to Victims

Due to limited collaboration among sectors, effectiveness in providing assistance to victims is limited. Police and hospital are not forthcoming in sharing data on victims. Moreover, the shortage of social workers poses a challenge to follow-up on and support survivors. Most of available assistance services are ad-hoc rather than sustainable. Reported initiatives indicate counselling as the main form of assistance to the victims.

b. Prevention Programs

Bearing in mind that women’s empowerment is one of the Millennium Development Goals, it is not surprising that most gender equality programs in Vietnam involve United Nations agencies’ participation in various forms: from initiating, funding, research, expertise sharing, training and providing capacity. UN Women, UNFPA, and UNDP actively promote gender programs through education targeted at multiple sectors. In most cases, UN agencies are behind the initiatives on data collection, research and publishing of gender-related studies.

Several other international NGOs provide activities that support women’s empowerment, economic security, and the prevention of trafficking by offering vocational training. The Asia Foundation and Oxfam GB, for example, have organized capacity building for women’s clubs in certain provinces (An Giang). The UN JP on Gender Equality for 2009-2011 in Viet Nam was an innovative collaboration of 12 UN agencies,

Table 9: Selected non-state actors engaged in action against violence

<table>
<thead>
<tr>
<th>Organization</th>
<th>Scope of activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>National</td>
<td></td>
</tr>
<tr>
<td>VWU</td>
<td>Awareness raising programs, protection and prevention, counselling services</td>
</tr>
<tr>
<td>Centre for Women and Development</td>
<td>Research and dissemination, Statistical collection</td>
</tr>
<tr>
<td>HCM Youth Union</td>
<td>Awareness programs, women empowerment training programs</td>
</tr>
<tr>
<td>International</td>
<td></td>
</tr>
<tr>
<td>UN Agencies</td>
<td>Research and dissemination, training programs, gender mainstreaming trainings for governmental agencies, provide technical assistance, policy recommendation, engage stakeholders</td>
</tr>
<tr>
<td>ADB</td>
<td>Funding research and dissemination</td>
</tr>
<tr>
<td>WHO</td>
<td>Research on health and domestic violence, research on HIV and abuse children, produce reports, organize workshops and press conferences, dissemination of studies</td>
</tr>
<tr>
<td>Swiss Agency for Development for Family and Gender Studies</td>
<td>Funding gender mainstreaming programs</td>
</tr>
<tr>
<td>The Asia Foundation</td>
<td>Capacity building programs, vocational trainings,</td>
</tr>
<tr>
<td>Oxfam GB</td>
<td>Capacity building programs, vocational trainings,</td>
</tr>
<tr>
<td>Australian Agency for International Development (AusAID)</td>
<td>Funding gender mainstreaming programs</td>
</tr>
<tr>
<td>Spanish Agency for International Development Cooperation (SDC)</td>
<td>Funding gender mainstreaming programs</td>
</tr>
<tr>
<td>World Organization Against Torture</td>
<td>Research and Dissemination, awareness campaigns</td>
</tr>
</tbody>
</table>

Source: Researcher’s compilation

In 2009 Viet Nam launched the nation-wide campaign promoting gender equality and challenging traditional gender-bias perceptions called “I’m a Man, I’m against Violence”. The campaign was co-chaired by the Ministry of Culture, Sport and Tourism and Peace and Development. It partnered with 25 organizations, with INGOs, LNGOs, the UN and AECID contributing expertise and funding. It targeted men aged between 18-45 years-old in 16 provinces and aimed at preventing domestic violence.

Programs targeting men are increasingly becoming popular. Since 2008, a national radio station has been broadcasting the program “Window of Love”, which addresses domestic violence. Within a few months of the start of the program, there were over 1 million signatures collected for the campaign “Say No to Violence against Women”. In 2009, the TV program “Breaking the Silence” started to be aired nationally, targeting at raising awareness for gender-based violence and the role of the community and justice sector in addressing the issue.

The National Strategy to Promote Gender Equality 2011-202 developed in collaboration with UN-Women is focused on gender mainstreaming. It is expected to prevent GBV by acting on key determinants of gender inequality, and through the dissemination of research results.

5. Progress Indicators and Challenges

As a study stated, “In Viet Nam, while political will and capacity building are present, financial commitment, changing gender norms and addressing stigma remain challenges.” A remaining challenge to the implementation of existing policies is the budget. Next to funding, there are issues of coordination and monitoring. The policy documents assign responsibility for funding of initiatives to State, provincial, and local structures. Implementation of existing laws requires mobilizing human and financial resources, setting up systems of monitoring, evaluation, reporting and tracking accountability, as well as training services.

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164 Rasanathan and Bhushan, “Gender-based violence in Viet Nam: Strengthening the response by measuring and acting on the social determinants of health.” P.2

Allocation of funds nation-wide poses an issue of disproportionate distribution, as low-income provinces often lack the necessary budget. While it is a positive sign that Vietnamese development indicators show advancing results, reaching middle-income status can also result in reduction of international funding. Whether in such a case national funding will be available to sustain or create programs in the absence of international support is an open question.

One of the main gaps within Vietnam is that there is no multi-sectoral approach to preventing and addressing GBV. As ADB has assessed, domestic violence remains largely a private matter; and it is addressed by NGOs, INGOs, and the VWU rather than the government.

The problem of violence in Vietnam still requires a lot of juridical attention. Difficulty in defining forms of domestic violence, sensitivity of the issue, as well as social norms that tolerate or encourage domestic violence make the situation more complicated. Inadequate training or insufficient knowledge about gender-based violence was found within the legal aid providers according to a report from the National Legal Aid Agency from 2009. The study noted that only legal aid centres in 5 of 63 provinces were mainstreaming gender. Under-trained in psychological skills, police and legal providers in many cases are unable to provide adequate assistance to the female victims.

Lack of trust in the judicial system may also impede effectiveness in solving problems associated with domestic violence. The government is recognized to have made many efforts to fight corruption; it passed the Law on Corruption Prevention and Control in 2005 and discussed the issue in several National Assembly meetings. However, a report said that there are still survivors of gender-based who are concerned about the “transparency of police, local authorities and the courts, and whether court decisions do enough to punish perpetrators or decide child custody and property rights fairly.” The same report mentioned that a survivor of violence was worried because she heard a rumour that her husband is using money to try to influence the court.

More data is however needed to gauge the progress of the government’s program against corruption and how much it has impacted on cases of gender-based violence.

As pertains particularly to children, while Vietnamese laws restrict harming children, the enforcement of these regulations has still been a big challenge. One of the problems is attributed to influences of Confucianism and the belief that it is acceptable, in line with the saying: “Spare the Rod, Spoil the Child”. People do not interfere with physical punishment, as they believe that is a way of educating domestically within the family.

**Perception Change**

It is worth taking into consideration that prior to 1994, the issue of domestic violence was not a topic of public debate. Before that only “a few isolated articles had addressed some extreme forms of gender-based violence.” No in-depth studies on DV from before 1986 have been found. Although there was media coverage of the problem, cases of domestic abuse were referred to as “husband’s bad temper”. It was not until 1994 that Le Thu Quy first used the terminology of “domestic violence” as it is in English. This shows that the public perception on the issue of “invisible violence at home”, as it used to be referred to, is still relatively new.

The situation of violence against women in Vietnam was summarized by the 5th and 6th CEDAW Report: “Efforts have been made to eliminate gender prejudices and change the perception of the roles of women and men. Yet, the impacts differ from field to field, from region to region. This is largely due to the lack of comprehensive measure to remove the old paradigm of male chauvinism, which has been existence for thousands of years.” The report recognized that domestic work, and care of family and children are still considered primarily the woman’s duty. Further, some obsolete customs are still practiced, particularly in ethnic minorities groups (e.g. child marriages), impeding women’s advancement.

166 Ibid. P. 31
167 Ibid. P. 35
168 ADB, “Viet Nam: Gender Situation Analysis.”
170 Ibid.
171 Ibid. P. 47
173 Ibid.
175 Nations, “Platform of Action and the Beijing Declaration, Fourth World Conference on Women.” P. 14
176 “CEDAW Combined fifth and sixth Periodic Reviews of State Parties.” P. 18
6. Recommendations

1. More integrated research and accessibility to data on the issues of concern is needed. Insufficient general knowledge about the existing problem of gender-based violence, as well as little understanding of legal rights, remain the main challenges that should be targeted. Education at all levels, as well as all sectors should be implemented. The key for preventing GBV and DV is raising awareness about the fact that violence is a crime liable to legal punishment, not only a domestic issue. The state authorities should pay increased efforts to erase traditional perceptions that stigmatize the problem and to collect reliable data on prevalence and trends of different forms of violence that would also enable research to overcome the issue of under-reporting cases of occurring violence due to prevailing sense of shame among the victims. Vietnam faces the parallel challenge of reaching out to the victims and delivering necessary assistance services, as well as preventing the occurrence of the problem and raising awareness of the issue with both men and women.

2. There is an urgent need for coordination and further development of state policies to promote greater gender equality. It is also necessary to educate all social groups that gender-based violence is not acceptable in any case. Although Vietnam has enacted the law on domestic violence, there is a need to strengthen national policies and legal frameworks in compliance with documents. There are three such fields that need to be strengthened simultaneously:

1. Educating people about gender equality, and specifically that gender-based violence is a criminal act, not only a domestic matter, and it is legally punishable; and erasing the social stigma attached to, and isolation of abused women;

2. Promoting the legal and formal instruments assisting abused women and increasing the availability of such assistance;

3. Committing to prevention measures and supporting research and data collection in order to raise awareness of the issue.

Efforts at changing general perceptions should be targeted at gender stereotypes. The CEDAW 5th and 6th Report recognized that some school textbooks remain gender-biased. Traditional image of women are depicted with the four Confucian virtues attributed to women. Primary school children learn from early age that women and girls do house chores, take care of children, perform manual work, do farming etc. Boys and men are depicted as scholars, explorers, engineers or skill-workers. Such education contributes to gender prejudice and the social roles based on gender.177

In other words, national strategies and international initiatives should consider methods combating violence against women and children that would:

- Improve data collection, support research and dissemination on all forms of violence against women.
- Engage men into the campaigns of raising awareness on gender equality.
- Wide-spreading the legal knowledge about the legal mechanisms: for women to know their rights, for men to know that any act of violence is a subject of criminal prosecution.
- More integrated mechanisms should be adopted at state level.
- Education strategies should be incorporated, including eradicating gender stereotypes in the textbooks.
- Increase media campaign to condemn the violence and change the perception that DV is not a matter to be ashamed of and encourage women to break the silence.

177 Ibid. P. 31
C. EXPLOITATION

1. Description of the Problem

   a. Prevalence of Exploitation

Among the forms of exploitation of women and children, a substantial prevalence of human trafficking, cases of sexual exploitation, forced labour, and forced marriage have all been reported. Vietnam remains a source country of labour abroad, mainly to Taiwan, Malaysia, South Korea and Japan. At the same time, it is also a source of trafficked women and children for sexual exploitation to those countries, as well as to Cambodia, China, Laos, Thailand, and also Europe (particularly Czech Republic). Incidences of exploitation, such as forced prostitution, child labour, and forced labour are also reported in the national contexts.

Trafficking

Vietnam was listed in the Tier 2 Watch List in 2012 by the U.S. Department of State’s Trafficking in Persons Report for not fully complying with the Trafficking Victims Protection Act’s minimum standard for the elimination of trafficking, although it made significant efforts to do so.\(^{178}\)

Vietnam is mainly a source country, but also to a lesser extent a destination country. From available literature, the current situation indicates that the Vietnamese Government is not reacting sufficiently. Available data on trafficking mostly focus on women and children. Reports tend to range over a period of time with varying statistics, including those provided by national agencies. The problem with such available data is that they tend to be rather approximate rather than accurate, due to poor facilitation in tracking concrete documentation as well as the difficulty in reaching all cases. As in the case of domestic and sexual violence, problems in assessing the accuracy of existing data and the extent of unreported cases problematize the assessment of reports.

The difficulty lies in the lack of precise monitoring mechanisms, the lack of exact figures, and the chronic problem of underreporting found in other countries as well. Various studies offer different data, but in most of cases it is believed that actual numbers of trafficked people exceed by far the available statistics. For example, The British Embassy in Hanoi, in conjunction with the Child Exploitation and Online Protection Centre reported that within 2005-2009, there were 6,000\(^{179}\) trafficking victims--resulting in 3,190 court cases. However, there were approximately 40,000 women and children reported missing during this period of time, and there was a high suspicion that they may have been trafficked. Due to the lack of nation-wide record of missing people, it is difficult to track exact figures.\(^{180}\) The criminal nature of trafficking and the extensive efforts reported to by perpetrators to disguise or hide their activities makes accurate estimates of exact data impossible to obtain. Available reports, often from the same period of time, suggest different statistics, making the issue confusing to grasp and the scope of the problem difficult to measure. The Strategic Information Response Network (SIREN) Report quotes another number of estimated victims of human trafficking in the period of 2004-2009:1,586 cases and 2,888 perpetrators recorded.\(^{181}\) This number of cases is almost certainly far too low.

<table>
<thead>
<tr>
<th>Source of data</th>
<th>Period of time</th>
<th>Number of trafficked persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnamese Border Guard</td>
<td>2010</td>
<td>183</td>
</tr>
<tr>
<td>The Asia Foundation</td>
<td>2007</td>
<td>862</td>
</tr>
<tr>
<td>TuoiTre Newspaper</td>
<td>2006</td>
<td>6,000</td>
</tr>
<tr>
<td>The British Embassy in Hanoi and Child Exploitation and Online Protection Centre</td>
<td>2005-2009</td>
<td>6,000</td>
</tr>
<tr>
<td>Vietnamese Ministry of Justice</td>
<td>2004-2010</td>
<td>4,973</td>
</tr>
<tr>
<td>Vietnamese Ministry of Public Security</td>
<td>2004-2009</td>
<td>2,935</td>
</tr>
</tbody>
</table>

\(^{178}\) U.S. State Department, “TRAFFICKING IN PERSONS REPORT 2012,” (U.S. State Department, 2012).


\(^{180}\) “The Trafficking of Women and children from Vietnam,” (Hanoi: Child Exploitation and Online Protection Centre in association with the British Embassy, 2011).P.10

\(^{181}\) UNIAP, “Mekong Region Country Datasheers Human Trafficking,” in SIREN (Bangkok: UNIAP, 2010).P.52
Although, a recent law amendment re-phrased “trafficking in women and children” into “trafficking in persons”, in Vietnam human trafficking is still mainly addressed as trafficking in women and children, without including men (or boys above 16). A number of reports mention men, particularly from ethnic minority groups, being trafficked for labour exploitation mainly in mines, farms and factories, but trafficking in men was not found as the main focus of any available research.183

Means Employed

There are certain patterns used by trafficking networks. Among the recruitment mechanisms are recommendations or introductions by a friend or villager, illegal recruitment agencies, or other un-official channels.184

It is common that victims are aware of the illegality of crossing borders, but in doing so they assume that they would get unauthorized employment for better pay. Certain cases show that some trafficking victims agree on illegal crossing border and cooperate with the traffickers. However, upon arrival they are deprived of travel and identification documents. Instead of getting employment, they experience forced labour, forced marriage or sexual exploitation. Threats and violence are commonly employed on women to make them comply with the exploitation. In worse cases victims are enslaved, e.g. certain brothels tattoo the women and girls as a sign of ownership. Alliance Anti-Traffic (AAT) reported inhuman treatment of the victims, including physical maiming to prevent escapes and even organ harvesting. There are also suspicions of murder cases of non-compliant victims.185

Another powerful tool used by the traffickers is the Internet, especially when targeting children and teenagers. The rising access to Internet and popularity among the young provides traffickers a convenient means to reach the potential victims, with whom they establish contact first via online chat rooms. Newspapers have collected a number of cases where young girls are recruited by “friends” they made online. Some assistants to traffickers of girls appear not much older than the victims, giving her family an impression of a good “older sister”. They be friend the victim and offer “a shopping trip to city”, from which the victims do not come back home.186

Another common strategy is debt bondage of the victims who are duped into thinking they are going abroad to work. Upon arrival they are told that they need to pay back the inflated costs of transportation, which usually takes a couple of years of slavery. Only in some cases do victims receive some payment and are able to send money back to their families. The majority of victims are not familiar with the language, geography, law or other relevant information of the destination country, therefore they feel they have no choice but to comply with the traffickers’ rules, which are typically buttressed by force and coercion.

The 2012 Trafficking in Persons Report of the U.S. Department of State confirms that such a practise is commonly adopted

A study on migration trends conducted in 2010 of 1,265 Vietnamese migrants from three northern districts who

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183 UNIAP, “Mekong Region Country Datasheers Human Trafficking.”

184 "The Trafficking of Women and children from Vietnam." P. 13-17

185 Ibid. P. 21-22

had gone abroad for work found that nearly all faced high recruitment fees that put them in a state of debt bondage for years; the majority of those that had to return to Vietnam early – after one to two years – were not able to earn enough to pay off those debts. Upon arrival in destination countries, some workers find themselves compelled to work in substandard conditions for little or no pay despite large debts and with no credible avenues of legal recourse. Some of Vietnam’s recruitment companies reportedly did not allow workers to read their contracts until the day before they were scheduled to depart the country, after the workers had already paid significant recruitment fees, often incurring debt. Some workers reported signing contracts in languages they could not read. There also have been documented cases of recruitment companies being unresponsive to workers’ requests for assistance in situations of exploitation.  

Common Routes of Trafficking

According to the General Report of Activities of Vietnamese citizens migrating abroad presented at the First Conference on International Migration co-organized by the IOM in 2011, the National Duty Office 130 Against trafficking women and children has identified 89 key routes often used by trafficking gangs. The Report, however, did not provide a specific list of those key routes.

According to the SIREN Human Trafficking Report, there are prevailing four routes of trafficking in persons from Vietnam:

Map 2: Common routes of trafficking

Route number one: China, mainly southern provinces.

Vietnam shares with China a border of 1,463km, with six provinces on the Vietnamese side (Lai Chau, Ha Giang, Lao Cai, Cao Bang, Lang Son and Quanh Ninh) and two on Chinese side (Yunnan and Guangxi). The borderline is porous. With an imbalanced gender ratio in China, as well as strong demand for male child in a one-child policy country, trafficking in women and children from Vietnam to China is a predominant trend.
Vietnamese women, children, even new born-babies are trafficked for marriage, sex exploitation, forced labour as well as adoption purposes. “According to official estimates, trafficked women into China account for 70% of the total number of trafficked women abroad.” Vietnamese women are in high demand as brides in China due to the gender imbalance in the country and heavy societal pressure for marriage and having children. Next to forced marriage, women are trafficked for the purpose of prostitution. Within the range of the Southern China-Northern Vietnam border alone, 1,777 brothels have been identified. Traffickers do not only target single women, often married women are trafficked together with their children, who are later either sold for adoption or to brothels. Another common purpose of trafficking is exploitation in domestic servitude.

The incidence of crossing the borders with China grew tenfold in recent years. A study of the Institute of Labour Science and Social Affairs with the support of the ILO estimated that 4,000 Vietnamese workers enter China on daily basis through Lao Cai province alone. In 2008, there were 2,500 trafficked persons from Lao Cai that were rescued. Estimates indicated that the traffickers operating in this area received VND 3-40 million (approximately USD 160-2,500) per each person they manage to sell to the mines, brick kilns, plantations, the entertainment industry and domestic work.

Route number two: Cambodia.

In Cambodia, common perception about the beauty of Vietnamese women raises a demand for Vietnamese migrants, as well prostitutes. Estimations say that there are 15-32% Vietnamese women working in the sex industry in Cambodia. They enter the sex industry either voluntarily or by force, but there is prevalence of bonded labourof migrant workers. Often women are trafficked further to Thailand. The majority of sending communities are around the Mekong delta. Vietnam is also a destination for trafficked persons from Cambodia for sexual exploitation and also for forced begging.

Route number three: Taiwan and South Korea.

Increasing numbers have been reported of arranged marriages and agencies that mediate in sending brides to Taiwan and South Korea, as well as Japan. Higher income and the opportunity of marrying a man from a more developed country lure rural women; however, some end up in domestic slavery.

Route number four: Beyond the Greater Mekong Sub-region.

Vietnamese women and children are also trafficked beyond the neighbouring countries to Hong Kong, Macau, Malaysia, and even Europe. Thailand is reported as the transit point due to logistic convenience.

Other destinations: Trafficking to the UK

While most available literature identify trafficking operating from Vietnam to neighbouring countries, the report by the British Embassy in Hanoi and the Child Exploitation and Online Protection Centre detected a rising trend of trafficking of Vietnamese children into the UK. Fifty-eight children were trafficked to the United Kingdom over a period of 12 months for purposes of labour, sexual exploitation and street crimes. Another emerging trend was reported when a number of children (mainly girls) were found to be “flying into UK undocumented, claiming asylum and subsequently going missing from care.” It is believed that these girls, before being trafficked into UK, were previously exploited in brothels in China. Trafficking in children and youth is predominantly for sexual abuse. Girls are targeted by traffickers because they are easier to manipulate and on account of the expectation that they can generate higher earnings. There is higher demand in the sex industry for young girls for their virginity. Seventy per cent of all Vietnamese victims of trafficking recorded by the UK National Referral Mechanism from April 1st 2009 to December 31st 2009 were children.

191 Ibid.
192 “The Trafficking of Women and children from Vietnam.”
195 Ibid.
196 Ibid.
197 Ibid.
198 Ibid. P. 3
199 Ibid. P. 3
200 Ibid. P. 13
**Trafficking Returnees**

In terms of information on survivors returning, the official data from Vietnamese Office of Migration from 2010 provides the following numbers:

Table 11: Number of human trafficking returnees in 2010 by destination countries

<table>
<thead>
<tr>
<th>Returning from</th>
<th>Number of children returnees</th>
<th>Number of women returnees</th>
<th>Returning on their own</th>
<th>Rescued</th>
<th>Exchanged</th>
<th>Expelled</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>53</td>
<td>333</td>
<td>32</td>
<td>80</td>
<td>253</td>
<td>21</td>
</tr>
<tr>
<td>Laos</td>
<td>2</td>
<td>52</td>
<td>16</td>
<td>28</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>Cambodia</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>385</td>
<td>48</td>
<td>108</td>
<td>268</td>
<td>21</td>
</tr>
</tbody>
</table>

Source: Translated by the researcher, data from Official website for Information on Migration by the Ministry of Foreign Affairs, IOM and EU

**Cross-Border Marriages/Mail Order Brides**

In recent years, a significant number of Vietnamese women married Taiwanese, Chinese, South Korean and Japanese men, the majority of them through arrangements of matchmaking agencies. Cross-border marriages carry a risk of exploitation or sale of women. Brokers and matchmaking agencies’ activities often break norms of human rights by launching advertising campaigns, which treat potential brides as commodities for sale. In the early 1990s, TV advertisements in Taiwan showed Vietnamese women on a runway with numbers for Taiwanese men to pick from by giving them a call. Later such ads have been banned. However, there have been practices reported of Taiwanese men coming to Vietnamese matchmaking agencies and choosing a bride from a group of presented candidates.

International marriages often take one of two forms: arranged marriages and marriages brokered through ethnic ties. Marriage migration involves the question of the legality of the activities of existing matchmaking agencies and brokers. Although they may differ from what is traditionally regarded as kidnapping or human trafficking, in many cases, the activities and practices performed by certain brokers do carry a trafficking component as they verge on deceiving, misleading or trapping women into making decisions when they are not fully aware of the conditions. Many women who register with such agencies are not given precise information about the potential husband or the exact destination or future address. Fraudulent misrepresentation or deliberate denial of accurate information lends brokered marriages the quality of trafficking.

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204 "Báo cáo tổng quan hoạt động di cư của công dân Việt Nam ra nước ngoài - [General Report of Activities of Vietnamese citizens migrating abroad]." P. 4


207 Nguyễn, “Marriage migration between Vietnam and Taiwan: A view from Vietnam.” P.13
Lack of sufficient information before departing to marry in a foreign country may result in disillusion. The term “Taiwan disillusionment” as coined by Vietnamese media, reflects a phenomenon of some Vietnamese women married into problematic marriages. Before entering the marriage, those women expected a positive change, particularly in economic terms, for their lives. However, the reality never met their expectations. In the worst cases they were abused, forced to be the “wife” for their husband’s brothers and relatives, bearing children for his family, forced into farm labour, or even sold into the entertainment industry. Such cases clearly fall within the category of trafficking and exploitation.

**Sale of Children**

Reports indicate that the sale of children and youth poses a serious problem for Vietnam. The Pacific Link Foundation has reported cases where poor families have sold their own children, often to couples in China. The one-child Policy in China creates a demand for buying children, in particular males. Other cases involve Chinese men buying Vietnamese women to produce a male baby. Often, once a son is born, the mother, sometimes together with daughter or daughters born prior to the son, are returned to Vietnam or sold to a Chinese brothel.

Kidnapping for trafficking purposes is serious, particularly in the border regions with Cambodia and China. The Post-Yokohama Report estimated that there were 60 kidnapped children from 14 provinces, 29 of them were under 16 years old; 26 of them were sold for sexual exploitation. Yet the data does not specify the timeline or source of information. It is of common perception that Vietnamese boys are trafficked to China for illegal adoption; however, no specific statistics are available at the moment.

Vietnamese women are also reportedly exploited as surrogate mothers. A Taiwanese surrogacy service was found to have exploited 14 Vietnamese women by forcibly impregnating them and selling the babies to wealthy Taiwanese couples for $32,000.

International adoption as a mean of trafficking children abroad has become a matter of closer scrutiny. Some data on the number of international adoptions have been compiled. According to data from the Ministry of Justice, during 2008-2010 there were 2,420 children from Vietnam adopted mainly by citizens of Canada, Switzerland, Denmark, Spain, France, and Italy. More detailed information as to the prevalence, nature, and monitoring of such incidences would be helpful.

**Internal Trafficking**

Trafficking, particularly for sexual exploitation is not limited to cross-border movements. Within Vietnam, women and children are kidnapped, forced or deceived into working in sexual enterprises. Predominantly, the movement occurs from rural to urban areas. Major cities are the main destinations for trafficked women forced into prostitution, karaoke bars, forced labour at factories, or domestic service. Men are also often victims for forced labour in agriculture, construction and factories.

Internal trafficking is a complex issue and still needs more clarification, both in terms of legislation as well as in conceptualizing. There is a thin boundary between trafficking and irregular or illegal migration that ends in exploitation. Victims in most cases are unprepared for migration and lack legal and situational awareness. Many forms of exploitation occur, including forced labour, being forced or tricked into working in the sex industry, or partial deprivation of freedom.

Although no accurate number of internally trafficked people can be reached at the moment, the government has provided some estimates. The following table indicates estimated numbers of people who left their home communities for employment purposes, but disappeared or whose status is unrecorded. Estimates of number of suspected trafficked victims were organized by the

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208 Ibid. 19-20.
209 "The Trafficking of Women and children from Vietnam.” P. 12
212 “The Trafficking of Women and children from Vietnam.” P. 12
213 Data quoted from the Official website on Migration Information, “Information on Migration”. (last retrieved on March 6th, 2012)
provinces in each of 64 provinces. For the convenience of this study, the researcher has summarized the data into the nation-wide numbers accordingly:

Table 12: Number of missing people across the country by the duration of missing (2010)

<table>
<thead>
<tr>
<th>Gender</th>
<th>Missing time</th>
<th>Total number across the country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>Under 5 years</td>
<td>2,321</td>
</tr>
<tr>
<td></td>
<td>5 - 10 years</td>
<td>6,633</td>
</tr>
<tr>
<td></td>
<td>Over 10 years</td>
<td>249</td>
</tr>
<tr>
<td>Men</td>
<td>Under 5 years</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>5 - 10 years</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Over 10 years</td>
<td>2</td>
</tr>
<tr>
<td>Women under 25</td>
<td>Under 5 years</td>
<td>600</td>
</tr>
<tr>
<td></td>
<td>5 - 10 years</td>
<td>1,169</td>
</tr>
<tr>
<td></td>
<td>Over 10 years</td>
<td>18</td>
</tr>
<tr>
<td>Women above 25</td>
<td>Under 5 years</td>
<td>677</td>
</tr>
<tr>
<td></td>
<td>5 - 10 years</td>
<td>2,077</td>
</tr>
<tr>
<td></td>
<td>Over 10 years</td>
<td>121</td>
</tr>
<tr>
<td>Children - boys</td>
<td>Under 5 years</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>5 - 10 years</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Over 10 years</td>
<td>2</td>
</tr>
<tr>
<td>Children - girls</td>
<td>Under 5 years</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>5 - 10 years</td>
<td>697</td>
</tr>
<tr>
<td></td>
<td>Over 10 years</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Compiled by the researcher based on the data from the Official website on Information on Migration by the Ministry of Foreign Affairs, IOM and EU

Child Prostitution

The 2012 TIP Report described Vietnam as a destination country for child prostitution, with exploiters coming mainly from Japan, South Korea, China, Taiwan, the UK, Australia, Europe, and United States. “Although this problem is not believed to be widespread.”

The World Children Organization in 2006 estimated that there are 200,000 sex workers in Vietnam, 7.5% - 10% of whom are children. Even more worrisome is the growing tendency of children's percentage in the sexual industry.

Child prostitution has been an increasing problem within Vietnam since the opening of the country. UNICEF and ECPAT data quoted in the Post-Yokohama Report estimated 27,000 Vietnamese prostitutes working in Cambodia, 20-25% of whom are aged between 14-18. However, it is impossible to determine the actual number of young people engage in prostitution due to the covert nature of the practice. A report about child prostitution co-sponsored by ILO indicated that there is a tendency towards an increase in numbers of child prostitution: in 1989 2.5% commercial sex workers were children; in 1994 – it was 11%; in 1995 – 11.42%. This data is, of course, now very out of date. The figures are believed to vary significantly from 5-20% depending on the region. In the South of Vietnam, the number of children engaged in prostitution is higher than in the North. Also, there is a variance in the age tendency of child prostitutes between North (prevalence of 15-17 years old) and South (prevalence of 13-17 years old).

Figure 7: Percentage of children in commercial sex industry according to ILO estimations

| Year | 12.00% | 9.00% | 6.00% | 3.00% | 0%
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Researcher’s compilation following the data from “Children in Prostitution in Hanoi, HaiPhong, HCMC and Can Tho- Rapid Assessment”

The recruitment process, as the ILO study showed, is mostly based on four scenarios. In the first type of scenario, children are either persuaded by friends or people from their home communities to follow them to the city in search of legitimate jobs, but upon arrival they find themselves in exploitive environment, were they are often beaten, threatened and locked in the rooms/brothels. The second form of recruitment involves children being deceived by the friends of fellow villagers who force them into the sex industry, by promising high paid jobs. Sometimes,

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215 Ibid. (last retrieved on March 6th, 2012)
216 U.S. Department, “TRAFFICKING IN PERSONS REPORT 2012.”
families receive money in advance to convince them that their children can have equal or even higher earnings. In the third scenario, children, upon arrival at the city, face difficulty making ends meet and volunteer to work in prostitution once they are offered the higher-income job. The last type of recruitment, and the rarest one according to the report, is when they deliberately seek such work for personal or family reasons.

Children in Special Circumstances

A report published in 2009 describes the situation of vulnerable children as follows:218

MOLISA reports that, in 2004, there were over 2.5 million219 children in special circumstances...220 According to MOLISA and other government agencies, there are over 1.2 million children with disabilities, 263,000 children affected by HIV/AIDS221 (8,500 of whom are infected), 150,000 orphans, 23,000 child labourers, 20,000 child sex workers, 21,000 street children, 13,000 children in conflict with the law, 8,000 drug users, and 126,309 children who were deprived of the care of their biological parents. In addition, there are also 1.2 million children living in poverty situations, 86% of whom are Kinh (Kinh is one of the 54 ethnic groups in Vietnam). Many children in special circumstances are struggling to survive on their own; some are forced to work and live on the streets, and a small number are living in institutions.222

Street Children

Street children are exposed to all dangers of society, and have little protection, if any. In the eyes of law, they are often petit criminals, guilty of theft, involved in drugs, or vandalism. There have been reported instances of brutality by the police against street children, or children in detention.223

The issue of street children has been linked to the “negative phenomena arising from the revival of state-sanctioned capitalism.”224 “Street children” refers to the children who live or work on the streets, called in Vietnamese as “bụiđời”, which translates to English as “dust of the life,” referring to “children of the dust”.225 Human RightsWatch estimated that there are 1,500 street children in Hanoi and 23,000 street children throughout.226 Most of them work as shoe-shiners or chewing-gum sellers. Most children in Hanoi earn about 20,000 VND (approximately 1 USD) or less per day.227

The government has recognized the concern relating to street children. In 1999 the Prime Minister issued Decision No. 134 on “Ratification of the Program of Action for Protection of Children with Special Circumstances in the 1999-2002 Period”,228 Several ministries and departments are responsible for protection of street children, namely the MOLISA, the Ministry of Public Security (police) and the Committee for Population, Family and Children.


219 The source indicated that “in 2004, there were over 2.5 million children in special circumstances - over 3 percent of the total child population.” Ibid, 12. This Study is of the opinion that what may have been referred to was the total population of Vietnam in 2004, which was 81,436,400. General Statistics Office of Vietnam, “Population and Employment: Average Population by Sex and Residence,” http://www.gso.gov.vn/default_en.aspx?tabid=467&i...D=12940 (accessed 8 November 2012).


221 “Children affected by HIV/AIDS: Children “affected” by HIV/AIDS are broader than just children infected with HIV/AIDS. It is defined by the international instruments as: children who are HIV positive; children who are affected by HIV/AIDS because of the loss of a parental caregiver and/or because their families are severely strained by its consequences (orphans and children living in affected families); and children who are most prone to be infected.” Ibid.


225 Ibid.

226 Data quoted in ibid. P.10

227 Ibid. P. 11

228 Ibid. P. 13
**Child Labour**

Forced labour of men, women, and, particularly, children is a persisting challenge. The Vietnamese law sets the minimum employable age as 18 and prohibits child labour, with certain exceptions. If hiring companies obtain permission from the parents and the Ministry of Labour, Invalids and Social Affairs (MOLISA), children from 15 to 18 can be employed. The practice of engaging children in work is particularly serious in rural areas.

According to the data from 2006 provided by the ILO, 6.7% (930,000) of children between the ages of 6 and 17 participated in some economic activity, usually in the family farms or businesses not within the scope of law. Because their work is not legally registered, children often suffer exploitation and/or are exposed to hazardous conditions in the workplace. In HCM City alone, in 2009, 62 of 173 production factories were inspected and found to use illegal child labour. Official inspections reported that 96% of all child labour is not documented, 75% of them were found in the central coast and Mekong Delta provinces. Children often work in the farms, mines, factories, or in domestic service.

The actual number of children participating in economic activities is problematic to assess due to the irregular nature of employment, often regarded as help in the family business. As seen from the below compilation, the available statistics are far from precise on the criteria of obtained estimates.

<table>
<thead>
<tr>
<th>Source of information</th>
<th>Year</th>
<th>Estimation</th>
<th>Age group</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOLISA</td>
<td>2010</td>
<td>15% (26,000)</td>
<td>Not specified</td>
</tr>
<tr>
<td>ILO</td>
<td>2006</td>
<td>6.7%</td>
<td>6-17</td>
</tr>
<tr>
<td>US State Department</td>
<td>1990s</td>
<td>30%</td>
<td>6-17</td>
</tr>
</tbody>
</table>

Source: Compiled by the researcher based on literature quoted in the report.

In September 2011, Human Rights Watch published a report on a number of human rights abuses committed against persons detained in drug detention centres under Ho Chi Minh City’s administration. Among these abuses is forced labour. Human Rights Watch conducted “in-depth, confidential interviews” with 34 recent detainees of street children in Vietnam have reduced since 2004. A report by UNICEF mentions that “The estimated number of street children in Viet Nam varies, and was put at about 12,000 in 2007.” A news article indicated that, “according to data by the Street Educators’ Club, the number of street children has dropped from 21,000 in 2003 to 8,000 in 2007. In particular, the number went from 1,507 to 113 in Hanoi and from 8,507 to 794 in Ho Chi Minh City.”

According to the Labour Law, employment of children under 15 is illegal, with some exceptions that MOLISA can grant. Working hours for juveniles cannot exceed 7 hours a day or 42 hours a week, and they can only perform jobs suitable for their physical, mental and personal development. The government Circular from 1995 stipulates 13 working conditions and 81 jobs in which it is prohibited to employ juvenile workers.

The actual number of children participating in economic activities is problematic to assess due to the irregular nature of employment, often regarded as help in the family business. As seen from the below compilation, the available statistics are far from precise on the criteria of obtained estimates.

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>15-17</td>
<td>62.3%</td>
</tr>
<tr>
<td>11-14</td>
<td>36.7%</td>
</tr>
<tr>
<td>6-10</td>
<td>7.4%</td>
</tr>
</tbody>
</table>

Source: VWU and some NGOs Alternative Report. [Numbers were released without specific date, geographical range, and job criteria (Researcher’s comment)]

229 "U.S. State Department Human Rights Report 2010."


of 14 of 16 centres under the administration of Ho Chi Minh City. All 34 former detainees were detained within five years of the date of their 2010 interview. Findings were as follows:

Vietnam’s system of forced labor Centres for people who use drugs has expanded over the last decade. In 2000, there were 56 drug detention Centres across Vietnam; by early 2011 that number had risen to 123 Centres. Between 2000 and 2010, over 309,000 people across Vietnam passed through the Centres.

Refusing to work, or violating any one of a number of Centre rules, results in beatings or confinement in disciplinary rooms (phòng kỷ luật). Staff beat detainees with wooden truncheons or shock them with electrical batons, sometimes causing them to faint. In disciplinary rooms—either crowded punishment rooms or solitary confinement cells—physical deprivation is used as an additional form of punishment: food and/or drinking water rations are often reduced, access to bathing is restricted, and family visits are prohibited. People held in disciplinary rooms often have to work longer hours or conduct more strenuous work than usual, or are only allowed out of such rooms for 30 minutes each day, if they are allowed out at all.

In addition to adults, children who use drugs are also held in drug detention Centres. Like adults, they are forced to work, beaten, and abused.

Labour is said to be central to the purported “treatment” of people in drug detention centres. There is no standard type of labour and most have a variety of labour arrangements, some involving outside businesses. Government regulations make labour therapy one of the official five steps of drug rehabilitation. The centres must “organize therapeutic labour with the aim of recovering health and labour skills for drug addicts.”

The Vietnamese government reported that in 2007, 3.5 per cent of detainees in Ho Chi Minh City centres were children. Children can be detained for one to two years. Decree 135 of 2004 requires that detained children must take part in “therapeutic labour.” There is nothing in the decree on “post rehabilitation management” to prevent a child from being categorized as at “a high risk of relapse” and thus subject to an additional two years of detention.

b. Root Causes of Exploitation

Extreme poverty, lack of resources, lack of perspectives, lack of education, lack of awareness of related danger, lack of safety nets, shattered or dysfunctional families, the lure of better life in big cities or relatively wealthier countries make women and children voluntarily enter arranged marriages or travel to cities or other countries for work. With the growing tendency towards urbanization, rural to urban movement of persons for employment purposes is becoming customary. However, often those migrations pose threats, particularly to women and children, of being trafficked.

Asia Foundation found that women and girls in the Mekong Delta Region have difficulty in accessing Social Policy Banks due to certain regulations and registration issues. This prevents a number of women from approaching financial institutions for help, which creates a circle of events that raise the risk for trafficking. In many cases, poverty-stricken families seek external funding assistance, including indebtedness. Financial difficulties often lead to children, especially girls, dropping out of school. To seek employment or marriage, some girls and women, who seldom have any legal awareness, decide to migrate to a city and are lured or deceived into the sex trade.

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235 Ibid, P. 2

236 Ibid, P. 4

237 Human Rights Watch, “Rehab Archipelago”. p. 4

238 The Human Rights Watch publication commented as follows: The five official stages are: 1. Admission and sorting; 2. Treatment for withdrawal, the impact of detoxification and opportunistic infection; 3. Education and counseling to rehabilitate behaviors and personality; 4. Labor therapy and vocational training; 5. p. preventing and fighting against relapse, preparing for community reintegration. See Interministrial Circular 41/2010/TTLT-BLDBXH-BYT.

239 Human Rights Watch, “Rehab Archipelago”. p. 17

240 Human Rights Watch, “Rehab Archipelago”. p. 66


242 Ibid.
Rapid economic growth results in unequal distribution of wealth, skewed largely towards urban areas. Rural and remote areas note rising unemployment that push people for job-related migration. The Government also encourages the unemployed to seek employment abroad. However, the movement has been poorly-regulated, which creates opportunity for trafficking.243

At-risk groups are street children, who are exposed to abuse, maltreatment, and have no safety networks. Orphans, street children and children from dysfunctional or broken families are particularly vulnerable to various forms of exploitation, including kidnapping, trafficking, forced labour, and recruitment to sex industry, sex exploitation, or pornography. Because of the lack of accurate data, or registration of street children, it is impossible to assess how many street children actually have been trafficked. Moreover, the lack of records and registration make them even easier prey for traffickers.244

C. Impact of Exploitation

Some reports express concern that a number of girls initially exploited in brothels in China are being re-trafficked for prostitution in Russia and across Europe, including the UK, where in most cases they enter by claiming asylum.244 As previously mentioned, lack of tight coordination and clear division of accountability among the responsible agencies can lead to disastrous consequences. There have been cases where border authorities have recognized victims of trafficking, released them at the border, but gave them no assistance in coming home, therefore posing a threat of being re-trafficked.245

In the cases of female migrants who enter the sex industry, violence, threats, psychological abuse, confinement, dependency and indebtedness are often experienced. Apart from lack of social safety net and lack of legal protection, women face social stigma and are sometimes too afraid to go back to their communities. Often, they lie about their occupation to their families and friends. Thus, they find themselves in a situation with no emotional, psychological, or de jure support. Such conditions, in addition to the abuse and fear experienced in work, might lead to severe emotional problems. Moreover, practices of unprotected sex coupled with lack of regular health examinations and predominant presence of drugs in the industry results in the danger of uncontrolled spread of HIV/AIDS and other sexually transmitted diseases. According to Reuters, more than one fifth of sex workers in Hanoi are infected with HIV.246

Apart from drugs and diseases, women working in the sex industry are exposed to a high risk of unplanned pregnancy, due to the low rate of condom use. This leads to a chain of other serious issues, such as abortion, often conducted not in the hospitals or by certified doctors. Unwanted pregnancies can also result in raising the number of orphans, since the babies are often abandoned after the birth, which leads to the problem of street children and, consequently, the social evils that they might be exposed to. There are cases of sex workers returning to their home communities with their babies, but those are relatively rare because of severe social stigma and condemnation from the society that they would face.

Victims of exploitation suffer from serious emotional, mental and physical disorders. Insufficient assistance to the victims and difficulty in re-integration into the society due to serious social stigma are sources of suffering. Although counselling services are a part of rehabilitation programs, there are no professionalized psychological assistance systems that reach all victims in a sustainable manner.247

Child Prostitution

A study on child prostitution in North and South Vietnam found the following prevailing impacts: (1) physical conditions that include difficult activities serving customers, rude treatment by customers, beating by employers and street gangs; (2) psychological conditions stemming from fear of HIV/AIDS and other STDs infection, fear of arrest by police, fear of pregnancy, fear of exposure to the public, fear of identification by family and friends; (3) economic conditions of low income, which is a source of exploitation by other people; (4) social conditions that are at risk of family separation and social isolation.248

244 "The Trafficking of Women and Children from Vietnam.” P. 31
245 UNICEF, “Reversing the Trend: Child Trafficking in East and Southeast Asia.” P. 63

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of rejection by customers, fear of being found out by family and villagers, sadness and anxiety about the future, conflict in social environment, strict control from employers or pimps, and being exploited by street gangs.248

2. De Jure State Responses

a. Bases of State Responsibility

Vietnam has been active in participating in regional mechanisms to combat trafficking. It is a signatory to most existing regional multilateral cooperation mechanisms. Bilateral agreements play a significant role. Since 2001, Vietnam and China have launched a number of cooperation programs at various levels based on informal agreements and annual joint action plans. It has been a strong partnership and it has served as role model and basis for the China-Myanmar Anti-Trafficking Cooperation Framework 2007–2010.249

International Legal Framework:

- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Convention on the Elimination of All Forms of Discrimination Against Women
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention against Corruption
- International Labour Organisation Convention concerning Forced or Compulsory Labour (ILO 29)
- International Labour Organisation Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO 182)
- United Nations Convention against Transnational Organised Crime

Regional Agreements

- ASEAN Declaration on Transnational Crime (1997)
- Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT), Memorandum of Understanding on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-region (2004)
- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)

Bilateral Agreements

Cambodia:

- Treaty on Border between Vietnam and China 20/07/1983: “The two sides enhance the cooperation to keep security and social order in the bordering region. In the case citizens of one country violate regulations of the other country (assault, robbery, smuggling …) the local authority will arrest, document and hand over the offender and evidence to authority of the citizen’s country for conviction.”250

- Agreement between Cambodia and Vietnam on cooperation to combat trafficking in women and children (2005). The cooperation assists children and young women who had been trafficked and work to eliminate trafficking in women and children. On the Vietnamese side, responsible organ for implementing is the Ministry of Public Security.251

- The Cooperation Agreement between Vietnam and Cambodia on Standard Operating Procedures for the Identification and Repatriation of Trafficked Victims (2009)

China

- Provisional Agreement on Solving affairs in Border Area between Vietnam and China 07/11/1991. Chapter IV said: “The two countries will collaborate to keep the security and social order in the bordering area including addressing the issue of illegal migration.”


249 UNICEF, “Reversing the Trend: Child Trafficking in East and Southeast Asia.” P. 48


They will work together to investigate, arrest and transfer cross-border criminals. Coordinate to prevent and suppress smuggling, drug, arms, counterfeite money, seduce and trafficking in women and children.”252

- Agreement on Mutual Legal Assistance in Civil and Criminal Matters 19/10/1998. Art. 26 stipulated: “The required party shall provide other party duplicates of the criminal sentences related to nations of the other party”; Art. 28 said: “Both parties, as required will provide to each other information about the current law and practices of law implementation in each country.”253

- Vietnam - China: several meetings were held to identify the need for developing an MOU between Vietnam and China to combat Trafficking in Persons. The Ministry of Public Security of Vietnam (MPS) prepared the first draft of this MOU in October 2008.

Other Countries

- Border Agreement between Vietnam and Laos (22/09/2003), in which “[t]he two sides agreed to raise awareness about border regulations, improve management capacity, smash drug trafficking and smuggling and ease people’s mobility and movement through the border.”254

- Lao PDR – mutual legal assistance (includes provisions related to extradition)

- Lao PDR – Agreement on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking (2010)


- Mutual Legal Assistance treaty (MLAT) between Vietnam and UK, which came into force in September 2009.

- Korea – Treaty on Extradition between the Republic of Korea and the Socialist Republic of Vietnam (signed in 15 September 2003 and signed into force on 19 April 2005); Treaty Between the Republic of Korea and the Socialist Republic of Vietnam on Mutual Legal Assistance in Criminal Matters (signed in 15 September 2003 and signed into force on 19 April 2005);

- Mongolia – mutual legal assistance

- Indonesia – cooperation in preventing and combating crimes (2005)

The Government has recognized the risks affecting the migrating population, hence has included relevant provisions into the labour export agreements, particularly in the following MoUs:


- Memorandum of Understanding on sending Vietnamese workers to Korea between the Vietnamese Ministry of Labour, Invalids, and Social Affairs and the Korean Ministry of Labour (2008)


b. State Policies Against Exploitation

Law on Trafficking

In March 2011, the Vietnamese National Assembly adopted the Law on Prevention, Suppression Against Human Trafficking. The Law itself provides for when it enters into force: 1st of January 2012 (Article 57).

The law provides the definition of sexual exploitation, sexual slave, and forced labour, as follows:

Article 2. Use of Terms

In this Law, the following terms are understood as follows

- Sexual exploitation means the coercion of persons for prostitution, for being subject matters for the production of pornographic materials, for erotic performance, or for sexual slavery.

- Sexual slave means persons who, under dependent situation, are forced to serve other persons for the latter’s sexual demands.

- Forced labour means the use of force or the threat of use of force, or other means to coerce persons to work against their will.

252 Wang, "Anti-Human Trafficking Programs in Vietnam. Trafficking in women and children from Vietnam to China and legal frame-work and government responses.”

253 Ibid. P. 12

254 Ibid. P. 12

Under the law, the following acts are prohibited:

**Article 3. Prohibited Acts**
- The trafficking in persons as stipulated in Article 119 and Article 120 of the Penal Code.
- The transfer or receipt of persons for sexual exploitation, forced labor, the removal of organs, or for other inhuman purposes.
- The recruitment, transportation, harbouring of persons for sexual exploitation, forced labor, the removal of organs or for other inhuman purposes, or for the commission of the acts as stipulated in paragraphs 1 and 2 of this Article.
- Coercion of persons to commit any of the acts stipulated in paragraphs 1, 2 and 3 of this Article.
- Conducting brokerage to help other persons commit any of the acts stipulated in paragraphs 1, 2 and 3 of this Article.
- Revenge or the threat of revenge of victims, witnesses, denunciators, their relatives or persons who deter the acts stipulated in this Article.
- Misuse of the prevention, suppression against human trafficking for illegally obtaining profits or committing illegal acts.
- Obstruction against denunciation, notification and handling of the acts stipulated in this Article.
- Differentiation or discrimination against victims.
- Disclosure of the information of victims without their consent, or their lawful representatives.
- Assuming false position as victims.
- Other acts of violation of the provisions in this Law.

**Specific Provisions of the Penal Code**

It is important to note that Article 3 of the Law on Prevention, Suppression Against Human Trafficking, which enumerates the acts prohibited, refers to the provisions on trafficking in the Penal Code. Indeed, previous to the enactment of this law, trafficking was punished under various offenses in the Penal Code that are directly relevant to trafficking. Specifically, article 119 prohibits trafficking in persons and article 120 prohibits trading in, fraudulently exchanging, or appropriating children. The Penal Code includes a range of offenses that could be applied to the process of trafficking. For example, crimes relating to document fraud (articles 266-268, 284), laundering of proceeds of crime (article 251), and coercing other persons to stay in foreign countries (article 275), are all prohibited under the Penal Code.

**PENAL CODE, Article 119 - Trafficking in women**
- Those who traffic in women shall be sentenced to between two and seven years of imprisonment.
- Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and twenty years of imprisonment:
  - Trading in women for the purpose of prostitution;
  - In an organized manner;
  - Being of professional characters;
  - For the purpose of sending them overseas;
  - Trafficking in more than one person;
  - Trafficking more than once.
- The offenders may also be subject to a fine of between five million and fifty million dong, to probation or residence ban for one to five years.

**PENAL CODE - Article 120.- Trading in, fraudulently exchanging or appropriating children**
- Those who trade in, fraudulently exchange or appropriate children in any form shall be sentenced to between three and ten years of imprisonment.
- Committing such crimes in one of the following circumstances, the offenders shall be sentenced to between ten and twenty years of imprisonment or life imprisonment:
  - In an organized manner;
  - Being of professional character;
  - For despicable motivation;
  - Trading in, fraudulently exchanging or appropriating more than one child;
  - For the purpose of sending them abroad;
  - For use for inhumane purposes;
  - For use for prostitution purposes;
  - Dangerous recidivism;
  - Causing serious consequences.
- The offenders may also be subject to a fine of between five million and fifty million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years or subject to probation for one to five years.

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Prostitution

PENAL CODE - Article 254.-Harbouring prostitutes

- Those who harbour prostitutes shall be sentenced to between one and seven years of imprisonment.
- Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and fifteen years of imprisonment:
  - In an organized manner;
  - Coercing other persons into prostitution;
  - Committing the crime more than once;
  - Against juveniles aged between full 16 years and under 18 years;
  - Causing serious consequences;
  - Constituting a case of dangerous recidivism.
- Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve years and twenty years of imprisonment:
  - Against children aged between full 13 years and under 16 years;
  - Causing very serious consequences.
- Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to between twelve and twenty years of imprisonment.
- The offenders may also be subject to a fine of between one million and ten million dong.

Labour Law Provisions

- No prison or forced labor

According to the Vietnam Labor Law, paragraph 2, Article 5, the maltreatment of workers and the use of forced labor in any form shall be prohibited.

According to the Vietnam Labor Law, Article 9, the employment relationship between workers and employers shall be established and developed through negotiations and agreement on the principles of voluntariness, equality, co-operation, respect of each other’s lawful rights and interests, and full observance of commitments.

- No Child Labor

Minimum Age-In accordance with Vietnam Labour Law, Article 119, the minimum age for workers is 15 for all industries.

Record Keeping- According to the Vietnam Labor Law, Article 119 at places where young workers (under 18 years old) are employed, separate records shall be kept mentioning in full the name, date of birth, work assigned and results of periodic health checks.

- Working Hours

According to the Vietnam Labour Law, Article 122 the hours of work for young workers shall not exceed 7 hours per day or 42 hours per week.

According to the Vietnam Labour Law, Article 119 states that young workers are workers under 18 years of age.

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- Harassment/discipline

According to the Vietnam Labor Law, Article 5, maltreatment of workers is prohibited.

According to the Vietnam Labor Law, Article 8, Section 3, employers have the obligation to respect the workers' honor and dignity, and to treat workers correctly.

According to the Vietnam Labor Law, Article 111, Section 1, all acts by employer to offend female workers' dignity and honor are strictly prohibited.

- Non-discrimination

In accordance the Vietnam Labor Law, with Article 5, Section 1, every person shall have the right to work, to choose freely the type of work or trade and to improve professional skills without any discrimination in respect of sex, race, social belonging, creed, or religion.

According to the Vietnam Labor Law, Article 9 indicates that the labor relationship between workers and employers shall be established and developed through negotiations and agreement on the principles of voluntariness, equality, co-operation, respect for each other's lawful rights and interests, and full observance of commitment.

According to the Vietnam Labor Law, Article 111, Section 1, the employer must implement the principle of equality between men and women in respect of recruitment, employment, advancement in wage grades, and remuneration.

Other Related Laws and Regulations

Aside from than the Penal Code and Labour Law, several laws and regulations supplement protection against exploitation:

- Decree No. 38 on the Administrative Sanctions Against Violations of Labour Legislation (1996);
- Decree No. 49 on Sanctions against Administrative Violation in the Domain of Security and Order (1996);
- Law on Marriage and Family (2000);
- The Ordinance on Prevention of Prostitution (2003)
- Law on Protection, Care and Education of Children (2005),
- Law on Gender Equality (2006);
- Law on Vocational Training (2006);
- Law on Vietnamese Guest Workers (2006);
- Law on Donation and Transplantation of Human Tissues and Organs, Donation of Corpse/Body (2006);
- Decree No. 69 (2007) to amend the previous Decree No. 68 on International Child Adoption and Marriage, Decision 17 on Reception and Reintegration Support of Trafficked Women and Children returned from Abroad (2007),
- Decision 16 on Strengthening Implementation of National Plan of Action to Combat Trafficking in Women and Children (2007),
- Inter-Ministerial Circular 03 on Victim Identification and Reception (2008),
- National Programme on Community-based Caring for some categories of Children with Specially Difficult Circumstances 2005-2010
- 1998-2002 Plan of Action to protect Children in special circumstances including scheme to prevent, solve and recover children suffering from commercial sexual exploitation, plan was adopted for the period of 2004-2010;
- Decision 134/TTg released on May 31st 1999 by the Prime Minister on the Plan of Action to protect children in special circumstances: aiming at preventing and support children suffering commercial sexual exploitation;
- 2001-2010 National Agenda for Children in which prevention of prostitution and child sale is high on priority;
- National Plan of Action (NPA) against the Crime of Trafficking in Women and Children (NPA) 2004-2010. The Plan called for cross-border cooperation to combat the trafficking of children and women with Cambodia and China. It resulted in two bilateral memorandums of understanding between Vietnam and China and Vietnam and Cambodia. The National Plan of Action focuses on the sexual exploitation aspects of trafficking rather than on labour exploitation. It did not include men, as it referred to trafficking victims as women and children. The Ministry of Public Security was given control over all law enforcement issues relating to trafficking, and should coordinate with relevant ministries, agencies,
and mass organizations to implement the NPA.\textsuperscript{258} In 2007 the Vietnamese Government published a National Plan of Action (NPA) on Criminal Trafficking in Women and Children outlining the four main components:
- Communicating with and educating communities on trafficking
- Combating trafficking in children and women
- Receiving and supporting women and children victims returning from abroad;
- Developing and strengthening a legal framework in relation to prevention and combating criminal trafficking in women and children.\textsuperscript{259}

- Decision 19/20044/QS-TTg on the approval of the Programme on the Prevention of and Solution to the Situation of Street Children, Sexually Abused Children and Children Working under Heavy or Hazardous Conditions (2004-2010)

\textbf{c. Assessment of State Policies}

\textit{Trafficking}

The government finalized a five-year national plan of action on human trafficking and provided an estimated $12 million in funding for anti-trafficking activities. As stated in the previous section, Vietnam's trafficking-specific law came into effect only in January of 2012. The government has yet to complete its implementation by issuing all related decrees and circulars.\textsuperscript{260} As this is a very new law, most of the literature assessing the legal framework of Vietnam may not squarely reflect the situation as it stands now. The US TIP Report 2011, however, stated as follows relative to the 2011 law:

In March 2011, the government passed an Anti-Trafficking Statute that provides a comprehensive list of prohibited acts, including some forms of trafficking not previously prohibited by other statutes, and also provides for trafficking prevention efforts. While the government states that most trafficking acts, including labor trafficking, are already covered under Vietnam's Criminal Code, other acts of trafficking require additional legislation and implementing regulations before Vietnam's laws have criminal penalties for all forms of trafficking.\textsuperscript{261} (Emphasis supplied.)

The 2011 law does not contain penalties in terms of numbers of years for imprisonment for violation of the law; however it does provide the following:

\textit{Article 23. Handling of Violation}

- Any person who commits the acts stipulated in Article 3 of this Law shall, depending on the nature and extent of the violation, be disciplined or prosecuted for criminal liability; if damage occurs, he/she shall be held liable for compensation in accordance with law.
- Any person who abuses his/her power or position to shield, ignore, wrongly handle, or not to handle the acts stipulated in Article 3 of this Law shall, depending on the nature and extent of the violation, be disciplined or prosecuted for criminal liability; if damage occurs, he/she shall be held liable for compensation in accordance with law.
- Any person who assumes false position as a victim shall, in addition to being handled in accordance with law, be obliged to reimburse the sum that he/she has received as financial aid.\textsuperscript{262}

As provided in the Penal Code, the maximum sentence for trafficking women is 20 years; a maximum sentence of life imprisonment is imposed for trafficking in children.\textsuperscript{263} Article 120 stipulates that the crime of trading in, fraudulently exchanging or appropriating children is punishable by 3 to 10 years of imprisonment. The penalty for organized or professional trafficking of more than one child, or for despicable motivation or inhumane or prostitution purposes, or for sending abroad is from 10-20 years to a lifetime sentence of imprisonment.\textsuperscript{264}

\textsuperscript{259} “The Trafficking of Women and children from Vietnam.” P 6
\textsuperscript{261} US TIP Report 2011, p. 384.
\textsuperscript{262} The researcher utilized the “Draft Law submitted to the National Assembly for passage, Law on Prevention, Suppression Against Human Trafficking”, as found in the website of Asia Regional Trafficking in Persons Project, <http://www.artipproject.org/artip-tip-c/js/laws-policies-national-ams.html#vietnam>, (accessed 20 April 2012).
\textsuperscript{263} “The Trafficking of Women and children from Vietnam.” P 7
maximum financial penalty is 50,000,000 Dong.265 Some international organizations believe that such penalties are too lenient for such crime, especially as the Penal Code does not include provisions for attempting, participating, organizing or directing other persons to commit the offence.266

It is noted that the 2011 trafficking law gives defines sexual exploitation, sexual slavery, and forced labour. The law also has provisions for victim care and trafficking detection and prevention. However, while it enumerates prohibited acts, the law itself does not define “trafficking”. The 2011 trafficking law makes reference to Articles 119 and 120 of the Penal Code, which enumerate punishable acts. Thus, UNIAP gives the following recommendations:

There should be a clear definition of human trafficking in line with the Palermo Protocol and the mechanisms for effective implementation of the Law on Vietnamese Guest Workers should be established.

Counter-trafficking interventions should move beyond trafficking for sexual exploitation and address all relevant aspects of trafficking in the country, both the ‘demand’ and the ‘supply’ side.267

Reviewing this framework, an international consultant for UNODC, has commented that although children are protected by Vietnam’s legal framework from criminal conduct and sexual exploitation, “when compared with international standards, there are gaps in the current domestic legal framework relevant to child sex tourism.”268

Child Prostitution

The Penal Code punishes “paid sexual intercourse with juveniles” and persons who engage in intercourse with children under 13 years old will be charged with rape. Children who are engaged in prostitution are not treated as criminals; however, they are subject to administrative sanction, or even fines, education at the community and compulsory rehabilitation. Children working as prostitutes may be arrested and detained for 24 hours while the administrative violation is being investigated.

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

The Ministry of Public Security, in cooperation with other ministries, mass organizations, NGOs and international agencies, oversees the implementation of the National Action Plan on Combating Trafficking in Women and Children 2011-2015. Other key actors are the Ministry of Justice (MOJ), Ministry of Foreign Affairs (MOFA), Ministry of Labor, Invalids and Social Affairs (MOLISA), Border Guard Command (BGC), Ministry of Culture, Sport and Tourism, Vietnam Women’s Union (VWU) and the National Assembly.269

Counter-trafficking interventions have launched supervision and inspection of service businesses where illegal sex sale might occur, such as hotels, guesthouses, restaurants, karaoke bars or massage parlours. Punishments include warnings, fines, or confiscation of business licenses. Some commentators consider that fines and punishments are too lenient and that corruption may hamper the effectiveness of monitoring authorities.270

Pertaining to child labour (and violation of children’s rights, in general) MOLISA is responsible for enforcing laws and policies that would punish, fine, and prosecute the employers who violate children’s rights.

b. Complaints Process

In 2005, Vietnam established a centralized specialist investigation unit, C14 – Unit 7, mandated to undertake trafficking investigations. Smaller specialist units are in Hanoi, Ho Chi Minh City, HaiPhong and Lao Cai.271

265 Approximately 2,400 USD at the time of writing this report.
266 UNIAP, “Mekong Region Country Datasheets Human Trafficking” (P.32
270 “Sale of Children, Child Prostitution & Child Pornography - a complementary report from NGOs in Viet Nam to the Vietnamese government’s report on OPSC.”
In cases of trafficking, when the Vietnamese Immigration Department receives documentation about the victim, the verification process takes about 20 working days. After receiving a response from the local police, the Immigration Department completes the ID verification, which takes another 10 working days. If the person is identified as a victim of trafficking, the Immigration Department will enable them to return home. For the self-return process, the representative of the People’s Committees in the victim’s source province receives the ID request and begins documenting information about the victim. The documentation then is transferred to the provincial office of the Ministry of Labour, Invalids, and Social Affairs (MOLISA) who verifies victim’s identity, which takes approximately five working days. The provincial policy agency responds with a verification result, to be considered by the MOLISA within 15 working days.\(^{272}\)

Vietnam does not yet have specialized or separate procedures for investigation and assessment of child abuse complaints.\(^{273}\) Under the existing law of Vietnam, there are no separate complaint procedures for reporting incidents of children in need of protection. Therefore, complaints that a child has been abused, neglected, exploited or abandoned are made in accordance with the general complaints and denunciations procedure. If parents commit an illegal violation against a child, the MOLISA, VWU or other agencies/organizations or individuals can request the Court to restrict the rights of parents through separation of the child from those abusive parents. However, in practice it appears to be very rare for external persons to interfere with family issues. \(\text{“There is no mandatory reporting obligation on professionals who detect or suspect that a child is in special circumstances, unless the act committed against the child has criminal elements.”}^{274}\)

c. Protection and Rehabilitation

The Ministry of Public Security (MPS) in cooperation with the Ministry of Labor, War Invalids and Social Affairs (MOLISA) and the Ministry of Finance are responsible for developing and implementing policies for identifying and receiving trafficked victims returning from abroad. In 2007, the Government introduced the Receiving and Reintegration Programme to protect, identify and offer assistance to victims. Governmental agencies, such as MPS, cooperate with international NGOs at local levels in launching education programs aiming at raising awareness of trafficking. The Women's Union, for example, ran an educational pSafer Migration Programme and the Alliance Anti-Trafficking (AAT) trains teachers. Trafficking shelters for trafficked girls have been established by Pacific Link Foundation to help victims re integrate, and offer support mechanisms and vocational training.\(^{275}\)

The MOLISA (in cooperation with IOM) launched three temporary reception centres in Lao Cai and Lang Son (close to Chinese border) and An Giang (close to Cambodian border) for receiving returnees from trafficking. Long-term shelters are managed by the Vietnamese Women's Union or DSEP, located in Hanoi, Lao Cai, Can Tho, HCMC, and An Giang. The shelters provide psychological support, vocational trainings, and other assistance relevant for reintegration to society. Such programs are offered for a maximum period of one year. The returners also receive help in obtaining identity documents and legal aid. Children coming back to schools are provided with learning materials. The number of shelters and available resources are still very low in comparison to the actual number of returnees.

Data from the VWU quoted that in 2010 the following trafficking survivors have received assistance:

<table>
<thead>
<tr>
<th>Trafficking survivors received at airports</th>
<th>Trafficking survivors received at land borders</th>
<th>Trafficking survivors received at local authorities</th>
<th>Trafficking survivors receiving assistance from VWU</th>
</tr>
</thead>
<tbody>
<tr>
<td>76</td>
<td>376</td>
<td>740</td>
<td>734</td>
</tr>
</tbody>
</table>

Source: Table computed by the researcher based on the data from the Vietnamese Women’s Union\(^{276}\)

\(^{272}\) UNIAP, “Mekong Region Country Datasheers Human Trafficking.” P. 33
\(^{273}\) UNICEF, “UNICEF & The Children of Viet Nam.”P.15

\(^{275}\) “The Trafficking of Women and children from Vietnam.”P.8
\(^{276}\) “Information on Migration.” (last retrieved on March 6th, 2012)
Table 16: Forms of assistance and number of survivors receiving the assistance (data from 2010)

<table>
<thead>
<tr>
<th></th>
<th>Training</th>
<th>Introducing/assisting to find a job</th>
<th>Financial assistance</th>
<th>Equipment assistance</th>
<th>Assistance in building household</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and psychological assistance</td>
<td>Classes</td>
<td>People</td>
<td>Number of people introduced to a job</td>
<td>Number of people succeeded in finding a job</td>
<td>Number of people obtained a loan</td>
</tr>
<tr>
<td>Total</td>
<td>1,377</td>
<td>1,142</td>
<td>65</td>
<td>1,740</td>
<td>539</td>
</tr>
</tbody>
</table>

Source: Computed by the researcher based on the VWU's data\(^{277}\)

Currently, there are fifty-four rehabilitation centres across Vietnam for sex workers managed by MOLISA. Five of them specialize in offering help to sex workers, the rest in providing drug rehabilitation services.

Children engaged in the sex industry receive education and rehabilitation. As the Ordinance on Prostitution Prevention stated, children from 14 years upwards will receive educational and rehabilitative measures at their own localities; "children who are regular sex-sellers from 16 years old upwards and have already received educating and rehabilitating measures or do not have permanent shelters will be sent to rehabilitation centres for between three to eighteen months."\(^{278}\) However, although the Law on the Care, Protection and Education of Children states that abused children shall be assisted by their families, the State and society to recover through counselling and physical and mental rehabilitation, there are reportedly no legal normative documents that would guide the implementation of these provisions.\(^{279}\)

### d. Prevention Measures

Chapter 2 of the 2011 trafficking law contains mandates for protection against trafficking. Some of the specific articles are as follows:

- **Article 7.** Provision of Information, Dissemination and Education on the Prevention, Suppression against Human Trafficking
- **Article 8.** Advice on the Prevention of Human Trafficking
- **Article 11.** Combining the Prevention of Human Trafficking with Socio-Economic Developments Programs
- **Article 12.** Individuals Participating in the Prevention of Human Trafficking
- **Article 13.** Families Participating in the Prevention of Human Trafficking
- **Article 14.** Schools and Educational or Training Institutions Participating in the Prevention of Human Trafficking
- **Article 15.** Prevention of Human Trafficking within Business and/or Service Organizations or Establishments
- **Article 16.** Mass Media Agencies Taking Part in the Prevention of Human Trafficking
- **Article 17.** Vietnam Fatherland Front Committee and Its Member Organizations Taking Part in the Prevention of Human Trafficking
- **Article 18.** Vietnam Federation of Women Unions

\(^{277}\) Ibid. (Last retrieved on March 6\(^{th}\), 2012)


\(^{279}\) Ibid.
Taking Part in the Prevention of Human Trafficking

State and non-state actors have made efforts towards prevention through awareness campaigns, such as providing trainings and promoting safe migration. The Government of Vietnam approaches trafficking as a “social evil”, which is understood as deviation from legal, social, and ethical standards, and a negative repercussion of modernization. Among other “social evils” defined by the state are drug abuse, prostitution, pornography, gambling, and corruption. Hence, the Department of Social Evils has dealt with trafficking matters. Many campaigns address trafficking in connection with drug abuse, HIV, prostitution, criminality, and other forms of social evils. Although these phenomena are undeniably linked, such a strategy might not be the most effective one to raise awareness about trafficking crime. Moreover, it leads to a perception that stigmatizes trafficking survivors, as “participants” in those social evils.

Marriage Migration

In October 2003, the first Centre for Assistance in Marriage with Foreigners was established in Ho Chi Minh City in order to protect the rights of Vietnamese citizens, particularly women, and prevent marriage brokers from economic gain.

In 2007, the IOM sub-office in Ho Chi Minh City, together with the Korean Committee for Human Rights Policy and the Vietnamese Women’s Union, launched a program to prepare brides-to-be before leaving for their husband’s country. This pre-departure training, based in HCMC, includes language and culture programs and basic legal information. During the pilot phase, from the period of October 2007 to February 2008, 1,150 women attended the program. Reflecting an awareness of the problem, Taiwanese and Korean governments and NGOs have launched hotlines, available in Vietnamese language for domestic violence assistance.

Prevention programs have been mostly initiated by non-governmental and international organizations. (See following section on Role of Non-State Actors.) Further prevention measures, particularly considering how recent the law on trafficking is, are yet to be developed.

4. Role of Non-State Actors

a. Assistance to Victims

As mentioned earlier, non-state actors have been crucial in assisting victims by cooperating with the Government in establishing temporary and long-term shelters. They are also involved in organizing assistance and rehabilitation to the victims, by offering vocational trainings and psychological care. Aside from these, victims may obtain one-time “difficulty allowance” as well as start-up loans from the Bank for Social Policy or the Poor Women Support Fund. Funding has been received from the Alliance Anti-Trafficking in Persons, the IOM, Pacific Links Foundation, and the UNIAP. In some cases micro-credit loans are provided to the families of trafficking victims. Programs initiated by non-state actors overlap between assistance and prevention of trafficking. Below are some of the agencies working in Vietnam:


282 “CEDAW Combined fifth and sixth Periodic Reviews of State Parties.” P.22

283 Lom, “Foreign Marriages: Love and Money in Asia - Vietnamese Brides in Korea”. 

284 UNIAP, “Mekong Region Country Datasheets Human Trafficking.” P.33
Table 17: Non-state actors involved in anti-trafficking programs

<table>
<thead>
<tr>
<th>Name</th>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UN Agencies</strong></td>
<td></td>
</tr>
<tr>
<td>UNFPA</td>
<td>Research and dissemination, assistance to the victims, rehabilitation, vocational trainings, capacity building and technical support to the local agencies, awareness campaigns, publishing reports, funding research</td>
</tr>
<tr>
<td>UNICEF</td>
<td></td>
</tr>
<tr>
<td>UNIFEM (UN Women)</td>
<td></td>
</tr>
<tr>
<td>UNODC</td>
<td></td>
</tr>
<tr>
<td>UNIAP</td>
<td></td>
</tr>
<tr>
<td>ILO-IPEC/TICW, The ILO’s Mekong Sub-regional Project to Prevent Trafficking in Children and Women (TICW)</td>
<td></td>
</tr>
<tr>
<td>IOM</td>
<td></td>
</tr>
<tr>
<td>Action Aid (AAV)</td>
<td></td>
</tr>
<tr>
<td>AFESIP</td>
<td></td>
</tr>
<tr>
<td>Oxfam Quebec</td>
<td>Research and assessment of anti-trafficking programs</td>
</tr>
<tr>
<td>Save the Children UK (SCUK)</td>
<td>Publication on abuse of children</td>
</tr>
<tr>
<td>The Asia Foundation (TAF)</td>
<td>Rehabilitation programs for trafficking survivors. Initiating community-based support groups, legal aid services, dissemination and publishing</td>
</tr>
<tr>
<td>The World Vision</td>
<td>Awareness campaigns</td>
</tr>
<tr>
<td>The Norwegian Assistance to Vietnam (NAV)</td>
<td>Funding research</td>
</tr>
<tr>
<td>AAT-AFESIP Vietnam (Alliance Anti-Trafficking in Persons)</td>
<td>Collection and dissemination of data</td>
</tr>
<tr>
<td>Asia Regional Trafficking in Persons Project (ARTIP)</td>
<td>Technical support, awareness campaigns</td>
</tr>
<tr>
<td>Catalyst</td>
<td></td>
</tr>
<tr>
<td>Hagar International</td>
<td></td>
</tr>
<tr>
<td>ANESVAD</td>
<td></td>
</tr>
<tr>
<td>Pacific Links Foundation</td>
<td>Funding shelters for the survivors</td>
</tr>
<tr>
<td>Terre des Hommes Foundation</td>
<td>Work with street children</td>
</tr>
<tr>
<td><strong>International NGOs</strong></td>
<td></td>
</tr>
<tr>
<td>Blue Dragon</td>
<td>Assistance to the street children, children in special circumstances</td>
</tr>
<tr>
<td>Coordination of Action Research on AIDS and Mobility (CARAM Asia)</td>
<td>Research and dissemination</td>
</tr>
<tr>
<td>Child Sexual Abuse Prevention Programme (CSAP),</td>
<td>Prevention</td>
</tr>
<tr>
<td><strong>Local NGOs</strong></td>
<td></td>
</tr>
<tr>
<td>Centre for Studies and Applied Sciences in Gender, Family, Women and Adolescents (CSAGA),</td>
<td>Research</td>
</tr>
<tr>
<td>Research Centre for Gender, Family and Environment in Development (CGFED)</td>
<td>Research</td>
</tr>
<tr>
<td>Committee on Population, Family and Children of Vietnam (CPCC),</td>
<td></td>
</tr>
<tr>
<td>Research Centre for Gender and Development (RCGAD)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Researcher’s compilation

Because of the trans-national character of trafficking, detailed information about activities and initiatives of some of non-state actors are further elaborated in the regional programs below.
Some Regional and Sub-regional Initiatives:

Mekong Regional Law Centre Illegal Labour Movements Research Network

The Case of Trafficking in Women, The Mekong Regional Law Centre, and the Office of the National Commission on Women's Affairs in Thailand, in cooperation with the Asian Legal Studies Centre of the University of British Columbia, have initiated a process of effective national and international action aiming to control, reduce and ultimately eliminate the exploitation of migrant labour, particularly the trafficking of women into the sex industry. The project aims to increase awareness in the legal community regarding the strengths and weaknesses of the law and the legal system regarding trafficking; to develop a practical programme to improve the quality of legislation and law enforcement; and to engage law makers and enforcers in cooperative action in order to control and reduce trafficking. Participating countries are Cambodia, China, Laos, Myanmar, Thailand and Vietnam.285

UNDP Trafficking in Women and Children in the Mekong Subregion

This project was developed out of the Interagency Working Group, currently consisting of 14 UN agencies and international organizations. These international organizations, as well as various local and international NGOs and governments, have initiated a wide variety of programmes and projects addressing the problem of trafficking in women and children in the Mekong sub-region. The project responds to the recognized need for improved coordination and communication in order to increase the impact of the various counter trafficking initiatives. The project is scheduled to be three years and is funded through the Turner Fund and AusAid.

UNICEF

UNICEF has no regional project on child trafficking, but has supported and implemented studies on the issue in several countries and has been involved in building national and local capacity in the region. UNICEF also participates in the Regional Working Group on Child Labour. Furthermore, UNICEF is a partner in a number of projects in the Asia and Pacific Region, such as the Mekong Regional Law Centre project described above, the ESCAP project, the ILO-IPEC project, the UNDP project and the IOM Return and Reintegration project.

UNHCHR

The Office of the High Commissioner on Human Rights has encouraged the National Human Rights Commissions of the Asia-Pacific region to take up the issue of trafficking. Discussions with the Asia-Pacific Forum of National Human Rights Institutions (APF) resulted in a working paper and the recommendation to all member-institutions to appoint someone as the focal point on the issue of trafficking. The focus of UNHCHR is on legal and policy development, thereby acting as a catalyst and support for the work of others.

UNAIDS

In 1997, UNAIDS established a Task Force on Migrant Labour and HIV Vulnerability in South-East and East Asia. The Task Force has been involved in organizing workshops, research and advocacy work.

CARAM Asia

The Coordination of Action Research on AIDS and Mobility – Asia is an initiative of NGOs involved in migration issues in Asia, and is especially concerned with the growing vulnerability of migrants in Asia to HIV/AIDS. The objectives of CARAM Asia are information dissemination, advocacy, development of grass-roots interventions and action research models, and protection of human rights of migrants. CARAM has focal points in seven South and South-East Asian countries: Tenaganita Malaysia, SHISUK Bangladesh, ACHIEVE Philippines, Solidaritas Perempuan Indonesia, CARAM Cambodia, Mobility Research and Support Centre Vietnam, and Migrant Assistance Programme Thailand.

CATW-Asia Pacific

The Coalition Against Trafficking in Women is an international feminist network of organizations and groups promoting the human rights of women and children by combating sexual exploitation in all its forms, particularly in prostitution. The Asia Pacific branch was

launched in 1993 and is located in Manila. CATW-AP organizes education and training activities, develops human rights programmes, publishes research and other reports, provides services to, among others, member organizations, the media, and researchers through a documentation system on trafficking cases, and is active in networking, policy advocacy and campaigns related to prostitution, sexual exploitation and trafficking.

Mekong Coordination Team on Migrants and Victims of Trafficking (Mekong Cord)

This team was formed in 1998 with the objective of promoting activities for Database Development, Capacity-Building and Awareness-Raising, and Networking.286

Community-based Initiatives Against Trafficking in Children in the Mekong Sub-region 2003-2006 by Save the Children UK

In Vietnam, the program managed to launch awareness campaigns that reached 143,361 beneficiaries. Its strategy is based on community-based focus groups discussions (FGD) that served as a tool to monitor the changes in risky migration departures. The assessment of the program showed three key changes in the targeted communities: (1) Reduction of rate of risky departures from 30% to 5%; (2) Reduction of the percentage of children among migrants from 30% to 5%; (3) Reduction of the number of children below 15 years who leave the community to work.287 A particularly strong aspect of the program is the engagement of children, including from disadvantaged groups, in the activities. Awareness campaigns mobilized over 4,000 schools in several provinces and gave youth the opportunity to participate in trainings and raise their voice in the discussion about trafficking. Relevant publications regarding Vietnam include: “Report on research findings Action research with the participation of children and communities at three provinces of Bac Giang, Lang Son, and Quang Ninh” (2004), and “Our Voices, Our Views Mekong Children’s Forum on Human Trafficking: A summary of the forum and activities for a young readership” (2005).288

The Asia Foundation

In partnership with the National Legal Aid Agency (NLAA) and other Legal Aid Centres, the Asia Foundation works to: 1) enhance legal aid services to the trafficking victims; 2) increase coordination among government agencies and media organizations working on protection, investigation and re-integration; 3) organize training courses on Vietnamese law and international conventions and professional skills for the legal aid providers and community support groups; 4) organize legal education and mobile counselling services for communities. Between 2005-2007, the program provided legal services to 361 legal aid cases, including legal counselling, legal assistance, and representing victims at the court hearings.289

b. Prevention Programs

As can be concluded from the previous section, the majority of existing studies and reports are funded, conducted or advised by international NGOs and UN agencies. Some programs of non-state actors focus particularly on the prevention of trafficking:

The Asia Foundation initiated a program from 2002-2008 aiming at combating and preventing human trafficking in Vietnam. The program targeted provinces with serious trafficking record: Quang Ning, An Giang, Can Tho City, Nghe An and Thanh Hoa. Among the major components of program were:

- Prevention, Education, and Communication
- Community Support Group Models
- Women’s Economic and Social Empowerment
- Safe Migration
- Legal Aid for Trafficking Victims
- Cross-border Cooperation
- Reintegration of Trafficking Victims, and
- Scholarship for Disadvantaged Girls290

As a strategy of raising awareness and education, the Asia Foundation developed the Community Support Group (CSG) model that would engage community groups and civic leaders in offering counselling services and supporting poor and disadvantaged people, who are

286 Ibid. P. 21-26
288 Ibid.
290 Ibid.
particularly vulnerable to the trafficking industry.\textsuperscript{291}

Within the period of 2002-2008, the Asia Foundation published 6,000 handbooks addressing women and other at-risk groups; 1,200 trainer’s guides for local educators, 12,000 leaflets, 50,000 posters and stickers with essential assistance information.\textsuperscript{292}

In 2004 the Australian non-profit Child Wise Organization held a workshop to train more than 50 Vietnamese hotel staff, taxi drivers, tourist guides and travel agents in simple methods to safeguard children from sex tourism.\textsuperscript{293} Such initiatives are needed, but ought to be sustainable and reach broader audiences if they are to be effective.

The Vietnamese Women’s Union has launched several initiatives to enhance public awareness of the problem. In 2009, it coordinated 12,000 public broadcasts, reaching more than 1,000,000 people on themes such as human trafficking, HIV prevention and drug abuse. It has also published books and brochures that include legal instruments and guiding principles on human trafficking prevention. VWU has been engaged in vocational training and micro-credit provision for disadvantaged women.\textsuperscript{294}

The VWU developed a Plan of Action in 1997 on the prevention of trafficking in women and children. According to this plan of action, the VWU aims to concentrate on dissemination of information and education, research, reintegration assistance programmes for the return of trafficked women and children; community-based prevention schemes in coordination with agencies and organizations in different localities; supervision of law execution in relation to trafficking; and regional and international cooperation. Together with IOM, the Vietnam Women’s Union developed anational counter-trafficking information campaign in 1999 targeting 14 of the most severely affected provinces on a grass roots level, including door-to-door campaigns, public meetings and performances, and training of journalists to arrange appropriate media coverage.\textsuperscript{295}

An assessment of The ILO’s Mekong Sub-regional Project to Prevent Trafficking in Children and Women (TICW) indicated the following outcomes:

- Improved the capacity of over 300 staff in the central labour ministry and its provincial departments as well as the VWU and other related agencies through trainings to help them better confront labour exploitation, develop advocacy and safe migration awareness campaigns, monitor projects, and mainstream good practices into other national programmes. About 800 information workers from villages have been trained to communicate with the community about trafficking and safe migration.
- Adopted a comprehensive approach combined with strategic partnerships with government, labour groups, mass organizations, migrants and would-be migrants. Awareness-raising on migration risks, human and workers’ rights, legal protection and gender issues were woven into the microfinance and vocational skills training activities for women likely to migrate or families with children at risk of leaving school. These were followed with assistance in finding job opportunities with local businesses or setting up in trade.
- Conducted outreach to migrants by training Vietnam General Confederation of Labour trade union members on trafficking and labour exploitation issues. They were also informed on how to reach migrants, particularly young women, to inform them of their rights and responsibilities and to help them access referral services, including legal counselling. A new Travel Smart–Work Smart guidebook was developed in Vietnamese, with useful information and contacts for migrants and potential migrants. The VGCL resorted to innovative outreach services by going to boarding houses and other residences to reach vulnerable internal migrants.
- Managed to involve 200 children who came together in 2004 and 2007 to talk about trafficking in Vietnam and make recommendations to the Government on improving measures to combat trafficking and protect children.
- Engaged employers. In 2005, the Vietnam Chamber of Commerce and Industry (VCCI) organized a brainstorming discussion among 22 employers and representatives of business association on what can be done to prevent trafficking of women and children. The session included sensitizing on internal labour

\textsuperscript{291} Ibid. P. 11  
\textsuperscript{292} Ibid. P. 17  
\textsuperscript{293} "Sale of Children, Child Prostitution & Child Pornography - a complementary report from NGOs in Viet Nam to the Vietnamese government’s report on OPSC," P 15  
\textsuperscript{294} UNIAP, "Mekong Region Country Datasheers Human Trafficking." P. 34  
\textsuperscript{295} Derks, "Combating Trafficking in Southeast Asia. Review of Policy and Program Responses."
migration issues and decent employment practices as well as workers' rights. Participants were from key sectors such as garment, footwear, handicraft and food processing industries that attract the majority of young migrant workers. A handbook on The Roles of Employers in Preventing Trafficking was developed to educate employers and recruiters on proper hiring and recruitment practices.

- Boosted the influence of the women's federation. One clear indication of the project's impact has been the initiative of the Vietnam Women's Union to create a sub-regional alliance with other women's federations. In July 2007 in Hanoi, the Mekong Women's Forum brought together women from Cambodia, China, Lao PDR, Thailand (and Vietnam) to talk about good practices and country models. In Vietnam, the project has increased the Women's Union's involvement at the local level and its influence nationally on the trafficking issue296.

5. Progress Indicators and Challenges

Only recently, on 8 June 2012, Vietnam ratified the United Nations Convention against Transnational Organized Crime297 and acceded to the Trafficking Protocol298. Worthy of note also is the enactment of the Law on Prevention, Suppression Against Human Trafficking; and the passage of the National Plan of Action on Human Trafficking (2011-2015). Another progress indicator of Vietnam's effort to comply with the CRC is the establishment of the Committee for Protection and Care of Children (CPCC), which merged with the National Committee on Population, Family and Children, as the central mechanism to address issues related to protection and care for children.

With on-going internationalization and opening of borders, Vietnam faces increased challenges of combating trafficking. However, enhanced commitments and collaboration with neighbouring countries, adoption of international standards, legal frameworks, standards, and support mechanisms have been found to be helpful. Increased numbers of bilateral and multilateral agreements, as well as recent domestic policies, have shown the Government's willingness to address the problem more effectively, though significant challenges remain.

Trafficking in persons has been regarded in legal documents as trafficking in women and children; hence little is known about cases of trafficking males. One of the biggest problems is the lack of nation-wide index or study that would comprehensively aggregate available data. Existing literature and statistics offer inconsistent numbers, often without specific indicators of measurement. Therefore, the real scope of the problem is difficult to grasp and to effectively address. Despite the demand of deeper understanding, no sufficient resources have been invested in the research and systematic collection of information relating to the problems of trafficking or commercial sexual exploitation.

Geographical disparity remains a problem in the equal distribution of financial support. Unfortunately, the poorer and remote regions receive less funding; awareness campaigns seldom reach them. However, it is people from those regions that are the most vulnerable to human trafficking.

Bilateral agreements with neighbouring countries only extend to handing over identified victims at the border, without stating assistance for them in returning to their home from the border. The Pacific Links Foundation reported cases where victims released at the border were re-trafficked.299 According to the observation of UNICEF: “In China officials continue to return trafficking victims to Viet Nam as a part of general deportations, with no clear distinctions between victims of trafficking, other irregular migrants, and even traffickers.”300 This makes it difficult for Vietnam to provide appropriate services to victims, resulting in serious danger of victims being re-trafficked.


299 “The Trafficking of Women and children from Vietnam.”P.9

300 UNICEF, “Reversing the Trend: Child Trafficking in East and Southeast Asia.”P.63
Lack of adequate resources for funding education programs, vocational trainings, and awareness campaigns occur at all levels. More attention, for example, should be paid to education about safe migration. Poverty-alleviation by such strategies as micro-finance credits is necessary for combating trafficking. Education and training targeted at all levels is the core of the prevention programs.

Trafficking is not only an issue in border provinces, but with increasing rural movements towards urban regions, the problem is also a domestic one. A remaining challenge is coordination among the local authorities. Unclear division and accountability between MOLISA, Border Policy Force, Regular Police Force, local governments and other agencies prevent effectiveness in dealing with the complex matters of trafficking.

Insufficiency in the assistance provided to the victims has been observed. As the Women Magazine indicated: “There is a lack of polices and resources for integration of repatriates into communities. There is a lack of government support centres to receive and provide services needed.”

Particularly relative to child labour, it is difficult to legally pursue cases as, in many occurrences, the employers are relatives or family members of the exploited child. Moreover, insufficient government resources impedance progress.

The sex industry poses significant challenges for Vietnamese society. Although it is a lucrative industry, it remains officially illegal. There are no registered brothels; hence, there are no precise statistics of women working in prostitution. They have no social or health protection whatsoever. Moreover, because there is no official registry, there is no control over potential under-aged girls engaging in the industry.

As UNICEF observes, the protection policies in Vietnam have a serious shortcoming: “Social welfare policy in general, and child protection approaches in particular are characterized by a “charitable” rather than right-based approach. The provision of social services to vulnerable groups relies largely on voluntary efforts and non-profit organizations, rather than trained, paid professionals.”

Coordination and design of prevention programs often face challenges not only of funding, but also of effective organization. UNICEF, when conducting audience surveys in 2005 and 2007, found frequent duplication and overlapping of parallel information, education and communication programs funded by different donor organizations; conflicting, confusing and unclear messages; variances in focus (safe migration vs. anti-trafficking); and a general lack of attention to behaviour change. Capacity building also still needs strengthening. Moreover, conceptually and in practice, child trafficking continues to be conflated with smuggling, irregular migration and prostitution, or goes undetected because of child-unfriendly procedures, structural deficiencies, inconsistent legal definitions or ambiguity on what constitutes child trafficking in accordance with international laws (Palermo Protocol). Anti-trafficking in Vietnam, similarly as in other Southeast Asian countries, is reportedly tackled from supply-side dynamics, rather than being addressed from demand dimensions.

6. Recommendations

In addition to lack of an adequate level of understanding and awareness of the problem, there is an issue of properly defining the complex issue of trafficking. Often the awareness campaigns address human trafficking together with other social evils as prostitution, sexual exploitation, HIV/AIDS, and drugs. While they are undoubtedly connected, it is important to clarify the nature of human trafficking. Social stigma that is created by such simplification often hampers deeper understanding of the problem, and moreover, creates difficulty for returning survivors of human trafficking to re-adapt in the society. Above all, there is a need for systematic data collection and analysis and for the creation of conditions which enable necessary data collection. As has been seen above, there are significant gaps in knowledge in almost every aspect of trafficking and exploitation because of the lack of sufficient investigative and reporting mechanisms and of systems for data collection, collation, and analysis over time. The absence of accurate information necessarily

301 “Sale of Children, Child Prostitution & Child Pornography - a complementary report from NGOs in Viet Nam to the Vietnamese government’s report on OPSC.” Quoted from the Phu Nu (Women Magazine), March 12th, 2006.
303 UNICEF, “Reversing the Trend: Child Trafficking in East and Southeast Asia.” P.38
304 Ibid. P.39
impedes the ability to develop effective legislative, policy, and action-oriented responses to the various dimensions of the complex of trafficking issues. Despite the absence of comprehensive data a review of the literature indicates some areas where improvements in policies are needed:

1. A gender perspective ought to be included in the integrated approach in fighting trafficking. Non-discrimination and equality should be the base for rights-claims for both men and women. In other words, abiding by rights should be emphasized more than abiding by obsolete cultural practices that discriminate against women, e.g. overcoming the sex-selective migration policies that create more channels of migration and employment opportunities to typically male-dominated sectors, such as construction and agriculture. Moreover, the legal apparatus should exert more efforts to disseminate the new definition and understanding of “trafficking in persons”, which would also include men in the at-risk groups.

2. Anti-trafficking strategies should address violations both individual and structural dimensions. The individual dimension refers to an individual’s socio-economic, political, sexual rights and his or her ability to access remedies and claim rights. The structural dimension refers to economic, gender, and ethnic inequalities underlining socio-economic, political structures and processes that impact individual rights.305

3. There is a need for trafficking survivors (returnees) to disseminate their experience as part of a prevention strategy. Awareness campaigns should fight stigmatization of returnees, not only to enable to re-socialize in the community, but to encourage them to share their experiences. This would provide useful information for the authorities to deal with the matter. They should be consulted as regards implementation and monitoring of legal processes penalizing trafficking.

4. State policies should focus more on ensuring safe repatriation and assisting survivors in coming back to the community or rehabilitation centres. Some commentators advise that the Government adopt more strict penalties for human trafficking. At the moment, the punishment for trafficking in persons remains less stringent than the punishment for the crime of drug trafficking.306

5. Migrants-to-be turn for information and introduction not to authorities but to local communities, because of the trust factor. The awareness-raising campaigns should engage local communities to develop networks against trafficking. Local communities should be the main information providers, with capabilities for prevention and intervention.

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D. ABUSE AND DISCRIMINATION IN MIGRATION

1. Description of the Problem

This report focuses on labour migration, with particular emphasis on female and marriage migration. It does not address other aspects such as education migration, or high-skilled professional migration.

With rapidly spreading sex industries across Asian cities, women searching for employment are particularly vulnerable to certain service industries that are linked to the sex industry, such as karaoke bars, nightclubs, massage parlours, and hair salons. Young girls in particular often fall into traps set by friends or neighbours whom they trust and are the only connection away from their home communities. As discussed above, being tricked, lured, or forced to enter the sex industry by a false job offer is a popular scenario. Attracted by promises of high income, some women become sex workers voluntarily. In both cases, women are at risk to abuse, violence, and lack of health protection. For the sake of coherence and to avoid repetitious discussion, the impact of abuses against women who have been tricked, lured or forced into the sex industry have been discussed in the section on Exploitation and will not be reiterated here.

Unequal distribution of wealth is among the main reasons why people migrate from rural and poorer provinces to urban regions in seek for employment. Two types of migration have been recognized by the Vietnamese government: (a) organized migration, which refers to government-sponsored programs, sometimes including a permanent change of residence by the core family, and (b) spontaneous migration, which is recognized but not encouraged by the government, where the migrants are responsible for the costs of relocation and choice of destination.307

The demographic structure of the Vietnamese nation, of which over 68% of population is in the age of production (between 15-64), set favourable conditions for migration. With over 1.7 million people entering the labour market every year, the demand for job opportunities might be higher than national plans can supply.308 On one hand, such a young population may assist national development; on the other hand, it poses a challenge for the state to create sufficient employment for such a dynamic population.

Vietnam has been a growing labour exporting country, sending workers to neighbouring East Asian countries, such as Taiwan, South Korea, Japan, Malaysia, and also recently, to the United Arab Emirates, Saudi Arabia, UK and the US. The Vietnamese Government has made some efforts to expand markets of labour export both in terms of destinations and occupation sectors. At the moment there are 14 bilateral agreements on exporting Vietnamese labour, including the above-mentioned countries as well as Russia, Czech Republic, Slovakia, Bulgaria, UAE, Canada, and Kazakhstan. The government has decided to establish 8 Labour Management Offices in the major receiving countries.309

It is difficult to precisely measure temporary and irregular labour migration. “There is no definitive estimate of the number of Vietnamese international temporary migrant workers. Estimates vary from 300,000 to 500,000 migrant workers (not including permanent settlers and refugees) currently employed in foreign countries.”310 According to the MOLISA data, in mid-2006 there were 400,000 contract workers from Vietnam working in 40 countries around the world. It is believed that the factual numbers exceed official statistics by far, particularly because statistics exclude those who left through informal channels, including those who were assisted by unauthorized recruitment agencies.311

The more recent data offered by the IOM shows that there are more than 500,000 Vietnamese workers currently employed around the globe, with approximate 80,000 people leaving Vietnam each year for employment purposes.312

309 "Báo cáo tổng quan hoạt động di cư của công dân Việt Nam ra nước ngoài - [General Report of Activities of Vietnamese citizens migrating abroad].” P. 3
310 Abella and Ducanes, “The Economic Prospects of Viet Nam and what it means for Migration Policy.” P. 29
The Government has declared overseas labour migration as a component of its development strategy, establishing a goal of sending abroad at least 85,000 to 100,000 workers each year between 2010 and 2015. This goal is likely to be reached, considering that the major receiving countries of Vietnamese labour are the low-fertility countries with aging populations, like Japan, South Korea, and Taiwan. Vietnamese workers concentrate in construction, mechanics, electronics, textiles, aquatic processing, shipping industry, health care, housekeeping, education, and agriculture.

The government encourages labour export since the Vietnamese diaspora plays an important role in contributing to the country's economy. Remittances to Viet Nam have jumped dramatically from US$ 135 million in 1991 to US$ 8 billion in 2010.

Exporting labour to deal with unemployment has been a policy of the Vietnamese government since 1980s, when destination countries were the Eastern bloc; however, only in the 1990s did it start to be of more significance. While that decade was marked with the economic growth of neighbouring East Asian countries, Vietnam struggled with post-war poverty. With population issues of baby-boom, unemployment and economic hardship were the decisive demand-pull factor for labour migration from Vietnam. While in the 1980s labour migration was based on "labour cooperation" agreements between the governments of Vietnam and other Eastern bloc country, in the 1990s workers export became purely commercial. Hence, the conditions of the workers in the receiving country are no longer negotiated by the government, but by the individual enterprises and labour recruiting agencies.

There are a significant number of Vietnamese engaged in unskilled or semi-skilled jobs abroad, and the majority of them are women. Taiwan (with approximately 90,000 Vietnamese workers) and Malaysia (approximate of 100,000 Vietnamese workers) are the top receiving countries, where Vietnamese workers are employed in construction, shipping, manufacture, domestic help, nursery, and hotel and restaurant services. On the other hand, employment in Japan and South Korea is characterized by harsh conditions in the shipping and fishery industries. The average salary for workers in these two countries is higher than in Malaysia and Taiwan, making them more attractive. The movement of workers, however, is also more controlled due to some restrictions, such as language exams and the Employment Permit System introduced by the Korean government that allows Korean agencies to select the candidates.

Increasing proportions of women are migrating independently. Another important gender difference emerged with respect to the economics of migration. Women pay lower pre-departure costs than men, but tend to send more remittances and return home with more money. They are also less likely to run away and work illegally.

313 Abella and Ducanes, “The Economic Prospects of Viet Nam and what it means for Migration Policy.” P. 38
314 Dang, “Labour Migration from Vietnam: Issues of policies and practices.” P. 5
315 Abella and Ducanes, “The Economic Prospects of Viet Nam and what it means for Migration Policy.”
316 Dang, “Labour Migration from Vietnam: Issues of policies and practices.” P. 2-4
317 Ibid. P. 6
318 Dang, Tacoli, and Thanh, “Migration in Vietnam: A review of information on current trends and patterns, and their policy implications.” And Danile Belanger; Le Bach Duong; Tran Giang Linh; Khuat Thu Hong; Nguyen Thi Van Anh; Belinda Hammoud, “International Labour Migration from Vietnam to Asian Countries: Process, Experiences and Impact.” (Hanoi: INTERNATIONAL DEVELOPMENT RESEARCH CENTRE CANADA (IDRC); The University of Western Ontario; Institute for Social Development Studies Vietnam, 2010).
319 Hammoud, “International Labour Migration from Vietnam to Asian Countries: Process, Experiences and Impact.” P. 100
Table 18: Labour Export by Gender & Destination Country Year 1992-2006

<table>
<thead>
<tr>
<th>Year</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>Destination Country</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Taiwan</td>
</tr>
<tr>
<td>1992</td>
<td>710</td>
<td>100</td>
<td>810</td>
<td>0</td>
</tr>
<tr>
<td>1993</td>
<td>3,296</td>
<td>664</td>
<td>3,960</td>
<td>0</td>
</tr>
<tr>
<td>1994</td>
<td>8,587</td>
<td>1,563</td>
<td>10,150</td>
<td>0</td>
</tr>
<tr>
<td>1995</td>
<td>6,839</td>
<td>348</td>
<td>7,187</td>
<td>0</td>
</tr>
<tr>
<td>1996</td>
<td>11,697</td>
<td>1,262</td>
<td>12,959</td>
<td>0</td>
</tr>
<tr>
<td>1997</td>
<td>14,175</td>
<td>4,295</td>
<td>18,470</td>
<td>191</td>
</tr>
<tr>
<td>1998</td>
<td>10,309</td>
<td>1,931</td>
<td>12,240</td>
<td>1,697</td>
</tr>
<tr>
<td>1999</td>
<td>19,523</td>
<td>2,287</td>
<td>21,810</td>
<td>558</td>
</tr>
<tr>
<td>2000</td>
<td>22,435</td>
<td>9,065</td>
<td>31,500</td>
<td>8,099</td>
</tr>
<tr>
<td>2001</td>
<td>28,464</td>
<td>7,704</td>
<td>36,168</td>
<td>7,782</td>
</tr>
<tr>
<td>2002</td>
<td>35,566</td>
<td>10,556</td>
<td>46,122</td>
<td>13,191</td>
</tr>
<tr>
<td>2003</td>
<td>56,882</td>
<td>18,118</td>
<td>75,000</td>
<td>29,069</td>
</tr>
<tr>
<td>2004</td>
<td>29,706</td>
<td>37,741</td>
<td>67,447</td>
<td>37,144</td>
</tr>
<tr>
<td>2005</td>
<td>45,989</td>
<td>24,605</td>
<td>70,594</td>
<td>22,784</td>
</tr>
<tr>
<td>2006</td>
<td>51,832</td>
<td>27,023</td>
<td>78,855</td>
<td>14,127</td>
</tr>
<tr>
<td>Total</td>
<td>346,010</td>
<td>147,262</td>
<td>493,272</td>
<td>134,642</td>
</tr>
</tbody>
</table>

Source: The Department of Overseas Labour (DOLAB), MOLISA, 2006

More recent data are provided on the official website on migration:

Table 19: Labour migration in 2008-2010: Completed contract and non-completed

Vietnamese labour migrants according to destination country 2008-2010

<table>
<thead>
<tr>
<th>Completed the contracts and returned</th>
<th>Taiwan</th>
<th>Japan</th>
<th>S. Korea</th>
<th>Malaysia</th>
<th>Middle East</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>5,783</td>
<td>489</td>
<td>595</td>
<td>4,170</td>
<td>1,279</td>
<td>2,129</td>
<td>14,445</td>
</tr>
<tr>
<td>2009</td>
<td>11,458</td>
<td>2,114</td>
<td>11,031</td>
<td>6,945</td>
<td>5,279</td>
<td>4,335</td>
<td>41,162</td>
</tr>
<tr>
<td>2008</td>
<td>8,979</td>
<td>2,786</td>
<td>5,621</td>
<td>9,469</td>
<td>2,867</td>
<td>417</td>
<td>30,139</td>
</tr>
<tr>
<td>Total</td>
<td>26,220</td>
<td>5,389</td>
<td>17,247</td>
<td>20,584</td>
<td>9,425</td>
<td>6,881</td>
<td>85,746</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Returned before completing the contract</th>
<th>Taiwan</th>
<th>Japan</th>
<th>S. Korea</th>
<th>Malaysia</th>
<th>Middle East</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>302</td>
<td>10</td>
<td>29</td>
<td>187</td>
<td>974</td>
<td>189</td>
<td>1,691</td>
</tr>
<tr>
<td>2009</td>
<td>3,479</td>
<td>395</td>
<td>415</td>
<td>3,189</td>
<td>1,817</td>
<td>591</td>
<td>9,886</td>
</tr>
<tr>
<td>2008</td>
<td>5,469</td>
<td>812</td>
<td>209</td>
<td>1,819</td>
<td>1,021</td>
<td>1,312</td>
<td>10,642</td>
</tr>
<tr>
<td>Total</td>
<td>9,250</td>
<td>1,217</td>
<td>653</td>
<td>5,195</td>
<td>3,812</td>
<td>2,092</td>
<td>22,219</td>
</tr>
</tbody>
</table>

Source: Official website on Migration Information

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320 Following: Kannika Angsuthanasombat, “Situation and Trends of Vietnamese Labor Export ” (2008), P.7-8. Finding for other destination countries in 2006 are as follows: Lao 5,731, Qatar 2,621, UAE 1,743, Libya 88, Brunei 178, Saudi Arabia 205, other 284.

a. Prevalence of Abuse and Discrimination in Migration

Abuse may occur even before a migrant departs. Vietnamese migrants-to-be are most likely to turn to broker agencies that often take advantage of them by overcharging for their services. The ILAMI (International Labour Migration) Vietnam 2009 Survey funded by the International Development Research Centre of Canada (IDRC), the Social Science and Humanities Research Council of Canada (SSHRC) and the Canada Research Chair program (CRC) and conducted on 1,265 migrants in Ha Tay, Thai Binh and Ha Tinh provinces, found the following pattern of using the service of recruitment agencies:

Figure 8: ILAMI Vietnam 2009 Survey. Migrants’ First Contact in Recruitment Stage

<table>
<thead>
<tr>
<th>Recruitment agency</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private recruiter/ commune</td>
<td>70%</td>
<td>60%</td>
<td>60%</td>
</tr>
<tr>
<td>Private recruiter/ other</td>
<td>50%</td>
<td>40%</td>
<td>40%</td>
</tr>
<tr>
<td>People’s committee</td>
<td>30%</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Others</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Unsure</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Source: “ILAMI Report”322

The issue of recruitment broker agencies require closer attention, as it is connected to many illegal instances of deception, abuse and trafficking.

Two of most common problems that workers face abroad are: (1) violation of their rights by employers, and (2) contract-breaches that lead to some cases of desertion by the workers.

Forced over-hours, verbal abuse, seizure of passport and body search, or even physical punishments are among common practices complained of. Non-payment or late payment is another frequent form of violation. In the period of 2000-2005, Malaysia was reported to have 600 cases of non-payment, or unfair dismissal, affecting 1,200 workers, including Vietnamese. Similar cases of violation where employers were late in paying salaries and ending up not paying at all, or never paying the overtime-hours, were noted in Taiwan and South Korea.323

A publication by the International Organization for Migration (IOM) found a high incidence of physical violence and forced sexual intercourse experienced by female migrants. Of 80 women interviewed, 33 reported unwanted sexual intercourse and 14 reported forced sexual intercourse, 47 also reported physical violence.324

Another occurring problem is breaching contracts resulting to desertion by workers. The runaway rate is relatively high: 27-30% in Japan, 20-25% in Korea and 9-12% in Taiwan.325 In most cases, the workers decide to escape due to heavy burden of debts that they made to be able to migrate in the first place. For fear of being unable to pay back, the workers decide to leave the legal contract and engage in illegal jobs that might generate higher pay. This leads to illegal employment, illegal migration within the receiving country and other serious problems. “Missing” workers lack legal protection, risk violence and abuse by their illegal employers, and can file no complaint out of fear of deportation. Often, this leads to a form of slavery, where they have no medical or social benefits, but have to work excessive hours or bear with exploitation.

The SERC conducted a comparative study of migration tendencies in Laos, Myanmar, Cambodia, Vietnam and Thailand. Despite the generally higher level of education of Vietnamese workers, even when they engage in legal domestic migration, they often face various forms of discrimination. Most common would be exhausting working hours, uncomfortable and overcrowded living conditions, and insufficient health care, particularly in the cases of female migrants.326

322 Hammoud, “International Labour Migration from Vietnam to Asian Countries: Process, Experiences and Impact.” P. 33
323 Dang, “Labour Migration ifrom Vietnam: Issues of policies and practices.” P 8-9
325 Dang, “Labour Migration ifrom Vietnam: Issues of policies and practices.” P. 10

Huong Le Thu
**Link Between Migration and Trafficking**

Although trafficking and migration are separate issues, in many cases they are inextricably linked. Reports and interviews show that in many cases, trafficked persons embark voluntarily on migration. They are deceived, trapped or manipulated later on into trafficking. Migrants who cross the border illegally and eventually end up being trafficked are often too afraid of deportation or other legal prosecution to seek formal assistance. Control over illegal migration is undeniably essential, but it needs to be balanced so as not to criminalize the victims of trafficking.

Trafficking often occurs in the context of irregular migration of people who either are not aware of safe migration or do not have a specific target destination or employer. In many cases the movement starts voluntarily, but the migrants are deceived, tricked or trapped into the traffickers’ net. Exploitation usually happens en route or at the destination; victims lose control over the choice of destination and are deprived of travel and identification documents that prevent them from further movement. Such practice is common in countries were the labour force is large and the outflow of workers is not strictly controlled by state.

**b. Root Causes of Abuse and Discrimination in Migration**

Poverty remains the main reason for migration. Lack of resources, arable land, and seasonal droughts are among other causes for people to migrate. Migration to work is done through channels of family and friends’ circles; village authorities play a minor role in providing information.

Apart from economic hardship, cultural and societal values are also relevant factors why people migrate. Filial piety is commonly regarded as valuable, and children are expected to act according to parents’ expectations. In poverty-stricken families, children are encouraged to contribute to the household’s income, therefore many young people drop out of school and seek employment, often in the cities.

Vietnamese agencies do not provide adequate training prior to migrants’ emigration. In most cases workers are not familiar with conditions, rights, obligations of and towards the employers, not to mention training regarding culture, language and environment of receiving countries.

Hiring foreign workers is a strategy of reducing costs for any business. Hence, the imported labour force often faces poor living and working conditions, little health care and even violation of human rights. It is particularly frequent for un-skilled or semi-skilled workers, who often do not speak the language of the receiving country, and have no knowledge about legal rights.

Migrants, once having left their country, have limited access to protection or information services; hence often face risks of exploitation, violence and even sexual abuse. Due to their temporary status, migrant workers lack or have limited access to health care legal assistance and other public services. Language barriers are a serious problem in communication between the employers and workers. Moreover, because of lack awareness of legal context, the workers are more vulnerable to abuses.

**c. Impact of Abuse and Discrimination in Migration**

Little attention is paid to both physical and mental health of migrants once already arrived in the receiving countries. Studies have shown that a significant number of labour migrants suffer from loneliness, anxiety and stress due to culture shock, communication difficulty, as well as experience of exploitation, discrimination, and physical or sexual abuse.

### 2. De Jure State Responses

**a. Bases of State Responsibility**

The Vietnamese government has paid increasing attention to preventing illegal migration and abuse of migrants. Since 2007, it has started to recognize labour exploitation, both within the country and abroad. This change of perception created opportunities for partnership to develop safe migration programs with

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328 UNICEF, “Reversing the Trend: Child Trafficking in East and Southeast Asia,” P. 32

329 Dang, “Labour Migration from Vietnam: Issues of policies and practices,” P. 10

330 Found in this section are responses that have not been previously discussed in the sections of Violence and Exploitation.
non-governmental agencies working on migration issues, particularly international actors.\textsuperscript{331}

In August 2010, the government of Viet Nam signed a New Cooperation Agreement with the IOM. This agreement is the product of increased political will to cooperate with international partners on migration issues. As the Prime Minister concluded, “The new agreement puts the close cooperation between Viet Nam and IOM on a new, stronger basis. It offers new opportunities for enhanced cooperation to meet Viet Nam’s 21st century’s migration challenges.”\textsuperscript{332} Under the new agreement, the IOM declared it would help implement programmes aimed at safe and orderly migration, while respecting the rights and legitimate interests of migrants.

The shared objective aims to help Vietnam maximize the positive impact of migration on social development and boost legal migration opportunities for Vietnamese nationals. The new agreement reflects the multi-dimensional nature of modern migration. Cooperation includes capacity enhancement in migration management, migration health, counter-trafficking, information services, the voluntary return of stranded or irregular migrants, the promotion of sustainable labour migration, and coping with migration induced by climate change and disasters.

Bilateral agreements:
- MOU between Belgium-Vietnam on facilitation of legal migration, prevention of illegal migration and ensuring repatriation of illegal immigrants
- Vietnam- Australia Pact on Migration, 2009
- UK-Vietnam MOU on migration (2004), UK funded readmission centre at NoiBai airport for returnees.

\textbf{b. National Policies against Abuse and Discrimination in Migration}

The Government has passed the following laws and plans of action in response to the migration challenges:
- In 1999 the government approved a new policy - Decree No. 152/1999/ND-CP on overseas employment which specifies procedures and mechanisms to facilitate overseas employment and mechanisms. The guidelines were set by MOLISA, which requires workers to take language, culture and vocational trainings before going abroad\textsuperscript{333}

\begin{itemize}
  \item Decree 136/ND-CP, 17 August 2007, on immigration by the citizens of the Socialist Republic of Viet Nam
  \item Decision 135/2007/QĐ-TTg, 17 August 2007, on visas of the Vietnamese citizens permanently residing in other countries
  \item Directive 1737/CT-TTg, 10 September 2010, on increasing the protection of Vietnamese citizens migrating abroad\textsuperscript{334}
\end{itemize}

In 2006, law for vocational training, language and culture courses to be taken before working abroad was enacted. The law also addressed illegal recruitment agencies and worker’s violation of agreement by defining punitive measures.\textsuperscript{335}

\textbf{c. Assessment of State Policies}

Information containing assessment of policies has been the most challenging data to obtain in preparing this report. This is as true in regard to migration issues as in regard to trafficking and violence.

As indicated in the discussions above, the issue of labour migration is serious and will continue to be so in Vietnam. Apart from solving the country’s economic problems of unemployment and generating income in foreign currencies from the migrants’ remittances, there remain more complex problems of guarding worker’s rights beyond the country of origin. However, Vietnamese legislation lacks sufficient mechanisms to protect the rights of exported labour forces.

The percentage of female workers exported overseas has been increasing significantly over the years:

\begin{itemize}
  \item In 1999, 5%
  \item In 2000, 8%
  \item In 2001, 7%
  \item In 2002, 9%
  \item In 2003, 8%
  \item In 2004, 11%
  \item In 2005, 12%
\end{itemize}

\textsuperscript{331} ILO, “Meeting the Challenge: Proven Practices for Human Trafficking Prevention in Greater Mekong Sub-region.”


\textsuperscript{333} Dang, Tacoli, and Thanh, “Migration in Vietnam: A review of information on current trends and patterns, and their policy implications.” P. 15

\textsuperscript{334} “Báo cáo tổng quan hoạt động di cư của công dân Việt Nam ra nước ngoài - [General Report of Activities of Vietnamese citizens migrating abroad].”

\textsuperscript{335} Dang, “Labour Migration ifrom Vietnam: Issues of policies and practices.” P. 14
Table 20: Percentage of female workers sent abroad in selected years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>28%</td>
</tr>
<tr>
<td>2003</td>
<td>37%</td>
</tr>
<tr>
<td>2004</td>
<td>54%</td>
</tr>
</tbody>
</table>

Source: Following the VASS data quoted from ADB “Vietnam: Gender Situation Analysis”336

Despite this fact, “Vietnam has no specific gender policies and regulations that would protect the rights and welfare of female workers.”337

As earlier stated, abuses often occur even before workers are dispatched abroad. Due to a lack of strict regulations on licensed recruitment agencies, there are many grey issues that pose serious challenges for legal regulation. Questionable agencies and brokers target rural and poor communities with limited knowledge about safe migration, promising them lucrative job offers from abroad. Prospective migrants have to pay a certain sum of money upon signing their agreement, and without them knowing (while waiting for actual departure, which might take months or years), the debt rises. As a result, even before migrating, they become indebted with sums of money they are never able to pay back if they stayed in the country; therefore, they cannot break the contracts. They reportedly often mortgage their land and properties, borrow money from banks in order to pay the brokers fees. This form of deceit and exploitation is not regulated. Illegal recruitment is popular; however there are no statistics on actual cases of people recruited in such an abusive way.338

MOLISA recognizes that such illegal recruitment agencies violate government regulations of direct recruitment. Yet little attention have been taken to solve the issue or to provide the data necessary for accurately assessing the problem. As a report states: “The government is reluctant to privatize placement agencies as it would give way to exploitive brokers and traffickers to further manipulate and take advantage of labourers who wish to work abroad.”339

Further, as the report Labour Migration from Viet Nam: Issues of Policy and Practice pointed out, not only is there lack of protection prior to and while working outside the country, but there is also a gap in policy addressing return and reintegration:

From a policy perspective, there is lack of coordinated strategies to assist returning migrants with reintegration. Labor export strategy and related policies do not consider issues of return and reintegration. Most migrant workers are left to their own devices and frequently face difficulties in finding employment commensurate with the skills they have acquired abroad. Knowing the language and familiar experience with the host society, some returnees have tried to find work again in the Republic of Korea, Japan, and Taiwan (China).340

3. Implementation, Monitoring, and Enforcement

No substantial information about implementation of monitoring or enforcement of migration policies has been provided by government sources so far.

a. Monitoring Mechanisms

The government has authorized some 170 enterprises to act as recruitment brokers or agencies. MOLISA has been appointed to supervise their activities, set minimum standards for employment and to provide services to protect the rights and interests of Vietnamese migrant workers. The Department of Overseas Labour (DOLAB) is a specialized agency under MOLISA, which is responsible for statistics on overseas migrants, recruitment agencies, forging bilateral agreements, monitoring and licensing recruitment agencies, registration of overseas workers, setting training programmes for migrants, collecting and managing fees from overseas workers and providing guidelines to the Management Boards of Overseas Labour.341

b. Complaints Process

Little information on complaint mechanisms for abused or discriminated migrants is available. Decree 04/2005/ ND-CP,11 January 2005, on Complaint and accusation of labour [cases of abuse], provides that migrant workers have the right to file a complaint in cases of violation of

336 ADB, "Viet Nam: Gender Situation Analysis." P.21
337 Dang, “Labour Migration from Vietnam: Issues of policies and practices.” P. 3
338 Ibid. p. 13-14.
340 Ibid. p. 12.
341 Abella and Ducanes, “The Economic Prospects of Viet Nam and what it means for Migration Policy.” P. 40
rights. The procedure is dealt with by the MOLISA, to which the complaint must be filed within 90 days from the date of the occurrence of the action complained of. MOLISA’s website provides the forms and procedure.

c. Protection and Rehabilitation

As previously mentioned, Vietnamese policy lacks regulations and coordinated strategies assisting returning workers to get jobs. Many skilled workers face unemployment after several years abroad where they gained not only training but also relevant experience. Often, the reason is their low level of formal education. Many of them seek again for job opportunities in the countries they previously worked in.  

The first public database for Vietnamese migration abroad (www.dicu.gov.vn) was recently launched. The website was established for the following purpose:

In a bid to better inform potential Vietnamese migrants, migration practitioners and policy makers, a new website on migration has been launched. www.dicu.gov.vn, is the first public database on Vietnamese migration abroad. It provides disaggregated data and makes available legal documents and other resources to promote safe and legal migration. The study can be found on the website in Vietnamese. An English version is currently being finalized.

Making such information available would, hopefully, inform migrants of their rights and enable them to better protect themselves from abuses and discrimination.

d. Prevention Measures

A series of awareness raising workshops and direct assistance through skills training, education support and microfinance was conducted in two northern provinces (Quang Ninh and Thanh Hoa), three southern provinces (Tay Ninh, Hau Giang and Can Tho) and Ho Chi Minh City with the provincial labour departments and the Vietnam Women’s Union. Programs in 14 communities of three provinces were launched in collaboration with Department for Social Evils Prevention of the Ministry of Labour, Invalids and Social Affairs. Campaigns successfully engaged employers aiming at improving employers’ business practices in the recruitment and hiring of women migrant workers for national and overseas employment. Viet Nam Chamber of Commerce and Industry participated in the program.

The Vietnam Association of Manpower Supply (VAMAS) published the Code of Conduct, which presents the fundamental principles which Vietnamese enterprises recruiting workers for overseas employment should comply with. It is based on Vietnamese legislation, ILO Conventions and Recommendations and other relevant international instruments and on the actual context of Vietnam. It stipulates the legal base and duty of enterprises sending workers abroad. The Code of conduct is an important instrument for enterprises for their better legal compliance; better business management; and prevention of forced labour and human trafficking, especially against vulnerable workers such as female workers.

4. Role of Non-State Actors

a. Assistance to Victims

There are a number of international organizations and NGOs, as well as local NGOs committed to the issue of exploitation in migration. Often there are overlaps in programs for abuses in migration and exploitation of trafficked persons. Campaigns and programs tend to address the issues jointly. Thus, reference to non-state actors mentioned in the section on Exploitation would be informative.

Migration, particularly labour migration, has been a focus for a number of major international actors. International agencies are willing to invest in research, particularly in the areas where migration poses danger of exploitation and trafficking.
Table 21: Some major non-state actors working on migration-related issues

<table>
<thead>
<tr>
<th>Name</th>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>IOM</td>
<td>In Viet Nam, IOM supported the establishment of self-help groups to empower migrant women who have experienced violence. They were offered counselling and training to become facilitators of self-help groups for other migrant women. For women who often lack access to services, the self-help groups provided the basis for referrals to professional health and social services. The 128 women involved were able to articulate their needs and priorities to the government, mass organizations, media, and the wider community, through awareness-raising activities and the distribution of information and education materials.345</td>
</tr>
<tr>
<td>ILO</td>
<td>Capacity building, trainings, research and dissemination, funding programs, statistics aggregation</td>
</tr>
<tr>
<td>Canadian International Development Agency (CIDA)</td>
<td>Assessment of policies, technical support, capacity building, policy-implementation assistance, social women empowerment programs address to disadvantaged groups</td>
</tr>
<tr>
<td>USAID</td>
<td>Vocational training, reports over violations of labour migrant’s rights, child labours</td>
</tr>
<tr>
<td>UN agencies</td>
<td>Research, dissemination and publication</td>
</tr>
<tr>
<td>Save the Children</td>
<td>Reports on child labours, funding programs and trainings</td>
</tr>
<tr>
<td>Blue Dragon</td>
<td>Assistance to children in special circumstances</td>
</tr>
<tr>
<td>International Labour Rights Forum</td>
<td>Launched program “Stop child and forced labour in Vietnam”</td>
</tr>
</tbody>
</table>

Source: Researcher’s compilation

Funded by the European Union, IOM is working in the capital of Vietnam in partnership with three local NGOs to improve the support provided to migrant women who experienced violence. This 18-month project entitled, “Violence Against Women – A rights-based approach to empowering migrant women affected by violence in Hanoi” has seen considerable success since its implementation in January 2008.

The project contains six main groups of activities:
- Capacity building for peer facilitators and local NGOs working on human rights;
- Mapping of service providers and developing an initial service referral system;
- Self-help groups;
- Outreach and communication;
- Policy advocacy and implementation; and
- Social and health service provision.

Female migrants who experienced violence were recruited as peer facilitators. The capacity building project aims at sharing experience and knowledge about human rights, training communication skills, and providing support. The objective is to enhance women's awareness of, and capability to claim their rights. This initiative has resulted in nine self-help groups and organization of roundtables between the migrant women and duty bearers, and holds regular meetings with stakeholders.346

b. Prevention Programs

In December 2011, IOM Viet Nam and the Department of Overseas Labour (DoLAB) signed an agreement to establish a Migrant Resource Centre (MRC) in order to promote safe and sustainable labour migration from Vietnam. The project was funded by IOM and aims at assisting DoLAB with developing and delivering direct services to migrants through the MRC with outreach and awareness-raising activities in areas of high out-migration. The project fosters the exchange of good practices in providing comprehensive migrant support services between Viet Nam and other Asian countries.347

The Vietnamese Government, in association with IOM, launched the project “Building the database of Vietnamese citizens migrating abroad”. This project’s objectives are:
- Capacity-building for the governmental agencies that manage migration-related issues and promote legal migration, prevention from illegal migration movements

• Create a general database about Vietnamese migrants abroad, analysing, monitoring and evaluating the bilateral cooperation agreements.
• Create a comprehensive database with detailed information, legal provisions, and statistics that can be utilized while launching safe-migration awareness campaigns.348

5. Progress Indicators and Challenges

There is an urgent need for governmental agencies, as well as NGOs and civil society, to increase monitoring for transparency and safety of labour export. For Vietnam to keep exporting labour as a strategy of development, it needs to pay more attention to the legal and safety aspects of migration. Moreover, it needs to invest in vocational training of workers to enhance their competitiveness in global markets. Instead of exporting cheap manpower, Vietnam can offer skilled manpower.

Legal and safe migration awareness is essential and ought to be included in public education at all levels. While migration of young people is considered a positive contribution to the economy, the lack of safeguards makes families and communities willingly send their young unaware and unprepared for what they will face. The young, un-skilled workers and women are particularly prone to abuses and exploitation. The government should work more tightly in multilateral frameworks with such international organizations as IOM, as well as bilaterally with receiving countries to regulate migration movements more efficiently.

Moreover, closer monitoring on the recruitment agencies ought to be applied in order to prevent illegal activities of trafficking or deceit into unfair labour exploitation. Education and training campaigns should become an obligation for those who wish to engage into labour migration.

6. Recommendations

As an ILO study pointed out, there is a “lack of a proper counterfactual base from which to estimate the impact of migration.”349 There is a pressing need for the creation of a comprehensive database and research on migration issues. Available statistics are challenging to grasp and understand. For example, in terms of remittances from international migration in 2006 the World Bank estimated that Vietnam received USD 4.8 billion, whereas according to the Vietnam Household Living Standards Survey the sum was only USD 1.8 billion in the same year.350 Such disparity calls for more accurate research and clearer presentation of data.

The Government needs to pay more attention to the protection of migrant workers, particularly because many job seekers who wish to escape poverty are willing to take up any job abroad, or to settle for sub-standard conditions. Public information services for migrants-to-be ought to be more accessible, with clearer explanations on the conditions, requirements and standards of the employment abroad. In other words, awareness should be raised among the job seekers about their rights and obligations when seeking employment overseas. Such information should explicitly provide details on regulated costs, including service charges, brokerage commissions, wages, working hours, working conditions, costs of living, and addresses where the migrants can seek for assistance. Pre-departure and post-arriving trainings are absolutely essential.

There is a need for closer and regular monitoring and inspection of recruitment practices, which would involve local and provincial authorities, to avoid abusive and irresponsible deployment of workers abroad. It is critical that control is conducted by an independent agency to avoid fraud, bribery and trafficking practices by certain brokers.

The Government should come up with assistance to migrants in terms of remitting money back home. There ought to be standardized banking transfers that would provide safe services and reduce cost of foreign remittances.

The ILO recommends that Vietnam ratify ILO’s Migration for Employment Convention (1949), International Convention on Protection of Rights of All Migrant Workers and Members of their Families (1990), and the Migrant Workers (Supplementary Provisions) Convention (1975) to strengthen Vietnam’s position in negotiating for equal treatment of its workers abroad.351

348 “Báo cáo tổng quan hoạt động di cư của công dân Việt Nam ra nước ngoài - [General Report of Activities of Vietnamese citizens migrating abroad].”
349 Abella and Ducanes, “The Economic Prospects of Viet Nam and what it means for Migration Policy.” P. 21
350 Ibid. P. 33
351 Ibid. P. 42
In terms of economic development, national strategy should incorporate strategies to deal with geographically uneven economic growth, reducing unemployment, poverty, inequality and the potential for social instability in the country. The ILO recommends that the government limits, or remove any direct or indirect obstacles to the mobility of labour, such as any remaining limitations posed by the household registration system.352

Horizontal and vertical coordination among agencies is necessary to enhance effectiveness and avoid overlapping of similar but fragmented programs.

**General Observations**

Vietnam has been facing tremendous challenges of a rapidly developing country. The past decades have shown the country’s remarkable achievements in achieving Millennium Development Goals. In all cases of violence, exploitation, trafficking and migration, the violation, abuse and maltreatment often are rooted in the lack of legal knowledge. Further commitments need to address poverty-alleviation and equalize the distribution of wealth to avoid imbalance within the country. Apart from continuing efforts to strengthen national and international mechanisms of protection, monitoring the existing frameworks is recommended. Despite existing legal provisions and policies, knowledge about them remains limited.

Therefore, a common recommendation to all the issues discussed in this report is to raise legal awareness among citizens, and put more effort into education on legal rights and remedies to protect and prevent further abuses. It is hoped that an aggregated database of existing statistics and studies will be established. An integrated database is essential for a better understanding of the issues, as well as coming up with more accurate response mechanisms. There is a need for the Government to encourage and facilitate further studies and research, as well as dissemination of already obtained data. Accessibility to existing reports, assessments and monitoring publications would be essential for external actors to more effectively contribute to assistance programs.

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352 *Ibid.* P. 43
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