

# CITIZENS' GUIDE TO FIGHTING HUMAN TRAFFICKING

# INTRODUCTION

The People's Republic of China (PRC) is a source, transit, and destination country for trafficking in persons, primarily for forced labor and sexual exploitation. The majority of trafficking occurs within China's borders. China's migrant population is especially vulnerable to internal trafficking. Internationally, victims from neighboring countries such as Burma, Vietnam, Laos, Mongolia, Russia, and North Korea are trafficked into China for commercial sexual exploitation and forced labor. Victims from China are also trafficked worldwide.

This Citizens' Guide to Fighting Human Trafficking is a resource for individuals and organizations seeking to be actively involved in the fight against human trafficking in China. The government of China has sought to protect trafficking victims by issuing its second National Plan of Action to Combat Trafficking in Persons, which was effective from 2013 to 2020. In addition, China's criminal law contains several provisions punishing sex trafficking, forced labour, and other trafficking-related crimes. Thus, there is a legal framework within which individuals and organizations can protect the vulnerable and prosecute the offenders.

Chapter I provides an overview of the global problem of human trafficking and background information on how human trafficking presents itself in China today. Chapter II provides comprehensive, step-by-step procedures for rescuing human trafficking victims, prosecuting perpetrators, and rehabilitating survivors, with citations to pertinent provisions of the criminal procedure laws. Chapter III outlines the legal framework for anti-trafficking legislation, both internationally and in China, to provide context for any efforts undertaken to fight trafficking.

This Guide is the result of collaboration between Justice Ventures International and its many partners who are dedicated to eradicating modern slavery. We would like to acknowledge the valuable contributions of numerous pro bono lawyers and law students, both in the US and China, to the development of this Guide.

Citizens' Guide to Fighting Human Trafficking, 2021

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I

OVERVIEW OF  
HUMAN TRAFFICKING  
AND CONTEXT OF  
TRAFFICKING IN  
CHINA

# A. Definition and Dynamics of Modern Day Slavery

## Forms of Modern Day Slavery

At present, there are more than 40.3 million people trapped in modern slavery,<sup>1</sup> in an industry generating \$150 billion per year.<sup>2</sup> Modern forms of slavery can be found in the practices of domestic servitude, bonded labour or debt bondage, serfdom (when a person must live and work for another person on his/her land), forced labour, child slavery, and marital and sexual slavery.<sup>3</sup> Human trafficking is a term often used interchangeably with modern day slavery. According to the U.S. State Department's Trafficking in Persons Report ("TIP Report") 2018, the terms "trafficking in persons," "human trafficking" and "modern slavery" are umbrella terms encompassing recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion.<sup>4</sup> Human trafficking thus involves not merely the movement of persons but also the concept of enslavement.<sup>5</sup>

## International Definition of Human Trafficking

Human trafficking has become, in financial terms, the third largest organized crime internationally, after arms and drug trafficking.<sup>6</sup> In a widely adopted definition, the Palermo Protocol (The U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children) defines "trafficking in persons" as "the recruitment, transportation, transfer, harbouring or receipt of persons, using threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."<sup>7</sup>

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<sup>1</sup> "2018 Findings/Highlights," Global Slavery Index 2018, <https://www.globalslaveryindex.org/2018/findings/highlights/> <sup>2</sup> Putting Justice First: Legal Strategies to Combat Trafficking, Available at:

<http://www.trust.org/contentAsset/raw-data/ceedfd4f-0573-4caa-85ce-d5c222570078/file>

<sup>3</sup> Forms of Slavery, End Slavery Now, <http://www.endslaverynow.org/learn/slavery-today>

<sup>4</sup> 'The Face of Modern Slavery', Trafficking in Persons Report, 2018, pp.32-33. Available at: <https://www.state.gov/wpcontent/uploads/2019/01/282798.pdf>.

<sup>5</sup> What is Modern Slavery, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Diplomacy in Action, available at: <http://www.state.gov/j/tip/what/#>

<sup>6</sup> Malhotra D., Trafficking of Women and Children: A culture of Silence, Eastern Book Company, PL Web Jour 1, 2005.

<sup>7</sup> Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

According to this definition, human trafficking consists of three elements:

- 1) The act (**what** is done): Recruitment, transportation, transfer, harbouring, or receipt of persons;
- 2) The means (**how** it is done): Threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and
- 3) The purpose (**why** it is done): For the purpose of exploitation, which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

## Forms of Human Trafficking Recognized Globally

According to the United Nations Office on Drugs and Crime's Global Trafficking in Person's Report 2014, the two most common forms of trafficking are **sexual exploitation and forced labor**.<sup>8</sup>

### Sex trafficking/Commercial Sexual Exploitation

Sex trafficking occurs when an adult is forced, threatened or fraudulently coerced into engaging in a commercial sex act, such as prostitution.<sup>9</sup>

### Child Sex Trafficking/Commercial Sexual Exploitation

Similarly, child sex trafficking occurs when a child (a person under 18 years of age) is forced to engage in a commercial sexual act.<sup>10</sup>

### Forced Labour and Bonded Labour

Victims of forced or exploitative labour mainly work in the production of labour-intensive, cheap goods for export, including in the manufacturing and construction sectors, as well as in more informal industries, such as brick kilns.<sup>11</sup> Bonded labour is an outcome of indebtedness that exploits economically weaker sections of society. It occurs when a person agrees to render services to a lender in repayment of a debt.<sup>12</sup>

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<sup>8</sup> UNODC, Global Report on Trafficking in Persons 2018 (United Nations publication, Sales No. E.19.IV.2). Available at: [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf)

<sup>9</sup> TIP Report, US Department of State, 2018, p. 34. Available at: <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>.

<sup>10</sup> Ibid.

<sup>11</sup> Global Slavery Index 2018: China, <https://www.globalslaveryindex.org/2018/findings/country-studies/china/>

<sup>12</sup> Know your rights, Bonded Labour, 2010, National Human Rights Commission, page 1. Available at: <http://nhrc.nic.in/Documents/Publications/KYR%20Bonded%20Labour%20English.pdf>

## **Forced Marriage**

This is an institution or practice where individuals do not have the option to refuse marriage or are promised and married to another by their parents, guardians, relatives or other people and groups. It also occurs when a wife is forcibly transferred to another in exchange for some type of payment or when a widow is given no choice but to be inherited by one of her late husband's male relatives.

## **Begging**

Traffickers source women and children and place them in various areas to beg. Because disabled child beggars generate greater profits, traffickers sometimes maim children to enhance their value as beggars.<sup>13</sup>

## **Organ Transplantation**

Traffickers often exploit persons to transplant organs for profit. In some cases, the victim is unaware that his/her organs are being removed and in some cases persons agree to removal of their organs due to dire economic needs.<sup>14</sup>

## **The 4Ps and the Strategy to Combat Modern Day Slavery**

The United Nations in the Palermo Protocol has laid down a four-fold response (known as the "4P's") to trafficking in persons:

- **PREVENTION**
- **PROTECTION**
- **PROSECUTION**
- **PARTNERSHIPS<sup>15</sup>**

The 4Ps constitute a strategic framework to tackle trafficking of persons. Each of the four strategies addresses issues of supply and demand.<sup>16</sup> The following are examples of relevant actions:

- **PREVENTION**
  - Adopt or improve legislation to prevent trafficking of persons.
  - Develop national child protection systems and active participation of children in development of preventive measures.
  - Promote coherence among public policies related to trafficking in persons (migration, crime prevention, education, employment, health, security,

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<sup>13</sup> *Supra* note 14 at page 10.

<sup>14</sup> *Supra* note 14 at page 10.

<sup>15</sup> Four "Ps": Prevention, Protection, Public Prosecution, Partnerships, Trafficking in Persons, U.S. Department of State – Diplomacy in Action. Available at: < <http://www.state.gov/j/tip/4p/#>>

<sup>16</sup> The Framework for Action, UNODC International Framework for Action to Implement the Trafficking In Persons Protocol, United Nations, New York 2009, found on pp. 10-13. Available at: <[https://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf)>

nondiscrimination, economic development, protection of human rights, child protection, gender equality, among others).

- Develop and/or strengthen measures to reduce vulnerability to trafficking by addressing its root causes.
- Conduct a needs assessment for an impact evaluation for prevention strategies and programs.

- **PROTECTION**

- Establish or improve victim identification process.
- Adopt or amend legislative measures to protect and assist victims.
- Develop victim protection and assistance measures in compliance with international standards.
- Adopt measures ensuring return, if desired by trafficking victims, with appropriate risk assessment.

- **PROSECUTE**

- Develop, strengthen, and implement comprehensive national frameworks aligned with the Palermo protocol, including:
  - Recognize trafficking in persons as a criminal offence.
  - Criminalize other crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group.
  - Make penalties and sanctions appropriate and proportionate to the gravity of the crime and confiscate proceeds of trafficking.
  - Ensure the rights of victims, including the rights of victims and witnesses to protection before, during and after Public Prosecution, and foster effective collaboration between law enforcement, social welfare, and civil society.
  - Develop proactive investigative techniques without relying on victim testimony, and implement judicial procedures to avoid re-victimization of trafficked persons, in particular children, during the judicial process.
- Enforce national anti-human trafficking legislation.
- Establish specialized institutions such as specialized police units and judicial structures.



- **PARTNERSHIP**

- National Coordination and Cooperation
  - Develop and implement evidence-based policies on trafficking in persons, which are coherent with other policies.
  - Establish a system of multi-disciplinary cooperation and coordination among various stakeholders, such as government institutions, nongovernmental organizations, victim service providers, health institutions, child protection institutions, trade unions, workers' and employers' organizations, and the private sector.
  - Monitor and evaluate national strategies and/or plans of action to assess progress and impact.
- International Coordination and Cooperation
  - Create legal basis for international cooperation including promotion of cooperation agreements.
  - Develop or strengthen national capacity in extradition, mutual legal assistance, transfer of sentenced persons, joint investigations, and international cooperation to confiscate trafficking proceeds.
  - Develop or strengthen national capacities for the identification, return, risk assessment and reintegration of victims of trafficking, with special consideration to the best interest of the child, and establish cooperation between countries of destination, transit and origin.
  - Establish communication procedures, information and data exchange.
  - Establish coherence in policy recommendations and technical assistance provided by international and regional organizations.
  - Ensure cost effective division of labour.
  - Promote cooperation and joint programming among international and regional organizations in developing and implementing common strategies and programmes.

The **4P strategy** is now a globally recognized response to trafficking in persons.

## B. Clarification of Concepts

Due to the number of technical terms being used, it is important to clarify certain concepts pertaining to human trafficking.

### **SEX TRAFFICKING vs. SEX WORK**

Women who have been trafficked for **sexual exploitation** should be distinguished from women who voluntarily enter the **sex trade**.

### **SEX TRAFFICKING**

According to the 2017 TIP Report<sup>17</sup>, a victim of sex trafficking:

- Is an adult who engages in a commercial sex act, such as prostitution, which may occur within debt bondage (where individuals are forced to continue in prostitution to repay a debt, which the trafficker claims has been incurred from costs incurred during their transportation, recruitment, or their crude “sale”—which exploiters insist they must pay off before they can be free);
- Engages in such sex acts as a result of circumstances involving force, threats of force, fraud, coercion or any combination of such means; and
- Has been recruited, harboured, enticed, transported, provided by, obtained by or maintained by a person, known as the trafficker, for the purpose of exploiting the victim to engage in a commercial sex act.

In the above situations the adult’s “consent” to participate in prostitution is not valid.

When a child is engaged similarly to perform acts of commercial sex, it is referred to as child sex trafficking.

### **SEX WORK**

Sex work is the provision of sexual services for money or goods.

While sex trafficking results in sex work, sex work need not be the result of trafficking. There are instances where women voluntarily join the sex trade. It is the perpetrators of commercial sexual exploitation who are punishable under the Palermo Protocol and national law. Hence it is **trafficking** for sex work that is punishable and not sex work per se.<sup>18</sup>

### **Trafficking vs. Migration<sup>19</sup>**

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<sup>17</sup> Trafficking in Persons Report, June 2017, found on p. 17. Available at < <https://www.state.gov/documents/organization/271339.pdf> >

<sup>18</sup> Overs C., 2002, SEX WORKERS : PART OF THE SOLUTION – An analysis of HIV prevention programming to prevent HIV transmission during commercial sex in developing countries. Available at: <[http://www.who.int/hiv/topics/vct/sw\\_toolkit/115solution.pdf](http://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf)>

<sup>19</sup> The Difference between Trafficking and Migration, Trafficking and the Law, 2nd Ed., Socio Legal Information Centre, Human Rights Law Network, p 7.

Migration means the movement of people from one place of residence to another, which could be between districts, states, or different countries. It may be seasonal and temporary, or permanent. Migrants may move of their own accord to seek better prospects. When traffickers move victims, by contrast, they employ fraud, threats, coercion, intimidation and violence. The intent and consequence of these movements of people cannot always be understood during the period of movement, even for the individual worker who is in the process of migration or trafficking. It is often the outcome of the movement which determines whether it was safe migration or trafficking. Voluntary migration should not be confused with trafficking.

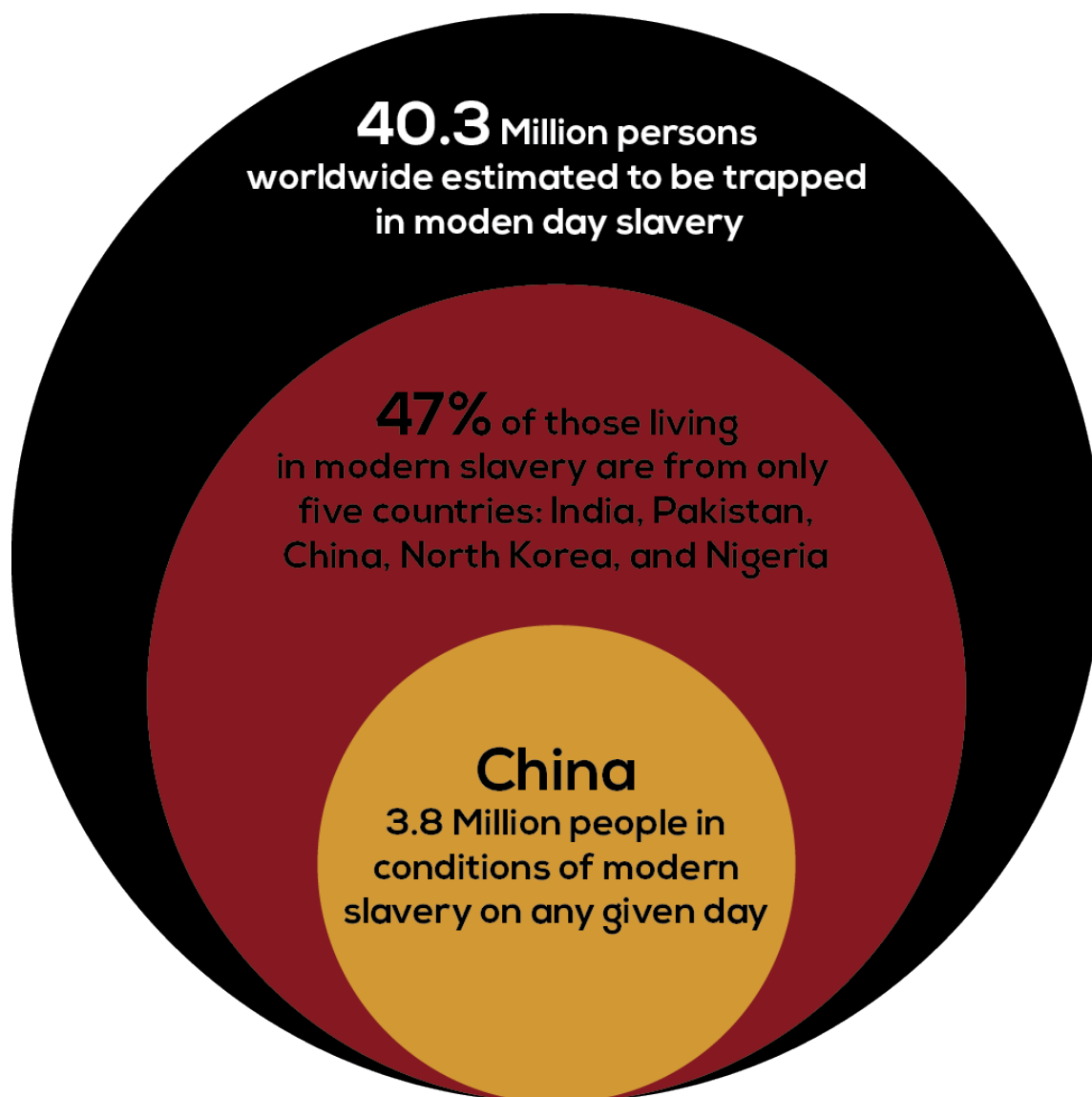
### **The Concept of Consent**

As long as a trafficker intends to procure, transport, buy or sell people for the purpose of exploitation, “consent” is not a valid defense to the crime of trafficking. Trafficking may involve types of coercion other than overt force. Traffickers maintain the submission of their victims through a variety of means – including fraudulent promises, debt bondage, physical and psychological abuse, rape, torture, threats of arrest or threats to the victim’s family. The concept of “honour,” especially to a victim of sex trafficking, often prevents victims from seeking help or leaving their conditions even when escape may be possible. Trafficked persons are often afraid to leave their situation for fear of public humiliation, as well as possible further victimization by society and their families. As they are almost always economically vulnerable and may have no other immediate means of survival, leaving is not a viable option for them.<sup>20</sup>

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<sup>20</sup> Supra note 2.

## C. Statistics

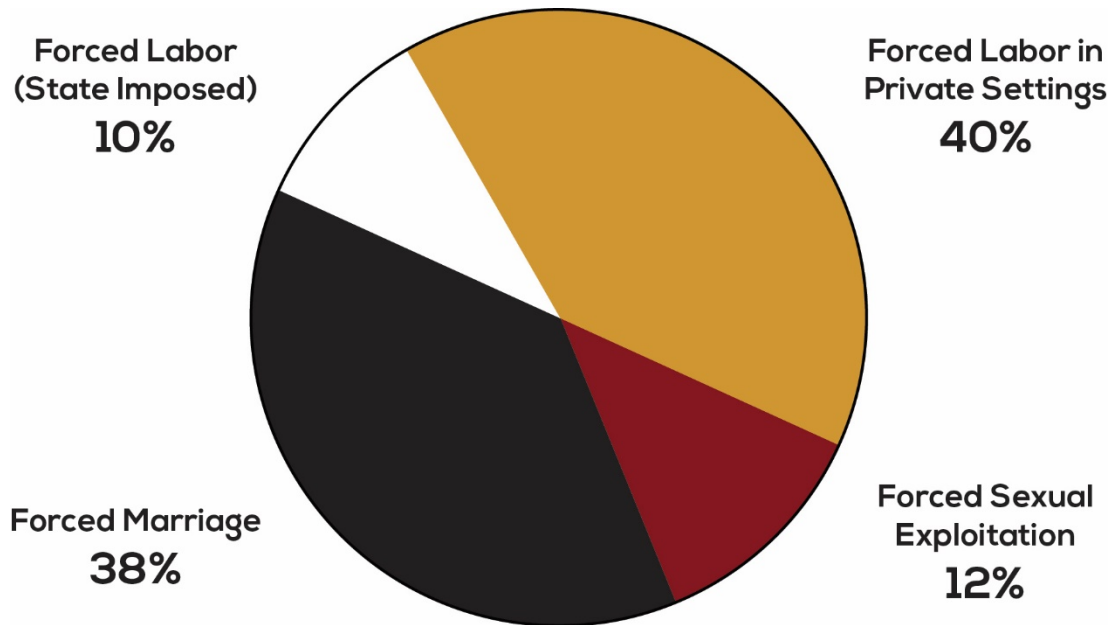


Above: **GLOBAL SLAVERY INDEX STATISTICS**<sup>21</sup>

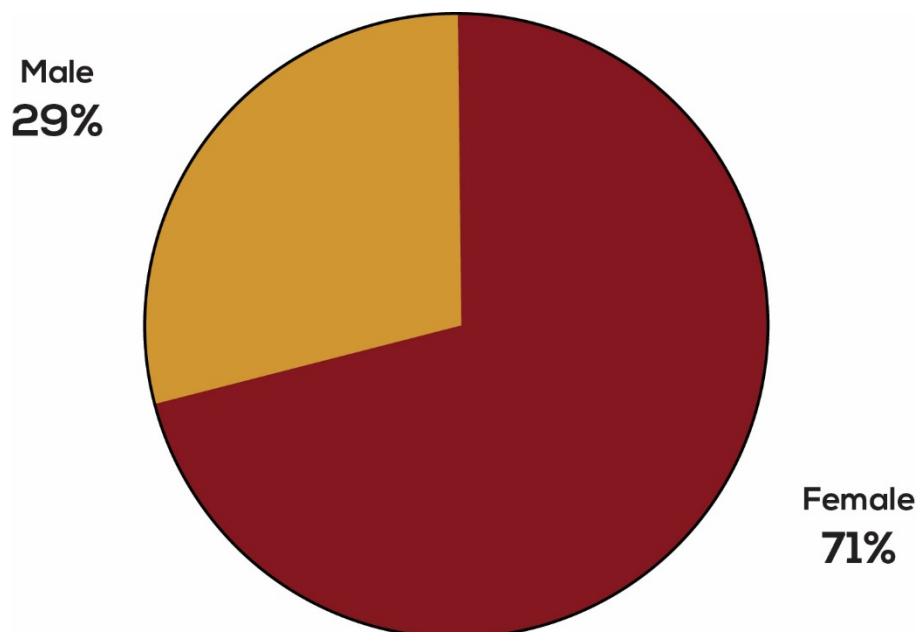
<sup>21</sup> Global Slavery Index 2018, available at: <<http://www.globalslaveryindex.org/2018/findings/>>

Given below are some facts and figures according to I.L.O.<sup>22</sup>

### WORLDWIDE BREAKDOWN OF MODERN SLAVERY BY SECTOR

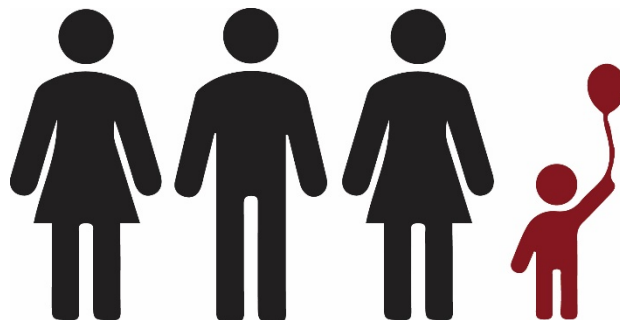


### VICTIMS OF MODERN SLAVERY BY GENDER



<sup>22</sup> Facts and Figures - Forced Labour, Human Trafficking and Slavery, I.L.O. Available at: <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

- For every 1,000 people in the world there are 5.4 victims of modern slavery.
- Women and girls are disproportionately affected by forced labour,<sup>23</sup> accounting for 99% of victims in the commercial sex industry and 58% in other sectors.
- In the private economy forced labour is estimated to generate about \$150 billion in illegal profits per year. While sexual exploitation generates profits, forced labor saves costs.
  - \$99 billion from commercial sexual exploitation
  - \$34 billion in construction, manufacturing, mining and utilities
  - \$9 billion in agriculture, including forestry and fishing
  - \$8 billion dollars is saved annually by private households that employ domestic workers under conditions of forced labor



**Above: One in four victims of modern slavery are children.<sup>24</sup>**

**Below: Indicates the dispersion of victims trapped in forced labour regionally.<sup>25</sup>**



<sup>23</sup> The ILO refers to forced labour as "situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities." This can be read at: <[http://www.ilo.org/global/topics/forcedlabour/news/WCMS\\_237569/lang--en/index.htm](http://www.ilo.org/global/topics/forcedlabour/news/WCMS_237569/lang--en/index.htm)>

<sup>24</sup> Facts and Figures - Forced Labour, Human Trafficking and Slavery, I.L.O.

<sup>25</sup> Prevalence across the regions, GSI. Available at: <https://www.globallslaveryindex.org/2018/findings/regional-analysis/regionalfindings/>.

# D. Human Trafficking in China

## Types of Trafficking Crimes

The Global Slavery Index 2018 estimates that of the 1,397,028,553 people in China, approximately 3,864,000 are enslaved.<sup>26</sup> Modern slavery exists in a range of industries including construction, manufacturing, mining, brick-making, restaurants, and domestic work.<sup>27</sup> The primary forms of human trafficking in China are:

- **Forced labor:** Includes debt bondage, where women and children are forced to work in industries such as brick kilns, coal mines, and factories, some operated illegally.<sup>28</sup> In 2011, China began to incorporate men into discussions of human trafficking, particularly in the context of forced labor practices in and around the region.<sup>29</sup> An estimated 90% of Chinese migrant workers move via irregular channels, where labor recruiters associated with crime triads are known to force migrants into debt bondage and other forms of coercion.<sup>30</sup> More than one third of migrant workers are employed in the manufacturing sector.<sup>31</sup>
- **Sexual Exploitation:** Includes the practice of kidnapping women and children from rural areas and transplanting them to urban centers for sexual and labor exploitation.<sup>32</sup> Prevalent in 2015 was the practice of luring these individuals into the city with false job opportunities and keeping them for four years without compensation.<sup>33</sup>
- **Forcible Marriages:** China's One Child Policy has created a demand for brides and prostitution due to the skewed boy-girl ratio. Popular areas of origin for domestically trafficked brides are Yunnan, Sichuan, and Guizhou, where poverty renders the women more vulnerable to trafficking.<sup>34</sup> Chinese Government Bureaus made estimates in 2015 that by 2025–2030, between 22 and 30 million Chinese men would be unable to find brides and would thus seek out mail order brides from countries like Burma and North Korea.<sup>35</sup>

Illegal adoption, begging and theft, violence in cross-border crimes, the use of the internet to lure younger girls to prostitution, complex trafficking ring structures, and a targeting of younger victims are also trends that continue to impact vulnerable populations in and

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<sup>26</sup> The Global Slavery Index 2018, [www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP\\_2018\\_BOOK\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf)

<sup>27</sup> *Id.*

<sup>28</sup> TIP Report 2018 *supra* note 1.

<sup>29</sup> Central Intelligence Agency, *Trafficking in Persons: China* (2015), [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2196.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2196.html).

<sup>30</sup> China – A Human Rights Report on Trafficking in Persons, Especially Women and Children, The Protection Project, 2013, p.2, accessed 11/28/14: <http://www.protectionproject.org/wp-content/uploads/2010/09/China.pdf>.

<sup>31</sup> "Migrant Workers and their Children," China Labour Bulletin, 27 June 2013, accessed 12/1/2014: <http://www.clb.org.hk/en/content/migrant-workers-and-their-children>.

<sup>32</sup> Central Intelligence Agency, *Trafficking in Persons: China* (2015), [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2196.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2196.html).

<sup>33</sup> *Id.*

<sup>34</sup> Lee, June. "Human Trafficking in East Asia: Current Trends, Data Collection, and Knowledge Gaps". Retrieved 11/30/2014.

<sup>35</sup> *Id.*

around China.<sup>36</sup> China's internal migrant population, currently estimated to exceed 236 million people, is especially vulnerable to internal trafficking.<sup>37</sup>

Human trafficking in China is fueled by the country's rapid economic growth, massive internal migration, gender imbalance<sup>38</sup>, and a variety of other factors. In particular, the massive internal migration from rural areas into the cities creates opportunities for traffickers to lure women and girls who often migrate at lower ages with less education than men.<sup>39</sup> According to estimates by the International Labour Organization (ILO) and the International Programme on the Elimination of Child Labour (IPEC), 90% of internal trafficking victims in China are women and children, primarily trafficked from Anhui, Henan, Hunan, Sichuan, Yunnan, and Guizhou Provinces to prosperous provinces along the east coast.<sup>40</sup> The ILO also found the age and sex of the victim to be an indication of the type of trafficking; specifically, young boys are trafficked for adoption, girls and young women are trafficked for sexual exploitation.<sup>41</sup> Furthermore, human trafficking is an extremely lucrative crime in China, earning more money annually than the trafficking of weapons or drugs.<sup>42</sup>

## China's Response to Trafficking Crimes

In the 2019 annual human trafficking report card for the People's Republic of China,<sup>43</sup> the U.S. State Department noted that China does not meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The report noted some positive steps by the Chinese government, such as addressing forced and fraudulent marriages in China. In addition, law enforcement authorities cooperated with foreign governments to investigate cases of Chinese citizens subject to trafficking in Burma, Cambodia, Cyprus, Macau and Singapore and increased consultative partnerships with Lao, Mongolian, and Vietnamese authorities to address forced and fraudulent marriages of their citizens to Chinese individuals. However, state-sponsored forced labor intensified under the government's mass detention campaign against Muslim ethnic minority groups in Xinjiang and other ethno-religious groups. Authorities arbitrarily detained more than one million ethnic Muslims in as many as 1,200 "vocational training centers" – internment camps designed to erase ethno-religious identities, where it is reported that detainees are subjected to forced labor in on-site or adjacent factories.

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<sup>36</sup> *Id.*

<sup>37</sup> TIP Report 2018, *supra* note 2, at 132.

<sup>38</sup> Due to the cultural preference for male children, China's One Child Policy has prompted issues such as sex-selective abortion, female infanticide, and abandonment of infant girls, resulting in a shortage of marriageable women. China has a skewed sex ratio of 117 boys to 100 girls. *Id.* Experts consider this shortage to be a major reason for the trafficking of women into prostitution and forced or coerced marriages. *Id.*

<sup>39</sup> International Labour Organization & All China Women's Federation: *The Project to Prevent Trafficking in Girls and Young Women for Labour Exploitation within China – Sharing Experiences and Lessons Learned in Trafficking Prevention* (publication issued by the ILO and ACWF; hard copy available)

<sup>40</sup> ILO-IPEC: *Yunnan Province of China, The Situation* (publication issued by the ILO-IPEC; hard copy available)

<sup>41</sup> *The Project to Prevent Trafficking in Girls and Young Women for Labour Exploitation Within China*

<sup>42</sup> Susan Tiefenbrun, *Human Trafficking in China*, 6 U. St. Thomas L.J. 247, 251 (2008) [hereinafter *Human Trafficking in China*].

<sup>43</sup> *China: 2019 Trafficking in Persons Report*.



Moreover, although court records from the Supreme People’s Court (SPC) in China indicate that the Government prosecuted at least a few potential trafficking perpetrators since 2011, it appears the government has decreased prosecution efforts, as SPC data indicates that it prosecuted and concluded approximately 634 trafficking cases in 2018 (1,146 in 2017), culminating in 1,252 individuals convicted (1,556 in 2017 and 1,756 in 2016).<sup>44</sup> In addition, despite reports of law enforcement officials benefiting from, permitting, or directly facilitating sex trafficking and forced labor, the government did not report any investigations, prosecutions or convictions of law enforcement officials allegedly involved in the crime.

Some of the problems noted by the State Department as impeding China’s anti-trafficking progress include:

- The national household registry system (*hukou*), which contributes to the vulnerability of internal migrants by limiting employment opportunities and reducing access to social services;
- The government’s handling of most cases with indicators of forced labor as administrative issues through the Ministry of Justice and seldom through prosecutions under anti-trafficking statutes;
- The arrest and detainment of foreign women on suspicion of prostitution crimes without screening them for indicators of sex trafficking before deporting them for immigration violations; and
- The implementation of a law placing foreign NGOs in mainland China under Ministry of Public Security supervision, which imposes burdensome requirements and restrictions on activities of civil society organizations able to provide victim services.

In light of these concerns, the State Department provided a series of recommendations including an end to forced labor in governmental facilities, abolition of the arbitrary detention and forced labor of persons in internment camps in Xinjiang, the vigorous investigation and prosecution of perpetrators of forced labor and sex trafficking (including government officials), and the institution of formal procedures to identify trafficking victims throughout the country.

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<sup>44</sup> China: 2019 Trafficking in Persons Report

## E. Human Trafficking Between China and other Countries

Internationally, victims from neighboring countries such as Burma, Vietnam, Laos, Mongolia, and the Democratic People’s Republic of Korea, as well as from Africa and the Americas, are trafficked into China for commercial sexual exploitation and forced labor. Traffickers kidnap or recruit women and girls through marriage brokers and transport them to China, where some are subjected to sex trafficking or forced labor. Illicit brokers increasingly facilitate the forced and fraudulent marriage of South Asian, Southeast Asian, Northeast Asian and African women and girls to Chinese men for fees of up to \$30,000. One trafficking survivor explained how North Korean women are typically drawn to false opportunities in China while fleeing from human rights violations in their home country. The brokers who arrange these forced unions threaten the women with deportation if they refuse to go through with the arrangement upon arrival in China.<sup>45</sup> Again, a key concern for these women is providing stability for themselves and their families and escaping persecution in their own countries; thus, they are easily lured by promises of safety and security in China.

Many cities in China, including Beijing, provide services for domestic matchmaking with migrants. Typically, Burmese women are sold for less than other women in forced marriages because of racist beliefs that they are “less desired” by Chinese men due to their darker complexions and foreign status. Many of these women still feel compelled to participate in these forced marriages because of extreme socioeconomic strains in Burma and look forward to the only economic opportunity available outside of their home country. Additionally, many of these individuals do not perceive themselves as trafficking victims and resist Chinese law enforcement efforts to “rescue” them from the system, particularly when many corrupt police officials have subjected these women to even more torturous conditions and failed to provide safe passageways for their return home.

Chinese men, women and children are also trafficked worldwide. Popular destinations for individuals trafficked from China include Thailand, Malaysia, Eastern European regions, America and parts of Africa. Chinese men in Africa and South America experience abuse at construction sites and in coal and copper mines, where they face conditions indicative of forced labor. In addition, traffickers subject Chinese women and girls to sex trafficking throughout the world, including in major cities, construction sites, remote mining and logging camps, and areas with high concentrations of Chinese migrant workers.

Recently, more attention has been drawn to the plight of male migrant Vietnamese workers subjected to forced labor trafficking schemes in and around China. For instance, Phan Quoc Suu and Phan Van Lin were just 16 and 18 years of age when they were lured

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<sup>45</sup> Ji-Hyun Park, *Surviving Human Trafficking in China* PROJECT SYNDICATE (Aug. 18, 2016), <https://www.project-syndicate.org/commentary/trafficking-north-korean-women-china-by-ji-hyun-park-2016-08?barrier=accessreg>.

into trafficking by a woman who came to their village promising good wages for work on a farm in China.<sup>46</sup> They were promised \$200 a month but once they arrived, they were denied pay for three months and when they complained were subjected to physical abuse and detention by the traffickers.<sup>47</sup> Although the National Plan amendments in China recognized forced labor as a form of human trafficking, the Vietnamese laws only recently recognized this type of coercion as a form of trafficking so little data exists.<sup>48</sup> Accordingly, there is emerging evidence that men are also subjected to illegal human trafficking operations.

On April 18, 2017, members of the Chinese government gathered alongside interagency partners at an annual human trafficking conference in Ho Chi Min City.<sup>49</sup> Data reported at the conference indicated that during 2016 and the first quarter of 2017, security forces and local police had uncovered 195 cases of illegal transportation of people from China to Vietnam.<sup>50</sup> In the process, 490 victims were reportedly rescued.<sup>51</sup> Similarly, both Chinese and Vietnamese authorities reported intercepting trafficking rings and highlighted the importance of patrolling the border between Vietnam and China as it was identified as an active area for human trafficking.<sup>52</sup> General Hoa described the regions between the two countries as a “hot spot” for human trafficking and other forms of illegal migration.<sup>53</sup> Human trafficking in these areas, General Hoa also emphasized, continued to constitute a “multi-billion-dollar-business.”<sup>54</sup> Many of these rings were known to transport women and girls by air and road between China and Vietnam as well as to Russia and other Eastern European regions.<sup>55</sup> While there, these women were forced to work at nail shops or to grow drugs for narcotics traffickers.<sup>56</sup> The conference also addressed the need to increase efforts to reintegrate survivors of trafficking into society and to deal with the psychological, healthcare, economic and legal problems facing the individuals impacted by these illegal practices.<sup>57</sup>

Other similar news accounts covering trafficking into and out of Vietnam (a major thoroughfare for Chinese citizens) echoed these statistics. Specifically, during the same period (2016 and Q1 of 2017), authorities in Vietnam dealt with 430 cases of human trafficking with 500 people accused of these crimes and 1,500 victims.<sup>58</sup> Notably, 85

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<sup>46</sup> Thahn Binh, Trafficked workers exploited in China IRIN (Nov. 2011), <https://www.irinnews.org/fr/node/251295>.

<sup>47</sup> Id.

<sup>48</sup> Vietnam was also not a signatory to the UN’s 2000 anti-trafficking protocol.

<sup>49</sup> VBN, Vietnam, China push forward with human trafficking fight VietnamBreakingNews.com (Apr. 18, 2017), <https://www.vietnambreakingnews.com/2017/04/vietnam-china-push-forward-with-human-trafficking-fight/>; Linh Bui, Vietnam, China enhance cooperation in combating human trafficking PUBLIC SECURITY NEWS (Apr. 19, 2017), <http://en.cand.com.vn/Public-security-forces/Vietnam-China-enhance-cooperation-in-combating-human-trafficking-437556/>.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Vietnam, China enhance cooperation in combating human trafficking.

<sup>53</sup> Human trafficking victims freed in Q1

<sup>54</sup> Id.

<sup>55</sup> Vietnam, China enhance cooperation in combating human trafficking.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Human trafficking victims freed in Q1.

percent of the victims in these cases were sold to China.<sup>59</sup> This report also noted one of the prevailing issues highlighted by the State Department's 2016 evaluation of China's human trafficking record. Specifically, in remote and isolated areas, individuals are considerably more vulnerable to traffickers and have less access to local law enforcement.<sup>60</sup>

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<sup>59</sup> Vietnam, China enhance cooperation in combating human trafficking.

<sup>60</sup> *Id.*

# F. Prevailing Perceptions of Trafficking in China

“Angel Project” Survey Report

In 2019, a survey was conducted of people residing in Guangdong, Sichuan, Hebei, Tianjin, and Shenzhen Provinces to evaluate the public’s general awareness and understanding of the human trafficking problem in China. A total of 530 questionnaires were distributed and 340 responses were collected. The questions addressed a broad range of topics, including the respondents’ knowledge of the frequency and concentration of human trafficking in their province, the public perception about the crime, the understanding of relevant federal and provincial laws and regulations, and opinions on and recommendations for the government’s actions to combat human trafficking. Key results from the survey for each province are summarized below.

## **Guangdong Province**

The survey issued 180 questionnaires in Guangdong Province and received 58 responses. The respondents mainly live in Guangzhou, the provincial capital, and Meizhou, a prefecture-level city. The age group ranged from youth to middle aged, with a concentration of 18 to 30-year olds and 50-year olds. There is a fairly even split between male and female respondents.

According to the survey, 69% of respondents believe that human trafficking occurs *occasionally* in Guangdong Province and 10.3% believe it occurs *frequently*. 75.9% of respondents believe that trafficking is most prevalent in western and northern Guangdong; 24.1% believe that it is more prevalent in eastern Guangdong; and 22.4% believe it is most prevalent in the Pearl River Delta region. 55.2% of respondents thought that the manner in which the Guangdong police historically handled human trafficking was average, 17.2% were satisfied, and 8.6% were not satisfied. In addition, nearly one-fifth of the residents said they did not pay attention to how the police handled human trafficking cases.

The majority of respondents believe that monetary gain is the main driver of human trafficking and 89.7% believe that the penalties for human trafficking are too lenient. They recommend increasing the current sentencing guideline of five to ten years’ imprisonment to more than ten years’ imprisonment, life imprisonment, and even the death penalty. All respondents stated that if they witnessed a human trafficking incident, they would report it to the police. In addition, 67.2% of respondents indicated that they would turn to the internet for information on reporting trafficking, while 25.9% stated that they would seek out relevant NGOs. Baby Back Home Volunteers Association and the Ministry of Public Security’s Children’s Missing Information Emergency Publishing Platform are regarded as the most reputable platforms and organization to help locate trafficked person.

Finally, in regards to the impact of the Guangdong government initiatives addressing human trafficking crimes, 65.5% of respondents believe that government crackdown is

average while 18.9% believe that the crackdown is insufficient or seriously insufficient. Most respondents (89.7%) believe that the state should establish and improve relevant laws and regulations or establish DNA databases to effectively combat trafficking. Nearly half of respondents believe that the government should encourage the establishment of relevant NGOs. Most of the respondents agreed that the government should implement stringent crack down and punishment for crimes involving trafficking of women and children. They also recommended that the government increase its efforts to promote awareness of traffickers.

### **Sichuan Province**

Researchers targeted respondents over 10 years of age living in the town of Guanyin in Xuzhou District, Yibin City. The questionnaires were randomly distributed around government buildings, gathering spots for merchants, plazas, and other public places such as bus stops and pedestrian streets.

Of the over one hundred questionnaires distributed, 76 were collected. 39.5% of respondents claimed that they had never heard of any trafficking cases in Yibin City or Xuzhou district, and 46.05% said they had never paid attention to the issue of human trafficking in Yibin City or Xuzhou district. The staff at the Guanyin Town Government, Xuzhou District Government, Statistics Bureau, the Investigation Team and the Women's Federation reported that there were few incidents of human trafficking in recent years and that there was law and order in the jurisdiction. The investigators then applied to the Xuzhou District Government through the online information disclosure application for "Statistical Data on Trafficking in Women and Children in the Xuzhou District of Yibin City in 2016-2018". The government response indicates that such information does not exist. The survey results, in-person interviews, and government response to the request for public disclosure of trafficking lead to the conclusion that there are very few reported incidents of human trafficking in the Xuzhou district of Yibin City.

### **Hebei Province**

The questionnaire was given to over 50 people and 31 responses were received. The respondents mainly lived in Xingtai, Shijiazhuang and Zhangjiakou cities in Hebei Province. The age ranged from youth to middle-aged, mainly concentrating on 19 to 30-year olds, with nearly twice as many female respondents.

54.8% of the respondents said that they *regularly* heard about trafficking in the news, and 19.4% said they *seldom* heard about trafficking in the news. About 38% thought that trafficking of women and children occurred *occasionally* in the Hebei Province, but 29% thought that it occurred *regularly*. In addition, all respondents stated that they would report to the police if they witnessed a human trafficking incident.

Most respondents believe that the primary motivation behind human trafficking is to sell the victims to the acquiring families or to illegal organizations for profit. Regarding the punishment of human trafficking crimes, 77.4% believe that the penalties for such crimes are too light and they support increasing the sentencing guideline minimum of five to ten years' imprisonment to more than ten years' imprisonment, life sentence, or even the death penalty.

Finally, 29% of respondents believe that the Hebei Province's crackdown of human trafficking is average, while 25.8% believe that the crackdown is insufficient or severely insufficient. More than 80% of respondents believe that the state should establish laws and regulations to effectively combat trafficking crimes or establish relevant DNA databases. In addition, many respondents suggested that the government should strive to develop the economy, change the public opinion towards wealth acquisition, and promote awareness of the dangers of traffickers.

### **Tianjin**

128 of 150 questionnaires distributed were received. The respondents mainly lived in Tianjin, and their age ranged from youth to middle-aged, concentrating in 19-30 years old, 31-40 years old and over 40 years old. Most respondents received at least a high school education.

More than 95% of the respondents said that they had *never* or *rarely* heard about trafficking incidents in the city of Tianjin. Over 80% of the respondents believe that "abduction" and "trafficking" constitutes human trafficking under Criminal Law, and 60% of the respondents believe that "kidnapping," "buying," "transfer" and "handover" constitutes trafficking. This indicates that most people can distinguish different manifestations of human trafficking, but some respondents cannot differentiate between indirect trafficking such as "transfer" and "handover."

In addition, 66.4% of the respondents did not understand the criminal nature of "buying" trafficking victims. However, 85.9% of the respondents firmly oppose the purchase of abducted victims, indicating that although the respondents had little legal knowledge about the purchase of trafficked victims, they opposed this behavior morally. More than 80% of the respondents believe that the current statutory penalty is too lenient and the government should crack down and severely punish traffickers in accordance with the law. Finally, 62.7% of the respondents agreed that even if the victim "consented" to the trafficking, such consent cannot be an affirmative defense for the trafficker because the behavior itself violated the public order. In summary, most respondents are familiar with the illegality of human trafficking and believe that such crimes should be severely punished.

### **Shenzhen**

The survey issued 50 questionnaires and received 45 responses. The respondents mainly live in Shenzhen, and their age ranges from youth to middle-aged, with a concentration of 19 to 40-year olds. There were twice as many female respondents.

About 95% of respondents said that they *often* or *sometimes* hear news about trafficking in women and children, and 60% believe that trafficking *sometimes* occurs in Shenzhen. Some respondents pointed out that Longgang, Songgang, Longhua, and Baoan Districts and other remote areas are more likely to have human trafficking incidents.

All respondents said that they would seek help from the police if they witnessed a human trafficking incident, but most people will also seek help through charitable organizations (51.1% of respondents) and online media (68.9% of respondents). The Baby Back Home

Volunteers Association and the Ministry of Public Security's Children's Missing Information Emergency Publishing Platform are the most reputable platform and organization to help locate trafficked person, as more than half of respondents were familiar with both organizations. More than 80% of respondents said that they "have no idea" or "know a little bit" about the legal policies regarding human trafficking, and 91.1% of respondents believed that trafficking in women and children is an illegal activity that should be criminally punished.

Finally, 73.3% of respondents believe that the Shenzhen government crackdown of human trafficking is average, and 11.1% of respondents believe that their crackdown is insufficient or seriously insufficient. 91.1% of respondents believe that the state should establish relevant laws and regulations and establish relevant DNA databases to effectively combat such crimes; 46.7% of respondents believe that the development of relevant NGOs should be encouraged. Most of the respondents suggested increasing supervision, improving the reward and punishment mechanism, and severely cracking down on human trafficking. They recommend that the government promote awareness of trafficking through publicity and education.



# II

## STANDARD OPERATING PROCEDURES

These standard operating procedures (SOP) provide a list of steps to be taken by citizens and lawyers seeking to assist trafficking victims and participate in the prosecution of offenders. While the SOP are listed as steps in the order in which they are most likely to occur, such steps may not necessarily occur sequentially. Some steps may occur simultaneously or in a different sequence.



## PROCEDURES FOR RESCUING HUMAN TRAFFICKING VICTIMS

- 1.1 IDENTIFYING HUMAN TRAFFICKING VICTIMS 
- 1.2 SUBMITTING THE CRIMINAL COMPLAINT 
- 1.3 PREPARING THE HUMAN TRAFFICKING RESCUE PLAN 
- 1.4 CONDUCTING PRE-RESCUE MEETING WITH POLICE 
- 1.5 INITIATING THE HUMAN TRAFFICKING RESCUE 
- 1.6 SECURING THE HUMAN TRAFFICKING RESCUE SITE 
- 1.7 SEPARATING HUMAN TRAFFICKING VICTIMS FROM THE ACCUSED 
- 1.8 GATHERING HUMAN TRAFFICKING EVIDENCE 
- 1.9 RECORDING HUMAN TRAFFICKING VICTIM STATEMENTS 
- 1.10 ENSURING PROTECTIVE CUSTODY FOR SURVIVORS 

## STEP 1.1 IDENTIFYING HUMAN TRAFFICKING VICTIMS

Work with the appropriate Public Security Bureau and relevant authorities to gather and verify facts supporting the existence of human trafficking and confirm whether the facts gathered support the legal elements of human trafficking under the Criminal Law.

### Commentary

Information about the incidence of human trafficking can be obtained from the following sources:

- Victim or victim's family/community
- NGO/Community Leaders
- Government authorities
- Any person having knowledge of the crime
- Informant

## POINTS TO NOTE

**Who is a victim of trafficking:** China's Criminal Law ("CL"), Articles 240 and 241, defines trafficking as "the abduction, kidnapping, trading and transporting of women and children for the purpose of selling." Offences such as forced labour and other trafficking-related offences are punished as other crimes and not as trafficking offences. For example, Article 236 criminalizes rape and sexual relations with a young girl, Article 238 criminalizes unlawful detention, Article 244 criminalizes forced labour, and Article 262 criminalizes abducting a minor, all of which may bear upon trafficking activity. See Chapter III, "Legal Framework."

**Means of gathering information and intelligence:** The following are means and places from which information on the incidence of trafficking can be gathered:

- **Source Area:** Collect intelligence on victims and potential victims in source areas. Victims include vulnerable persons, vulnerable communities, people in difficult situations, etc. The citizen should sensitize and motivate the community members to keep a watch in the community for irregular movements of victims. Intelligence in source areas can also be gathered from interviews with survivors.
- **Transit Points:** Transit points (including bus stops, railway stations, airports, immigration/custom offices at borders, and tourist destinations) are a source of intelligence on victims and perpetrators in transit.
- **Demand Areas:** Collect intelligence at areas/activities where demand for forced labour or sex trafficking is high (e.g., red light areas, brick kilns, coal mines, factories, entertainment industry, hairdressing, massage parlours, etc.)
- **Decoy Operations:** Information may be obtained by conducting decoy operations.

**Precautions to be taken:** While obtaining information, the following precautions ought to be taken:

- **Maintain confidentiality:** Information relating to the victims, the rescue site to be searched, the brothel owner/pimp, or employer must remain confidential. Do not disclose information to persons who do not need to know.

- **Contact the local police:** If you believe you have identified someone or have received information from any source about a victim of trafficking, alert the local police station immediately. Do not attempt to rescue or help the victim on your own, as you must have assistance from law enforcement agencies.
- **Drafting a complaint for submission to the local police:** Seek the assistance of a lawyer to prepare a written complaint, which should list all violations and invoke all applicable sections of law.

**Decoy operations:** A decoy operation occurs when a person goes undercover (such person is called a “decoy”) and uses his/her guise to obtain information about the incidence of human trafficking and where it is being committed. The decoy also helps gather any other information that could be useful in conducting a rescue operation but cannot be procured without such an operation.

- **Who can be employed as a decoy:** A decoy can be a police official, a representative of an NGO, or any other person willing to be sent as a decoy.
- **Who can a decoy be disguised as:** A decoy can pose as a bogus customer (for sex trafficking rescues), a middleman, a contractor, an employer, etc.
- **Brief the decoy:** The decoy must be sensitized on the plight of the victims and the risks involved in carrying out such operations. The decoy must be made aware of the vulnerability of the trafficked person and should neither traumatize the victim further by his or her presence nor take advantage of the situation. The decoy should be carefully trained about how to respond in the different circumstances that might arise.

**Role and importance of decoy customer in sex trafficking interventions:** The decoy customer is also known as a bogus customer, who ensures that the targeted victim is present in the brothel during the rescue operation. Decoy operations can produce strong evidence about the girl being sexually exploited. Recovery of marked transaction money in the presence of an independent witness from the brothel keeper/manager/owner implicates them in the crime. Even if the victim is not traced during the trial, there are chances of a conviction for running a brothel based on the testimony of decoy and independent witness, even in the absence of the victim.

The following important points pertain to a decoy customer:

- A decoy customer should be of good repute with no criminal background.
- He should not be a very young man.
- He should preferably be from an NGO or the police.
- He should be familiar with sex trafficking or the working of the red light area.
- He should be introduced to the special police officer before he is sent to the brothel.
- The importance of the operation should be explained to the decoy customer.
- The marked money for the transaction is to be given by the police to the decoy customer in the presence of an independent witness. The decoy customer should pay the marked/noted money to the brothel keeper/manager/owner.

- He should not engage in sexual activities with the victim.
- As soon as the transaction is done he should inform the police in a predetermined code.
- As the police approach the brothel he should try and keep the girl with him and not allow her to leave the room.
- If he is forced to leave the girl (due to suspicion of raid/tips off), then he should accompany the girl so that he can see where the girl is hidden.
- The statement of the decoy customer should be reduced to writing by the police officer.
- The decoy customer should testify before the court during trial.

### STEP 1.2 SUBMITTING THE CRIMINAL COMPLAINT

Use the facts gathered to draft a complaint to be submitted to the police and other government officials and ensure the details contained in the complaint address the elements of a trafficking crime under the Criminal Law.

#### Commentary

Discuss the information in detail with the informant to verify the genuineness of the information. However, report the information to appropriate authorities immediately, as time is of the essence. Decoy operations or reconnoiter visits may be carried out to authenticate the available information received from informants.

### POINTS TO NOTE

**To whom should the trafficking complaint be submitted:** The trafficking complaint (or information) is to be submitted to a public security organ, a People's Procuratorate or a People's Court, which are required by Art. 108 of the Criminal Procedure Law of the PRC ("CPL") to accept all reports, complaints and information. If a case does not fall under its jurisdiction, it must refer the case to the competent organ and notify the person who made the report, lodged the complaint or provided the information.

**Checklist before approaching authorities:** Before approaching the authorities, the citizen should:

- Determine which authorities to approach (depending on the urgency of the case, expected response from the authorities, severity of the case); and
- Contact the authorities to receive an appointment. The citizen meeting the authorities must be well versed with laws and procedures relating to human trafficking.

**Police acknowledgment:** As far as possible, submit the information/complaint in writing and obtain a written acknowledgement of the same. In the event the information cannot be made in writing, it may also be given orally to the police officer. The police officer must, if the information is given orally, reduce it to writing and have it signed by the informant. Ensure that the officials give due cognizance to the complaint made.

**Safety and privacy of complainants:** The public security organs, the People's Procuratorates and the People's Courts must insure the safety of reporters, complainants and informants as well as their near relatives. If the reporters, complainants or informants wish to not make their names and acts of reporting, complaining or informing known to the public, these shall be kept confidential for them. CPL Art. 109.

- **Summary of offences:** For details on penal provisions that may be invoked, refer to the chart of trafficking-related Criminal Law provisions provided in Chapter III(C).

### STEP 1.3 PREPARING THE HUMAN TRAFFICKING RESCUE PLAN

Assist the police and relevant authorities in preparing a comprehensive rescue plan, which should include a detailed physical map of the site.

#### Commentary

The plan should include details of the location, physical layout of the rescue site, entry and exit points, hideouts, sketch map of the rescue site, etc.

### POINTS TO NOTE

**Risk assessment:** Conduct a systematic risk assessment and have a plan to prevent and minimize the risks involved in a rescue. Other important information such as the location of the place to be searched, the profile of the traffickers and the social standing of the accused must be examined to assess the risks. Possible responses to mitigate risks along with a contingency plan in case of unforeseen circumstances must be planned with great care.

**Avoid sharing rescue site information:** The physical map of the rescue site should be kept confidential to the extent possible. There have been instances of victims going missing after information was leaked from various sources. It is best to avoid sharing the information with too many stakeholders.

**Pre-rescue plan:** Contact JVI for a sample pre-rescue plan that lists out the roles and responsibilities of team members.

**Sex Trafficking Rescue Checklist:** Appendix 1 has a Checklist for sex trafficking interventions.

## STEP 1.4 CONDUCTING PRE-RESCUE MEETING WITH POLICE

Participate in a pre-rescue meeting in accordance with the rescue plan where roles and responsibilities are assigned to team members. Advise and assist the police and relevant authorities during the pre-rescue meeting by sensitizing them on legal provisions and important information relating to the rescue to be undertaken.

### Commentary

**Team leader:** Appoint a team leader who shall explain the strategy and steps to be taken during the rescue. The team leader shall assign responsibilities and explain the role of participants in the rescue operation. Divide participants into groups, depending on the targeted number of rescue locations and expected number of victims, and appoint a team leader for each group. Share the names and contact details of each participant, team leaders and roles and responsibilities of each group.

Prior to participating in the rescue, team members must be familiar with the laws related to trafficking of persons.

**Note:** Under no circumstances should the team that was involved in identification/verification/intelligence gathering be involved in the rescue so as to protect their identity and to ensure an effective rescue operation.

## POINTS TO NOTE

**Composition of rescue team for arrest and investigation:** The rescue team should include a police officer and social worker, one of which must be a woman.

Pre – Rescue Checklist:

- **Prepare a rescue kit:** The kit should include stationery, cameras, torches, batteries, video cameras, refreshments (drinking water, snacks), a first aid kit, vehicles, printer and cartridges, laptops and chargers, reference materials such as statutes, a list of the police stations within the jurisdictions to which the victims belong, clothing, toiletries, food, drinking water, and activity books, crayons, and colored pencils (in the event there are children among the rescued victims). Appoint a point of contact for arrangement of logistics well in advance of the rescue.
- **Alert shelters:** Alert credible government-run/NGO shelters at the place of rescue regarding the approximate number of persons likely to be rescued and the date when they are likely to be brought to the home. Ensure that NGO run shelters are licensed by the Government. This should be done in total confidentiality so that information about the rescue operation is not leaked. It is important for NGO representatives to identify credible shelters and maintain a database. In the event the shelters cannot be made immediately available to survivors, care must be taken to ensure that the district committee makes alternate arrangements for their stay and safety.

- **Security of rescue team:** Ensure there is adequate police personnel depending on the size of the rescue operation. In case of sensitive or high risk locations, ensure that the rescue team is accompanied by sufficient police personnel. Under no circumstances should a rescue operation be carried out without police protection.

**Remind authorities of legal standard for forced labour:** Highlight points for the authorities to keep in mind while identifying forced labour, such as:

- Forced labour does not necessarily mean use of physical force;
- Forced labourers can be of any age;
- Forced labour can be of any duration; and
- No documentary evidence is required.

**Become familiar with useful questions:** Those participating in the rescue must familiarize themselves with standard rescue protocol before going on a rescue.

### STEP 1.5 INITIATING THE HUMAN TRAFFICKING RESCUE

Participate in the trafficking rescue with the police and other stakeholders according to the rescue plan, to ensure that it is carried out according to the law.

#### Commentary

On the day of rescue, take the following measures:

- **Prior to rescue, meet at common location and wait for signal:** Rescue team members must meet at a common location well before the rescue and wait for the decoy to give signal. The strategy for the rescue operations and its various steps should be explained at this time. Explain each team member's roles in the rescue operation to clear any doubts.
- **Stationing of surveillance team:** A surveillance team must be stationed at a strategic location near the place of rescue to provide information about any suspicious activity/tip offs.
- **On receiving signal enter site of rescue:** Upon reaching the strategic location as planned, immediately enter the rescue site where the victim is confined or kept and ensure that the site is fully searched. The victims may be kept hidden in boxes, attics, toilets, cubicles, cupboards, false ceilings, wall panels, bathrooms, etc. Enlist the help of rescued persons in locating other hidden victims, children, offenders, and other incriminating materials.
- **Key strategies during a rescue:** Ensure that the rescue team cordons off strategic areas, secures entry and exit points, locates hide outs and identifies a safe place where rescued persons can be kept while the rescue operation is being carried out.

**Video/photos of the scene of crime to be captured by the police:** Ensure that videography/photography of the scene of crime and offenders are carried out by the



police. Ensure that no one else captures photos or videos of victims or in the brothel area without appropriate permission.

**Advice on collection of material evidence:** Ensure that police adhere to legal procedures relating to the collection of material evidence.

**Refrain from physical force:** Refrain from using physical force and violence on any person while conducting the rescue.

**Police formalities:** Ensure that all police formalities are observed.

### POINTS TO NOTE

**Custody of phones:** To prevent information leaks, mobile phones and any other instruments of communication belonging to the rescue operation team members (including government officials) should be taken into custody by the police officer prior to the rescue.

**Ensure legal composition of rescue team:** Make sure that the composition of your rescue team is in accordance with law. Ensure the team has at least one police officer who is legally empowered to conduct a rescue.

**Recheck rescue kit:** Ensure that your entire rescue tool kit is in place (details mentioned under Step 1.4 - Points to Note).

**Ensure security of rescue team:** Ensure that the team is accompanied with sufficient police personnel and includes women police officers. Under no circumstances should rescue operation be carried out without police protection.

**Accused not to be present while moving rescued persons:** Ensure that the accused persons are not present while the victims are being taken to a safe location.

**Media engagement:** Media should be engaged only after the rescue. While engaging with the media the following points should be kept in mind:

- State accurate facts. While giving numbers, it is important to cite sources as it gives credibility to the information being provided.
- If wrongly quoted, place a request for a correction in writing.
- It is always helpful to provide the media with a press release after the rescue operation has been successfully completed.
- The objective of sharing stories must always be to create awareness about trafficking, sensitize the general public and take action against trafficking. While giving stories, ensure that the story is not politicized and does not draw attention to the victim's identity.
- Strive to build relationship with credible media houses. It is useful to prepare an internal database of media in your respective districts.

- Do not offer a story to the media if the survivor or victim is uncomfortable and does not want to share her story. Be sensitive to the power difference and to the lack of experience with the idea of consent that might mean that the victim expresses willingness without really being comfortable or understanding the implications. The safety of the victims and their family must be given primary consideration. Do not disclose information (such as names, photos or home villages).
- Familiarise yourself with standard international guidelines on reporting on children.

**Never share a story without obtaining consent from the victim or survivor.** The actual name of victims should never be mentioned. It is extremely important to also note that:

- The engagement of the media must never jeopardize a rescue.
- A victim/survivor should never be forced/coerced to share his/her stories without informed consent.
- An alias name can be used for the purpose of reporting.

### STEP 1.6 SECURING THE HUMAN TRAFFICKING RESCUE SITE

Assist the local police and relevant authorities in securing the rescue site, using proper legal procedures, to ensure all victims are rescued and safe and no incriminating evidence is lost.

#### Commentary

Seek the assistance of the police in preventing the accused from removing or hiding incriminating evidence, removing the victims from the place of rescue, or destroying evidence. Ensure that police immediately secure the perimeter of the rescue site to keep third parties from entering. To prevent leakage of information, mobile phones should be taken into custody.

### STEP 1.7 SEPARATING HUMAN TRAFFICKING VICTIMS FROM THE ACCUSED

Encourage the local police and relevant authorities to separate the trafficking victims from the perpetrators to ensure a safe and legal inquiry.

#### Commentary

Assist the police in immediately separating the victims from the accused to prevent harassment and intimidation. Ensure that the victim is being treated with dignity and sympathy and not as criminals. Encourage the women police officers to interact with the rescue victims at the site, and facilitate the safe custody of victims with social workers/counsellors and thereafter to protective government custody.

Be aware of your body language and do not make any unnecessary contact or use physical force on any victim. Sensitize the police officials and ensure that the police personnel do not use vulgar or inappropriate language or cause physical harm to others at the rescue site. Ensure that male members in the rescue team do not touch female victims.

### POINTS TO NOTE

**Initial Information to Victims:** While separating victims and moving them to a secure onsite location, ensure that they are immediately informed as to *what is happening, why the police and the others have come to the facility, and why he or she is being rescued.*

**Treat victims with dignity:** Victims have the right to be treated with dignity, so ensure that any action initiated by the law enforcement agencies are based on victim-friendly procedures and involve a woman police officer during the rescue process. The victim should always be made aware of his/her rights and should not be subject to harassment. The victims must be kept informed about various stages of information and must be extended help and assistance during all stages of intervention.

**Do not get offended** if the victims use abusive language or are uncooperative during the rescue process as they are under trauma.

**Involve social workers:** Ensure that police officers or social workers escort the victims throughout the process until they are in safe custody in a government or private licensed shelter home. The rescue team must include a professional counsellor or a social worker who is trained in managing trauma symptoms. This will help to allay the fears of the victim and help them understand that they are being assisted to leave the trafficking site for their own safety, freedom and protection.

**Best interest of victim is paramount:** Do not force victims to disclose details of offences or abuse that they are not willing to share. The victim must be provided counselling by a trained counsellor. Use translators so that the victim is able to give statements in his/her own language.

### STEP 1.8 GATHERING HUMAN TRAFFICKING EVIDENCE

Assist the local police in collecting all available evidence relevant to identifying and proving trafficking and insure compliance with the procedures set forth in CPL Arts. 50 and 139.

#### Commentary

Ensure that all the possible material evidence (such as diaries and registers in the brothel or labour site, ledgers, books of accounts showing networking with other

traffickers, cash, electricity bill, telephone, water and other bills, ration card, municipal tax receipts, travel documents, photographs, albums, condoms (used/unused) and other physical evidence) are collected by the police in the presence of independent witnesses (like representatives of local bodies), as they will become important pieces of material evidence in the Court.

Ensure that the legal procedure set forth in CPL Art. 138 is followed, which requires that a record be made of the circumstances of the search that is signed or sealed by the investigators and the person searched (and/or his family members, neighbors or other eyewitnesses).

### POINTS TO NOTE

**Legal basis for search of accused and his/her property:** CPL Art. 134 provides that in the process of collecting criminal evidence, investigators may search the person, belongings and residence of the criminal suspect and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places. CPL Art. 135 obligates a suspect to submit physical evidence, documentary evidence, audio-visual materials and other evidence that may serve as the evidence of guilt (or evidence of innocence) for a criminal suspect as required by a people's procuratorate or public security organ.

**List of material evidence to be collected:** Familiarize yourself with the list of material evidence prior to the rescue so that you are aware of what evidence needs to be collected (refer to Appendix 2 for a list). You may share this list with the police officials present at the time of rescue.

**Ensure police and government officials are made witnesses:** Insist that police officials and authorities present at the rescue are made witnesses to the collection of evidence, pursuant to CPL Art. 140.

**List of evidence collected:** Pursuant to CPL Art. 140, a list of evidence collected must be made in duplicate at the scene and be signed or sealed by the investigators, witness and the owner of the seized property, with one copy given to the owner and the other attached to the archives for future reference.

**Non-police personnel:** Non-police personnel can only assist the police officials during the collection of evidence and cannot procure it by themselves.

**Preserving crucial evidence:** Assist the police in preserving crucial evidence such as account books, business records and other relevant documents by making a note of important documents on perusal as well as taking photographs. This can prevent the perpetrators from hiding or destroying crucial evidence if the police are to return to seize such material during further course of a formal investigation.

## STEP 1.9 RECORDING HUMAN TRAFFICKING VICTIM STATEMENTS

Assist police with the recording of victim statements, informing victims about their rights before the process of recording begins and insuring that any questioning of victims complies with Article 125 of the CPL.

### Commentary

Ensure that the victim is not forced to speak and that counselling is provided to the victim by a trained counsellor. In addition, make arrangements for appropriate translators for victims who speak in a different language. Build a good rapport with victims and obtain detailed information as to how they were trafficked, where they were trafficked to and how long they were abused.

Take a detailed interview of the victim in order to secure information such as personal details, age, address, family history, etc. For sex trafficking cases, ensure that the interview is carried out by a woman police officer or in the presence of another female authority.

Brief the victims about their rights before the process of recording statements begins. Inform them that forced labour and trafficking are illegal and that they have a legal right to be freed from their circumstances of bondage. Reassure them that they can be protected from the owner/accused.

## POINTS TO NOTE

General guidelines for recording statements:

- **Rapport building with the survivor:** Rapport building with the survivor is a crucial element in obtaining truthful statements. One of the most important elements of building rapport is to spend time with the survivor. However, there are other general ways to build rapport: making sure the survivor is comfortable while sharing her story, explaining the full process of obtaining the statement, and explaining why it is important for the survivor to speak the truth.
- **Working together with the police:** In order to obtain a truthful statement, work closely with the police.
- **Confidentiality:** Maintaining confidentiality is important to building trust with the rescued person. However, for the sake of a good and truthful statement it is equally important to encourage the rescued victim to speak up and share her story. With this said, a rescued victim should never be pressured in an unethical way to share her story.

**Safety of victims:** At the rescue spot, ensure the safety and security of all victims.

**Be cautious when there is history of violent abuse by accused:** Take special care in cases where the complaint suggests a history of violent abuse by the accused.

**When a rescued person is under the age of 18:** There is no system of compulsory age determination of children rescued from a trafficking situation. However, children rescued from such facilities broadly fall into two categories:

- **Children rescued along with parent/guardian:** If the child is rescued along with his/her family, then the child will remain and be released with his/her family.
- **Children rescued without parent/guardian:** Due care has to be taken when a child is rescued and has been working in exploitative conditions without his/her parent or guardian. In such a case, where a child has been working in contravention of labour laws on the facility without his/her parent or guardian, the child should be referred to the local child welfare committee, to determine his/her age and to initially place the child in a protective home, while undertaking the further required steps for due care.

**A few points to note while the inquiry is conducted:**

- **Food and drink:** Provide the victims with food and beverage during the time of inquiry, as they are likely to be hungry and this may impede their giving testimony. The taking of statements may take hours, so further nourishment and places to be comfortable and rest should be provided as much as possible.
- **Treat victim with dignity:** Victims are entitled to access mechanisms of justice, so ensure that any action initiated by the public security organ is based on victim-friendly procedures. The victim should always be made aware that he/she is a victim and should not be subject to harassment. The victims must be kept informed about various stages of information and must be extended help and assistance during all stages of intervention
- **Best interest of victim is paramount:** Do not force the victims to disclose details of offences that they are not willing to share. The victim must be provided counselling by a trained counsellor. Use translators so that the victim is able to give his statements in his/her own language.
- **Be careful about recording incorrect information:** It is possible that the victims who are under threat may give inaccurate information at this stage. Ensure that the statements are recorded only when the victim is willing and in a state to provide information.
- **Monitor questions being asked:** Monitor the questioning by the government officials to ensure questions are fair and asked with sensitivity, answers are properly recorded, and the inquiry is completed promptly. Ensure that special procedures and special sensitivity is used during questions asked in relation to sexual abuse, assault or children.

**Inquiry must be completed away from owners:** Ensure that a full inquiry is completed away from the owners/accused at a secure location.

## STEP 1.10 ENSURING PROTECTIVE CUSTODY FOR SURVIVORS

Ensure that the survivors gather their belongings and are moved to a secure location, and file a protection order to protect them from threats and harassment from the perpetrators.

### Commentary

The rescued victim(s) must be handed over to a protective or children's home that is either run by an NGO or the government. Survivors are to be counselled by the aftercare staff about their stay in protective custody and that they have been placed there for their own safety and well-being on a temporary basis. Accompany the rescued victims whenever they travel to and from their place of safety.

## POINTS TO NOTE

**When victims can't be moved:** In the event where the rescued victims cannot be moved into another location, e.g. when a labourer does not want to leave the workplace and wants to continue working for the same employer or when the labourers are residing in the village itself (in case of agricultural labourers), ensure that there are sufficient police personnel available at the site to protect the rescued victims.

**Keep child with parent:** In case the rescued victim has a child, ensure that the child is not separated from the parent(s).

**Ensuring safety and security:** At the rescue spot, ensure the safety and security of all victims. Take special care in cases where the complaint suggests a history of violent abuse by the accused.

**Harassment protection letter:** File a harassment protection letter in the event the rescued victim expresses fear about the safety of his/her family members. All fears of the victims must be addressed and necessary actions should be taken immediately.

**For sex trafficking rescues,** ensure that the brothel is locked and the keys are kept in safe custody of the police in order to ensure safe custody of the premise. If necessary, prepare a letter to the police requesting security for the victims. Under no circumstances should the rescued persons be kept in the Police Station overnight.

## B.



# PROCEDURES FOR PROSECUTING PERPETRATORS OF HUMAN TRAFFICKING

2.1

REPORTING OF HUMAN TRAFFICKING CRIME



2.2

ARRESTING PERSONS ACCUSED OF HUMAN TRAFFICKING OFFENCES



2.3

OPPOSING THE BAIL APPLICATION OF ACCUSED PERPETRATORS



2.4

RECORDING STATEMENTS DURING INVESTIGATION



2.5

EVICTING OFFENDERS AND CLOSING FACILITIES



2.6

INITIATING PUBLIC PROSECUTION



2.7

FILING INCIDENTAL CIVIL ACTION TO OBTAIN COMPENSATION



2.8

ENSURING APPROPRIATE FORUM FOR TRIAL



2.9

ASSISTING THE PROSECUTION AT HEARINGS



2.10

PREPARING HUMAN TRAFFICKING WITNESSES TO TESTIFY



2.11

PREPARING FINAL ARGUMENTS TO PROVE SEX TRAFFICKING



2.12

OBTAINING TIMELY JUDGMENT



2.13

FILING OF APPEAL





## STEP 2.1 REPORTING OF HUMAN TRAFFICKING CRIME

Assist the survivor in reporting the trafficking crime to the public security organ, a People's Procuratorate, or a Primary People's Court within whose jurisdiction the trafficking was committed so that a case can be filed. CPL Art. 108. Ensure that the report is given to the appropriate Ministry or other relevant authority with all applicable trafficking and other offences included to initiate an investigation as required by CPL Art. 107.

### Commentary

Ensure that the complaint is filed before the public security organ and includes all relevant offences. Remember that when in doubt if a survivor is a minor, she should be treated as a minor. Seek the assistance of a lawyer if the public security organ fails or refuses to register the complaint.

## POINTS TO NOTE

**Anyone can make a complaint:** Pursuant to CPL Art. 108, the public security organ, the People's Procuratorate or the People's Court must accept all reports, complaints and information. If a case does not fall under its jurisdiction, it must refer the case to the competent organ and notify the person who made the report, lodged the complaint or provided the information.

**Complaint can be made orally or in writing:** Reports and complaints may be filed in writing or orally. The officer receiving an oral report, complaint or information shall make a written record of it, which should be signed or sealed by the complainant. CPL Art. 109.

**Protection of complainants:** Under CPL Art. 109, the public security organs, the People's Procuratorates and the People's Courts must insure the safety of reporters, complainants and informants as well as their near relatives. If the reporters, complainants or informants wish not to make their names known to the public, they must be kept confidential.

**Push for investigation under CPL Art. 113:** Once the complaint is filed, encourage the public security organ to move forward with an investigation under Art. 113 of the CPL by collecting and obtaining evidence and arresting individuals suspected of a trafficking crime.

**If investigation denied:** If the public security organ fails to file a case for investigation, the victim can bring the matter to a People's Procuratorate, who shall request the public security organ to state the reasons for not filing the case. If the People's Procuratorate considers that the reasons for not filing the case given by the public security organ are untenable, it shall notify the public security organ to file the case,

and upon receiving the notification, the public security organ shall file the case. CPL Art. 111.

## STEP 2.2 ARRESTING PERSONS ACCUSED OF HUMAN TRAFFICKING OFFENCES

After the trafficking case has been filed, encourage the public security organ to immediately arrest all of the accused involved with the trafficking offences and move forward quickly with the investigation.

### Commentary

Pursuant to CPL Art. 78, arrests of criminal suspects must be approved by a People's procuratorate or People's Court and carried out by the public security organ. If you have any information from the survivors regarding the identity of the accused, the information must be immediately passed on to the public security organ. Ensure that all arrests and further investigation are done in accordance with law and, if necessary, follow up with legal process to protect the victim, family and witnesses from the threats of perpetrators.

## POINTS TO NOTE

**Grounds for arrest:** Under Art. 79 of the CPL, an arrest can be made upon evidence that (1) the accused has committed a crime punishable by fixed-term imprisonment of ten years or more severe penalties, or (2) the accused has committed a crime punishable by fixed-term imprisonment but has also committed a prior crime.

**Detention** (CPL Art. 80): Prior to an official arrest, the public security organ may initially detain an active criminal or a major suspect under any of the following conditions:

- if he is preparing to commit a crime, is in the process of committing a crime or is discovered immediately after committing a crime;
- if he is identified as having committed a crime by a victim or an eyewitness;
- if criminal evidence is found on his body or at his residence;
- if he attempts to commit suicide or escape after committing a crime, or he is a fugitive; or
- if there is likelihood of his destroying or falsifying evidence or tallying confessions.

If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the People's Procuratorate for examination and approval. CPL Art. 89.

**Procedure for approving arrest:** The People's Procuratorate shall decide on a written request for approval of arrest submitted by a public security organ within seven days from the date of request. CPL Art. 89. If the People's Procuratorate decides to approve the arrest, the public security organ shall execute it immediately; if the People's Procuratorate disapproves the arrest, it shall give its reasons therefor. CPL Art. 88.

**Interrogation of accused:** Under Art. 92, interrogation of the accused must be conducted within 24 hours after the arrest by a People's Court, People's Procuratorate or a public security organ. CPL Art. 92.

**Victim Protection:** Identify whether the accused has made threats to the victims in the past. If so, file an application for protection of the victim at the concerned public security organ.

### STEP 2.3 OPPOSING THE BAIL APPLICATION OF ACCUSED PERPETRATORS

Provide supporting evidence to oppose the bail application of the perpetrator(s) and attend all bail hearings to oppose bail orally and by written application and to argue for stringent bail conditions, should bail be granted.

#### Commentary

Inform the Public Procuratorate whenever you have information about bail applications of the accused. In the event the accused is arrested for one or more non-bailable offences, encourage the Public Procuratorate to submit a written opposition to bail, contesting the granting of bail to the accused.

Attend each remand hearing and make sure bail is denied. In the event bail is granted to the accused, be vigilant with regard to the existence of appropriate circumstances that allow for cancellation of bail before the appropriate forum.

In cases where the accused fails to appear in court, evades or attempts to evade the course of justice, or causes hindrance to the administration of justice (i.e., the accused intimidates or bribes witnesses, causes the disappearance of evidence, or interferes with the investigation), argue that the accused should be placed under residential surveillance and arrested.

### POINTS TO NOTE

**Seek additional bail conditions:** If bail is granted, argue for the imposition of the following conditions (set forth in CPL Art. 69) that require the defendant:

- (1) Not to enter certain places;
- (2) Not to meet or correspond with certain persons;

(3) Not to engage in certain activities; and/or

(4) To surrender his/her passport and other travel documents and driver's license to the executing organ.

**When can bail be cancelled?** Under CPL Art. 69, a criminal suspect released on bail must abide by the following provisions:

- Not leave the city or county where he/she resides without the permission of the executing organ;
- Promptly report any change of address, employer, or contact information;
- Appear before a court on time when summoned;
- Not interfere, in any form, with witnesses who give testimony; and
- Not destroy or falsify evidence or collude with others to make

confessions tally.

These requirements encompass the two primary (though not exclusive) grounds for canceling bail:

- Interference or attempt to interfere with the due course of administration of justice which includes the following:
  - Attempt to tamper with evidence or witnesses
  - Interference with the course of investigation
  - Threatening witnesses or intimidating or corrupting witnesses, or indulging in similar activities that would hamper smooth investigation.
- Evasion or attempt to evade the course of justice which includes the following:
  - Attempts to or leaves the country
  - Going underground or becomes unavailable to the investigating agency
  - Going beyond the reach of the sureties
  - Abuse of liberty granted to the accused including indulging in similar criminal activity.

**Building a relationship with the Public Security Organ and the Public Procuratorate:**

Build close relationships with higher-ranking public security organ officials and public procuratorate to get updates on bail petitions filed by the accused.

## STEP 2.4 RECORDING STATEMENTS DURING INVESTIGATION

Encourage the trafficking survivors to speak the truth when providing their statements and ensure that the statements are being properly recorded by the public security organ.

### Commentary

Provide quality counseling support to the victims while their witness statements are being recorded and advise relevant authorities of the procedures set forth in Part II,

Ch. II, Sec. 3 of the CPL for recording statements. Encourage the police to examine all witnesses with knowledge of the case and record their statements. Ensure that victims are not coerced into giving incorrect statements.

### POINTS TO NOTE

**Witness statements:** The goal is to take truthful witness statements and the purpose is to gather information about how the survivor was trafficked to the destination site and the situation at the site. The statement is the foundation for the victim testimonies used during trial to ensure perpetrator accountability. Your role is to support and encourage the survivor to speak the truth and to assist the police in obtaining the statements.

**Prepare statement before hand:** It is best practice to have the victim prepare his/her statement beforehand. Make sure that he/she is confident about giving a truthful statement.

**Trained counsellors:** Only trained and certified counsellors should interact with the victims. In the absence of a trained counsellor, a social worker with experience in managing trauma symptoms would also be a suitable alternative. However, efforts should be made to ensure that the survivor receives professional counselling as part of his/her treatment plan.

**Statements to be recorded in language known to victim:** Ensure that the statements are recorded in the language of the victim.

**Forced/coerced statements:** Adequate checks must be placed to ensure that survivors are not forced to make statements and statements are recorded when survivors are willing and able to make them. Further, it should be ensured that the accused are not present during this process.

**Statements must be recorded at place convenient to victim:** Ensure that the victim is not taken to the police station for recording of statements. The statements should be recorded at a place convenient to the victim.

**False statement given on day/night of rescue:** If the rescued victim gives a false statement at the time of rescue or reveals additional information, encourage the rescued victim to give a supplementary statement.

### LEARN MORE & TAKE ACTION

**Recording statements of survivors:** Record statements of survivors when they are ready and able to make statements. Survivors can make additional statements as they heal from their trauma and any contradictions in future statements may be explained

by attributing confusion to trauma. See "Journey to Justice, a Manual on Psychosocial Intervention," UNODC, 2008, for counselling and psychosocial support to be provided to survivors.

### STEP 2.5 EVICTING OFFENDERS AND CLOSING FACILITIES

Make a petition under CPL Art. 139 to the appropriate Ministry for closure/sealing of the facility in which forced labour, sexual exploitation, or other illegal activity was taking place.

#### Commentary

Art. 139 of the CPL provides that all property and documents found during investigation that may prove a criminal suspect's guilt or innocence shall be sealed up or seized. Art. 142 further provides that when required by investigation, a people's procuratorate or public security organ may access or freeze a criminal suspect's deposits, remittance, bonds, stocks, shares of funds or other property in accordance with applicable provision.

Assist the police with the safe removal of all victims from the brothel or other rescue site prior to closing the facility.

### STEP 2.6 INITIATING PUBLIC PROSECUTION

Ensure that the People's Procuratorate makes a timely decision to recommend the initiation of a public prosecution.

#### Commentary

CPL Art. 172 provides that "when a people's procuratorate is of the opinion that the facts of a crime committed by a criminal suspect have been ascertained, the evidence is concrete and sufficient, and the suspect shall be subject to the criminal liability in accordance with the law, it shall make a decision on prosecution, initiate a public prosecution in a people's court in accordance with the provisions on trial jurisdiction, and transfer relevant case materials and evidence to the people's court."

A People's Procuratorate must make a decision within one month on a case that a public security organ has transferred to it with a recommendation to initiate a prosecution. CPL Art. 169.

### POINTS TO NOTE

**Factors to be considered by People's Procuratorate:** CPL Art. 168 provides that in examining a case for public prosecution, a People's Procuratorate must ascertain:

(1) whether the facts and circumstances of the crime are clear, whether the evidence is reliable and sufficient and whether the charge and the nature of the crime has been correctly determined;

(2) whether there are any crimes that have been omitted or other persons whose criminal responsibility should be investigated;

(3) whether it is a case in which criminal responsibility should not be investigated;

(4) whether the case has an incidental civil action; and

(5) whether the investigation of the case is being lawfully conducted.

**Preparing victims for interrogation:** The People’s Procuratorate shall interrogate the criminal suspect and the victim in examining a case for prosecution. CPL Art. 170. Thus, ensure that the victims are prepared to give truthful and strong testimony about their experience.

**If prosecution not initiated:** If the Procuratorate decides not to initiate a prosecution, encourage the victim to appeal the decision to the People's Procuratorate within seven days of receiving the written decision. CPL Art. 176. File a petition to the People's Procuratorate at the next higher level, pursuant to Art. 176, and request the initiation of a public prosecution. If the decision not to prosecute is upheld, the victim may bring a lawsuit to a People's Court.

If the public security organs or People’s Procuratorate refuse to investigate the trafficking, assist the victim in bringing a private prosecution case by filing a complaint under Article 204 of the CPL and ensure that the case is tried at a court session, pursuant to CPL Art. 205.

## STEP 2.7 FILING INCIDENTAL CIVIL ACTION TO OBTAIN COMPENSATION

Assist the survivors in filing an incidental civil action to recover economic losses suffered as a result of the defendant’s criminal offenses.

### Commentary

An incidental civil action for compensation can be filed during the criminal proceedings. CPL Art. 99. Since there is no state-sponsored victim compensation, use this civil action to obtain back wages and other compensation for victims of human trafficking.

## POINTS TO NOTE

**Preservation of property:** CPL Art. 100 empowers a people’s court to take preservation measures to seal up, seize or freeze a defendant’s property. Thus, when filing an

incidental civil action request that the people’s court take measures to preserve a defendant’s property to enable payment of any compensation awarded to the survivors.

**Measure of economic loss:** For forced labour victims, seek compensation for back pay based on the minimum wages to which the victims were entitled.

**Timing of incidental civil action:** Pursuant to Art. 102, an incidental civil action is to be heard together with the criminal case.

### STEP 2.8 ENSURING APPROPRIATE FORUM FOR TRIAL

Ensure that the case is filed before the Primary People’s Court where the crime was committed, pursuant to CPL, Art. 24.

#### Commentary

Article 19 of the CPL provides that the Primary People's Courts have jurisdiction as courts of first instance over ordinary criminal cases.

Ensure that the trafficking case is committed to the proper People’s Court as per procedures established by law. Charges should include all pertinent trafficking offenses under the Criminal Law.

### STEP 2.9 ASSISTING THE PROSECUTION AT HEARINGS

Once the trial begins, attend every court hearing and be available to assist the People’s Procuratorate at every stage of the trial.

#### Commentary

If you are knowledgeable about the facts of the case, try to attend case hearings to help the prosecution answer any questions put forward by the court, particularly with regard to the testimony of survivors.

### POINTS TO NOTE

**Witness appearance:** Ensure that all witnesses who are part of the trial are present at the hearing to avoid penalties for a failure to appear as set forth in CPL Art. 188.

**Seek Summary Procedure:** If the accused pleads guilty, seek a trial under summary procedure pursuant to CPL Art. 208. A case under the jurisdiction of a primary-level people’s court may be tried according to summary procedures if it satisfies all of the following conditions:



- (1) The facts of a case are clear and the evidence is concrete and sufficient;
- (2) The defendant pleads guilty to his/her crime, and has no objection on facts of the crime charged; and
- (3) The defendant has no objection on the application of the summary procedures.

A people's procuratorate may suggest a people's court to adopt summary procedures when initiating a public prosecution.

**Benefits of summary procedure:** Cases tried according to summary procedures are not subject to certain procedural provisions relating to service periods, interrogating defendants, questioning of witnesses and experts, producing evidence, and court debates. CPL Art. 213. In addition, summary procedure cases can be tried by a single judge (as opposed to the usual panel of three judges). CPL Art. 178. Finally, a people's court shall close a case tried according to summary procedures within 20 days upon acceptance thereof. CPL Art. 214.

**Incidental civil action:** During the course of the prosecution, the victim, plaintiff and defender in an incidental civil action may, with the permission of the presiding judge, put questions to the defendant. CPL Art. 186.

## STEP 2.10 PREPARING HUMAN TRAFFICKING WITNESSES TO TESTIFY

Assist the Public Procuratorate in preparing the prosecution witnesses for chief examination and cross-examination so as to enable them to testify accurately, boldly and with clarity.

### Commentary

Trained and qualified counsellors must prepare the survivors for chief and cross examination so that they may be able to testify boldly and accurately in spite of the trauma caused by the process, particularly questions put forward by the defense counsel. This preparation should ideally be done at a place that is comfortable for the survivor. Explain clearly to the persons testifying about the importance of their statements in creating evidence and keep them updated about the case.

Ensure that all documentary and physical evidence is entered into the record of the court.

## POINTS TO NOTE

**Preparing survivors for court testimony:** During this stage, the Public Procuratorate gets a chance to ask the witnesses questions regarding the human trafficking. The defense lawyer is then allowed to cross-examine the statements of the witness.

Counsel the survivors to be as descriptive and detailed as possible while answering questions placed by the Public Prosecutor and not to be disturbed by the cross questioning.

**Cross-examination:** The purpose of cross-examination is to create flaws in the prosecution story. It would be good to do a mock cross-examination so the witnesses are not perturbed by the process and are prepared to handle the questions from the defense advocates.

**If witness(es) turn hostile:** During the course of trial (at the stage of chief or cross-examination) if any of a prosecution witnesses turn hostile, then ensure that the procuratorate declares such prosecution witness as hostile and conducts his/her cross examination.

**Safety of witnesses:** Ensure the safety of witnesses and their families as required by CPL Art. 61 by accompanying victims to the court. Ensure that the witnesses are not influenced by the accused persons. Witnesses include the survivors, independent witnesses, decoy customers, police officers, and any other witnesses required to prove the prosecution's case.

**Video conferencing:** Explore the feasibility of recording the evidence of the victim through video conferencing in the event the victim is unable to appear in person before the court.

**Mock trial and courtroom visit:** Work towards making the survivor comfortable by taking the survivor to a courtroom so he/she will not be entering a court for the first time when he/she has to testify. This helps reduce the tension. Secondly, by holding a mock trial at a place of convenience, the survivor will better understand the process of witness examination, which may remove some fears.

**Victim sensitive measures:** Apart from making the survivor comfortable with the Court, encourage the court officers to be sensitive to the history of the survivor.

**Sensitive measures to be adopted when case deals with children:**<sup>61</sup>

- a) Child victims/witnesses are informed of their role in regard to court proceedings;
- b) Their views are allowed to be heard and respected;
- c) Inconvenience to them is minimized and their privacy is respected;
- d) Delays in the proceedings are reduced;
- e) Aggressive questioning or cross examination of child victims is avoided and the same, if necessary, is done through the judge;
- f) Provisions are made for trials in camera;
- g) The identity of the child victim is protected;

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<sup>61</sup> These measures are based on the guidelines provided for the Children's Court to follow under the Goa Children's Act, 2003. These are guiding measures on how to treat the child with sensitivity.

- h) Child victims are prepared for the judicial process and prosecution of alleged abusers and is not rushed if a child is not ready to go to court;
- i) The investigator ascertains the need for medical examination of the child victim and when examination is undertaken, ensures that multiple re- examination is avoided;
- j) The medical examination should be conducted in the presence of the parent/guardian and social worker/counsellor as far as possible;
- k) Child's testimony should be recorded in the presence of a social worker/counsellor as early as possible after the abusive incident with other witnesses at hand;
- l) Adequate translation/ interpretations and translators/ interpreters who are sensitive to the children's needs should be provided wherever needed.
- m) In case of a mentally challenged child, the competent service provider should depose on behalf of the child;
- n) The special needs of the child victims/witnesses should be catered for. These should include the following:
  - i. Enable children to familiarise themselves with the court surroundings;
  - ii. Inform children of the different roles of the key persons at court, such as the judge, the defence lawyer and the prosecutor;
  - iii. Inform the court of the special needs of children in general and of individual children in specific cases;
  - iv. Help children to be comfortable in the proceedings;
  - v. Encourage questionings to be short and clear so as not confuse child witnesses;
  - vi. Permit children below eight years of age to respond to leading questions facilitated by a social worker.

**Practice questions during trial:** Contact JVI for a set of practice questions that can be asked in a trial with regard to human trafficking.

## STEP 2.11 FINAL ARGUMENTS TO PROVE SEX TRAFFICKING

Be prepared to discuss the evidence with the prosecutor, defender, and party as set forth in CPL Art. 193 prior to the defendant's final statement.

### Commentary

**Debate allowed:** With the permission of the presiding judge, the public prosecutor, the party concerned, the defender and the agent ad litem may express their views on the evidence and the circumstances of the case and debate with each other. CPL Art. 193. Thus, assist the survivors, as the party concerned, in making a forceful case against the accused.

### STEP 2.12 OBTAINING TIMELY JUDGMENT

Ensure that judgment is pronounced within the time period prescribed in CPL Art. 202 and obtain certified copies of the final judgment.

#### Commentary

CPL Art. 202 requires that the people's court pronounce the judgment on a case of public prosecution within two months (and not later than three months) upon acceptance thereof.

### STEP 2.13 FILING OF APPEAL

If necessary, file a request with the People's Procuratorate to present a protest, which must be made within five days of the judgment. CPL Art. 218.

#### Commentary

If a victim refuses to accept a judgment of first instance made by a local People's Court at any level, the victim has the right to request the People's Procuratorate to present a protest within five days from the date of receiving the written judgment. The People's Procuratorate shall, within five days from the date of receiving the request made by the victim or his legal representative, decide whether to present the protest or not and provide a reply. CPL Art. 218.

### POINTS TO NOTE

Once the trial has ended, be vigilant in ensuring that an appeal filed by the accused is not missed or if an appeal is to be filed on behalf of survivors it is filed within the period of limitation. If an appeal is filed by the accused, encourage the People's Procuratorate to oppose the appeal.

C.



## PROCEDURES FOR RESTORING HUMAN TRAFFICKING SURVIVORS

3.1

ENSURING IMMEDIATE ACCESS TO MEDICAL CARE



3.2

PLACING SURVIVORS IN SAFE CUSTODY



3.3

FACILITATING ACCESS TO COUNSELING SERVICES



3.4

SECURING SURVIVOR COMPENSATION



3.5

REPATRIATING OR REHABILITATING HUMAN TRAFFICKING SURVIVORS



3.6

FACILITATING ACCESS TO GOVERNMENT ENTITLEMENTS



3.7

FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES



3.8

ENSURING SURVIVORS ENJOY PERMANENT FREEDOM



### STEP 3.1 ENSURING IMMEDIATE ACCESS TO MEDICAL CARE

Ensure that trafficking survivors receive a medical examination and any required medical care and that medical examinations are carried out with respect accorded to the trafficking survivors' right to privacy and other rights.

#### Commentary

Ensure that the rescued persons are extended immediate medical care without delay and are treated with dignity. For sex trafficking victims, request age-verification test, medical examination, HIV test (to be taken only with informed consent of the survivor), STD testing to be done at a hospital, and administration of sexual abuse tests.

Allow aftercare staff to accompany the survivors for their medical examination. For women survivors, ensure that the medical examination is conducted by or under the supervision of a female doctor.

### POINTS TO NOTE

**Consent required for examination:** Informed consent of the survivor must be obtained prior to performing the medical examination.

**Medical needs of child:** Attention must be paid to the medical needs of a child victim before referring to the child welfare committee, in instances where the child has been rescued without a family member or guardian.

**Victim-centric approach:** Treat victims with dignity. Inform victims about what is happening as the employers often threaten them. The rescue team must be trained to meet all challenges such as language barrier and social and cultural differences and must make immediate efforts to win the confidence of the victim.

**Confidentiality:** The identity of the survivors should be kept confidential. Under no circumstances should their name, photograph and information be disclosed and published in any print and visual media.

**Medical examination of female victim:** Ensure that the medical examination of a female victim is conducted by or under the supervision of a female doctor as mandated under CPL Art. 130. In the absence of a female doctor, arrange for a female police official to be present during the medical examination.

### STEP 3.2 PLACING SURVIVORS IN SAFE CUSTODY

Transfer survivors to a protective shelter and provide short-term provisions as needed.

#### Commentary

Rescued victims who are minors or do not have permanent homes should be taken to a shelter managed by an NGO or the government. The survivors should be counseled by aftercare staff about their temporary stay in protective custody and that they are staying there for their safety and well-being.

Facilitate the provision of basic short-term essentials such as food, clothing, temporary shelter, and transportation upon the survivors' release.

### STEP 3.3 FACILITATING ACCESS TO COUNSELING SERVICES

Work with the appropriate Ministry to provide survivors with access to trained and qualified counselors to help promote the healing process. Advise survivors about their right to counselling and other aftercare services.

#### Commentary

Once the rescued victim is admitted at the protective home, arrange for counselors to visit the victim within 24-48 hours of admission. Counselors should have official permission from the home before providing after care support. The counselors should also be available upon any emergency. Male counselors should be prohibited from providing counseling services.

### POINTS TO NOTE

**Provide regular support:** Counselors and social workers/case managers must visit the survivor regularly at the aftercare home to provide counseling and psychosocial support. They must develop individualized treatment and recovery support plans for each survivor and share them with the shelter staff.

**Connect with resources:** Case managers should utilize their network of education, vocational and counseling organizations to help victims access these services, to prepare them for reintegration or repatriation back to their home countries.

### STEP 3.4 SECURING SURVIVOR COMPENSATION

Research any compensation available to trafficking survivors and make applications therefor.

### STEP 3.5 REPATRIATING OR REHABILITATING TRAFFICKING SURVIVORS

Assist with the safe repatriation or rehabilitation of survivors and, if necessary, provide advice on legal matters related to repatriation or rehabilitation.

#### Commentary

Assist survivors with safely repatriating to their family/native place or an alternative safe location.

### POINTS TO NOTE

**Ensure family support:** No rescued victim should be sent back to his/her family without ensuring social acceptance and family support to prevent re-trafficking and further exploitation. In case family is unfit to provide care and protection to the victim, ask to extend the stay at the protective home for further rehabilitation in the form of counseling, education, and vocational training.

**Assist with repatriation process:** If repatriation is required, assist in the administrative process by helping the concerned aftercare home to gather all needed documents and put pressure on the government to follow up on the process.

### STEP 3.6 FACILITATING ACCESS TO GOVERNMENT ENTITLEMENTS

Assist trafficking survivors with accessing government entitlements related to education, employment, health care, counselling, and other entitlements.

#### Commentary

Provide legal assistance to survivors to petition government agencies if government entitlements are wrongly denied. Work towards empowering survivors by educating them about their rights and ways to access them.

### POINTS TO NOTE

**Legal aid:** Enlist the assistance of legal aid organizations to obtain government entitlements and benefits for survivors.

### STEP 3.7 FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES

Assist the trafficking survivors with accessing available private sector (NGO and business) resources related to education, employment, healthcare, counselling, and other services.



### Commentary

Facilitate the survivors' access to private resources by networking with partner organizations and relevant stakeholders who may be able to provide specialized care in the form of alternate livelihoods, interim shelter, assistance with obtaining documentation, education, health care, counseling, and other services.

Assist trafficking survivors with accessing available Ministries to facilitate employment services such as vocational skills training, vocational guidance and job referral.

### STEP 3.8 ENSURING SURVIVORS ENJOY PERMANENT FREEDOM

Maintain an ongoing relationship with trafficking survivors for at least 24 months from rescue to ensure their sustained rehabilitation and permanent freedom.

### Commentary

Remain accessible to survivors to provide advice and counsel regarding their rights in the community. Work closely with the government authorities to provide them all the relevant information and documentation so as to prevent re-trafficking and ensure reintegration of survivors. Do necessary follow up as is required from time to time. Conduct family assessments, draft individualized treatment plans, and work closely with the local government to ensure that rescued survivors can access their welfare benefits and compensation.

### POINTS TO NOTE

**Legal awareness training:** Preparing training materials for survivors to ensure they are aware of legal rights and thus less vulnerable to being re-trafficked.

**Goal of restoration:** The goal of restoration is for the released survivor to reach a place of sustainability, where he/she is able to provide for herself/himself.

**Planning:** The reintegration and repatriation of victims of trafficking is a long process that must be planned, taking into account the specific short and long-term needs and expressed priorities of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims.

A checklist of aftercare services to be provided in sex trafficking and forced labour interventions can be found in Appendix 4.

# III

## LEGAL FRAMEWORK

# A. International Covenants and Conventions on Human Trafficking

The United Nations (“U.N.”) is an international organization comprised of 193 countries, including the People’s Republic of China. Conventions and other instruments adopted under the auspices of the United Nations are among the main sources of international law and convention. International law is a powerful tool for combating modern day slavery as it provides the framework within which a country defines its laws in order to address the problem effectively. However, compliance with international law is subject to the individual country (“State Party”) signing and ratifying the Convention. There are several relevant conventions and instruments on modern day slavery that form a part of the legal framework relevant to the fight against modern day slavery.

The most directly relevant of these instruments are set forth in **Box 1** below.

Primary international conventions and other resources addressing modern slavery
• Universal Declaration of Human Rights, Article 4
• International Covenant on Civil and Political Rights, Article 6
• International Covenant on Economic, Social and Cultural Rights, Articles 6, 7, and 12
• United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
• Convention on the Elimination of All Forms of Discrimination Against Women
• Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
• Conventions on the Rights of the Child
• Convention on the Worst Forms of Child Labour
• Abolition of Forced Labour Convention

## B. International Legal Context for China's Anti-Trafficking Laws

China is a signatory to numerous treaties and other international documents that impose certain obligations on the Chinese government to combat human trafficking. One of the most influential international agreements in establishing the international framework for combating human trafficking is the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (commonly known as the "2000 UN Trafficking in Persons Protocol"). The UN Trafficking in Persons (TIP) Protocol is supplemental to the United Nations Convention against Transnational Organized Crime and provides a comprehensive set of rules for state practice and compliance. The UN TIP Protocol commits ratifying states to preventing and combating human trafficking and obligates them to introduce national trafficking legislation. Although the Chinese government finally ratified the 2000 UN TIP Protocol in December 2009, it has yet to revise its national laws to bring it into conformity with international standards.<sup>62</sup>

### China's Definition of "Human Trafficking"

The Chinese term used for "human trafficking" is literally "to abduct and sell" (拐卖). This is typically understood within the context of abducting women for forced marriage and babies for adoption.<sup>63</sup> Article 240 of the Criminal Law defines trafficking as consisting of "abducting, kidnapping, buying, selling, transporting, or transshipping women or children for the purpose of selling the victim." Under this definition, the means for human trafficking is abduction. The ILO points out that this definition is particularly weak "when it comes to women or youth who are not actually 'abducted,' but find themselves in exploitative conditions." Both the State Department and the ILO criticize this limited definition as failing to address the many different means through which people are trafficked, such as through the abuse of vulnerability.

The purpose of human trafficking is the sale of a person under the Chinese definition. This also differs from the international definition where the purpose is exploitation, which does not necessarily involve the sale or attempted sale of a person. In addition, the victims of trafficking are defined as "women and children" under Article 240. Chinese law does not recognize adult male victims of trafficking. In contrast, although the UN TIP Protocol does emphasize the particular vulnerability of women and children, it does recognize all persons as potential victims of trafficking, regardless of gender or age.

Apart from the Article 240 definition for human trafficking, there are also articles in the Criminal Law that separately identify and deal with the crimes of forced labor and sexual

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<sup>62</sup> U.S. Dep't of State, Trafficking in Person Report III (2010), available at <http://www.state.gov/documents/organizations/226845.pdf> [hereinafter TIP Report 2010] supra note 1, at 112.

<sup>63</sup> The Project to Prevent Trafficking in Girls and Young Women for Labour Exploitation in China (CP-TING): "Trafficking Prevention in China: the Way Forward" (brochure published by CP-TING; hard copy available).

exploitation. These will be identified throughout the discussion below regarding the relevant provisions of the Criminal Law.

## C. China's National Anti-Trafficking Laws

The legal framework for China's anti-trafficking laws is mainly provided by the National Plan of Action issued by the State Council, the Marriage Law, substantive provisions within the Criminal Law of the People's Republic of China, and the documents interpreting these provisions issued by the Supreme People's Court (SPC), the Supreme People's Procuratorate (SPP), or the Ministry of Public Security (MPS).

### **The National Plan of Action on Combating Trafficking in Women and Children and the National Plan of Action to Combat Trafficking in Persons**

The National Plan of Action on Combating Trafficking in Women and Children ("NPA") was a five-year plan of action issued by the State Council in December 2007, in effect from 2008 until 2012. The NPA does not constitute substantive anti-trafficking legislation, but it does reflect the policies and standpoints that the State Council is adopting as the chief administrative authority of the central government. The NPA outlines the approach the government is taking to combat trafficking. To that end, it established the Inter-Ministerial Joint Conference System for Anti-Trafficking in Women and Children (IMCS).

In January 2013, the State Council issued the National Plan of Action to Combat Trafficking in Persons, which revised the previous NPA. The new NPA, effective from 2013 to 2020, was promulgated in March 2013 to increase efforts to fight and prevent trafficking in persons, increase the budgets of local anti-trafficking efforts, improve the rescue and rehabilitation of victims, and to further comply with international standards for human trafficking.<sup>64</sup> The plan urges tougher measures to combat prostitution, with crackdowns focusing on major areas of human trafficking.<sup>65</sup>

Most notably, the new NPA revised the Chinese term for trafficking to "*guaimairenkou*", which includes all persons. Previously, the term was "*guaimaifunuertong*" which only included women and children.<sup>66</sup> This indicates the Chinese government's efforts to comply with international standards and provide protection to trafficking victims regardless of age and gender. However, while the new NPA may reflect the State Council's official policy, a concurrent change in terminology is not yet reflected in China's Criminal Law. Article 240 of China's Criminal Law only prohibits the buying and selling of women and children and does not apply to men. Moreover, the State Department notes

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<sup>64</sup>"The Action Plan for Fighting Human Trafficking (2013-2020)," All-China Women's Federation (Mar. 29, 2013).

<sup>65</sup>*Id.*

<sup>66</sup>Congressional-Executive Commission on China, 2014 Annual Report (Oct. 9, 2014) at 116 *available at* <http://www.cecc.gov/publications/annual-reports/2014-annual-report>.

that it is difficult to assess whether the State Council has provided adequate resources and training to government efforts for implementing the new NPA’s objectives.<sup>67</sup>

### Laws Bearing on Forced Marriage

The Marriage Law of the PRC (“Marriage Law”) sets forth the requirements for entering into and dissolving a marriage, including the minimum marriage age of 22 for men and 20 for women. Marriage Law, Art. 6. The Marriage Law expressly prohibits coercion (Art. 5) and allows for annulment if an individual is the victim of a forced (or “intimidated”) marriage (Art. 11). This law offers protection when one party to the marriage is coerced to enter into it against his/her real intention, or if his-or herself or relative’s life, health, reputation or property is threatened.<sup>68</sup>

In addition, China’s Protection of Minors Law prohibits parents or other guardians from allowing or forcing minors to enter into marriage and prohibits them from arranging marriages on behalf of minors. The Protection of Minors Law, Article 15.

### The Criminal Law of the People’s Republic of China

China has not adopted comprehensive anti-trafficking legislation to criminalize all forms of human trafficking.<sup>69</sup> Instead, provisions for prosecuting human trafficking are found within China’s criminal code, the Criminal Law of the People’s Republic of China (中华人民共和国刑法), which contains substantive provisions to prosecute offenders based on China’s definition of human trafficking. The relevant provisions of the Criminal Law dealing with human trafficking-related crimes are provided below:

Article #	Description of the Crime	Punishment of the Crime
<b>Article 134</b>	The crime of forced labor in risky conditions	Up to 3 years of fixed-term imprisonment / criminal detention  <u>When the circumstances are particularly odious</u> 3-7 years of fixed-term imprisonment
<b>Article 232</b>	The crime of murder	Death sentence OR life sentence / not less than 10 years in prison  <u>When the circumstances are relatively minor</u>

<sup>67</sup>Office To Monitor and Combat Trafficking in Persons, U.S. Department of State, “Trafficking in Persons Report 2014 – China,” at 133 (June 20, 2014).

<sup>68</sup> Interpretation No. 1 of the Supreme People’s Court on Several Issues in the Application of Marriage Law of the People’s Republic of China, Article 10

<sup>69</sup> U.S. Dep’t of State, Trafficking in Persons Report 132 (2014), available at <http://www.state.gov/documents/organizations/226845.pdf> [hereinafter TIP Report 2014], *supra* note 2, at 133.

		3 – 10 years in prison
<b>Article 234</b>	The crime of intentional injury	Up to 3 years of fixed-term imprisonment / criminal detention / control  <u>Causing serious injury</u> Up to 10 years in prison  <u>Causing a person's death or causes a person's serious deformity by badly injuring him with particularly ruthless means</u> Not less than 10 years in prison / life sentence <b>OR</b> Death sentence
<b>Article 236</b>	The crime of rape; the crime of sexual relations with a young girl	3 – 10 years in prison (heavier punishment if victim is a minor)  <u>Involving one of the listed circumstances</u> Not less than 10 years in prison / life sentence <b>OR</b> Death sentence
<b>Article 237</b>	The crime of forcefully molesting or humiliating a woman; the crime of child molestation	Up to 5 years in prison or criminal detention  <u>If a crowd is involved/if crime is committed in public</u> Not less than 5 years of fixed-term imprisonment (heavier punishment if victim is a minor)
<b>Article 238</b>	The crime of unlawful detention	Up to 3 years in prison / criminal detention / control / deprivation of political rights (heavier punishment where beating or humiliation is involved)  <u>If serious injury is caused</u> 3 – 10 years in prison  <u>If death is caused</u> No less than 10 years in prison  <u>If disability or death is caused by violent means</u> Punished according to <b>Article 234</b> and <b>232</b>

		(heavier punishment if crime is committed by an employee of a state organ)
<b>Article 240</b>	The crime of abducting and trafficking women and children	5 – 10 years in prison AND Fine  <u>Involving one of the listed circumstances</u> 10 years or more in prison or life sentences, AND Fine or confiscation of property  <u>For especially serious cases</u> Death sentence AND Confiscation of property
<b>Article 241</b>	The crime of buying abducted women and children	<u>Buying abducted women or children</u> Up to 3 years in prison / criminal detention /surveillance  <u>Buying and forced sex with abducted women</u> Convicted and punished according to <b>Article 236</b>  <u>Buying abducted women or children and depriving them of their physical freedom, or injuring or insulting them</u> Punished according to relevant provisions ( <b>Article 238</b> for unlawful detention; <b>Article 234</b> for inflicting injury, <b>Article 237</b> for humiliation, etc.)  <u>Buying and selling abducted women</u> Punished according to <b>Article 240</b>
<b>Article 242</b>	The crime of obstruction of public duties; the crime of obstructing the rescue of bought women or children.	Apply <b>Article 277</b>  <u>For primary elements leading others to obstruct state workers from rescuing bought women or children</u> Up to 5 years in prison / criminal detention  <u>For other elements who use force or coercion</u> Apply <b>Article 277</b> , 3 years or fewer in prison / criminal detention
<b>Article 244</b>	The crime of forced labor	In serious circumstances



		Up to 3 years in prison / criminal detention, <u>AND</u> Fine <u>OR</u> Fine only
<b>Article 262</b>	The crime of abducting a minor	Up to 5 years in prison / criminal detention
<b>Article 277</b>	The crime of obstruction of public duties	Up to 3 years in prison / criminal detention / control <u>OR</u> Fine
<b>Article 321</b>	The crime of transnational trafficking	Up to 5 years fixed-term imprisonment / criminal detention / control <u>AND</u> Fine  <u>For cases involving the listed situations</u> 5-10 years in prison <u>AND</u> Fine  <u>Heavy injuries or death to people being transported / Resisting investigation by violent and threatening means</u> No less than 7 years fixed-term imprisonment <u>AND</u> Fine (combined punishment for more than one crime if crimes committed by killing, harming, raping, kidnapping, and selling people transported or killing and harming investigating personnel)
<b>Article 358</b>	The crime of organizing for prostitution; the crime of forcing others into prostitution; the crime of assisting in organizing for prostitution	5 – 10 years in prison <u>AND</u> Fine  <u>Involving one of the listed circumstances</u> 10 years or more in prison or a life sentence <u>AND</u> Fine or confiscation of property  <u>Especially serious cases involving one or more of the listed circumstances</u> Life sentence or death penalty <u>AND</u> Confiscation of property  <u>Those helping organize people for prostitution</u> Up to 5 years in prison (5 – 10 years in prison if serious) <u>AND</u> Fine
<b>Article 359</b>	The crime of enticing, harboring, or introducing	Up to 5 years in prison / criminal detention / control <u>AND</u> Fine

	others into prostitution; the crime of enticing young girls into prostitution	<p><u>If the case is serious</u> 5 years or more in prison AND Fine</p> <p><u>Involving young girls under 14 yrs of age</u> 5 years or more in prison AND Fine</p>
<b>Article 360</b>	The crime of engaging in prostitution with pre-existing venereal diseases; visiting young girl prostitutes (under 14 years of age)	<p><u>Those with venereal diseases</u> Up to 5 years in prison / criminal detention / surveillance AND Fine</p> <p><u>Visiting Prostitutes Under 14 Years of Age</u> 5 years or more in prison AND Fine</p>
<b>Article 361</b>	The crime of commercial units used for prostitution	Apply <b>Article 358</b> and <b>Article 359</b> (main persons in charge to be severely punished)

# D. Treaties with and Anti-Trafficking Laws of China's Regional Neighbors

Given the rise in human trafficking across borders, China and its regional neighbors have taken some measures to address the issue collaboratively through treaties and other agreements. However, there remains a great disparity in the anti-trafficking laws of these countries.

## 1. Cambodia

*Treaties and Agreements:* The government of Cambodia has made significant efforts to strengthen its international relationships in order to combat trafficking both within its borders and across its borders into neighboring countries. Cambodia signed the UN TIP Protocol in 2001 and recently signed several additional agreements and Memoranda of Understandings (MOUs) with neighboring countries, including Thailand, Vietnam, Malaysia, Burma, Laos and China.

Both Cambodia and China are members of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), a governmental process incorporating the six countries in the Greater Mekong Sub-region (Cambodia, China, Lao PDR, Myanmar, Thailand, and Vietnam) in a formal alliance to combat human trafficking.<sup>70</sup> An MOU provides the basis for the COMMIT collaboration and a vision for the region in terms of its anti-trafficking collaboration. Some Sub-Regional Plans of Action (SPA) entered into subsequently have laid the path for bringing this vision into practice.<sup>71</sup> To be more effective in anti-human trafficking work, the COMMIT governments implemented SPA IV (2015 – 2018),<sup>72</sup> focused primarily on five areas with eight goals. The first area is policy and cooperation, with the goal of making legislation and policy responses comply with international standards. The second area is prevention, with the goal of reducing the trafficking of persons and encouraging communities and other stakeholders to become actively involved in trafficking prevention activities. The third area is protection, with the goal of identifying and protecting trafficking victims and providing integrated support. The fourth area is prosecution, with the goal of creating and operationalizing mechanisms for criminal justice cooperation in transnational human trafficking cases, and making sure that the victims of trafficking are provided with access to justice. The fifth area regards monitoring and evaluation, with the goal of creating procedures for monitoring and evaluating the entire cooperation in place.

With assistance from the Ministry of Foreign Affairs and International Cooperation (MFAIC), Cambodia developed and implemented “consular screening measures to reduce the sex and labor trafficking . . . by assessing applicants against trafficking victim

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<sup>70</sup> COMMIT 4th Sub-Regional Plan of Action 1, 2 (COMMIT SPA IV 2015 – 2018), <http://un-act.org/publication/view/4th-commit-sub-regional-plan-of-action/> [hereinafter “COMMIT”].

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

profiles jointly developed with China in 2016.”<sup>73</sup> These screening measures enabled MFAIC to assess trafficking victims’ profiles to better notice potential trafficking victims as they cross borders and report these individuals to either law enforcement or protective agencies as a means of trafficking prevention.<sup>74</sup> Through this collaboration, Cambodia and China have been better able to strengthen their prevention efforts; the heightened awareness that these screening measures provide can decrease the vulnerabilities that many migrant workers currently experience.<sup>75</sup>

Cambodia currently has plans to engage in collaboration with law enforcement agencies in several additional Asian countries, the agreements for which are in the drafting form.<sup>76</sup> Although there is still much work to be done, the members of the Cambodian public justice system have demonstrated a strong commitment to combat human trafficking, both domestically and internationally, to ensure the safety of its most vulnerable citizens.<sup>77</sup>

*Anti-Trafficking Legislation.* Cambodia has also made significant efforts to reduce trafficking in persons throughout the country, specifically related to sex trafficking and the sexual exploitation of children. In 2008, Cambodia implemented the Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation (TIPSE), a law that substantially adopted the Palermo Protocol’s definition of human trafficking and set forth the punishments for trafficking and related crimes. Following implementation of this law, Cambodian officials prosecuted more people and imposed more stringent penalties for crimes related to sex and labor trafficking.<sup>78</sup> TIPSE criminalizes sex and labor trafficking and prescribes penalties of seven to 15 years imprisonment for offenses that contain the action, means, and purpose elements of human trafficking stated above.

To improve the investigation and prosecution of trafficking crimes, Cambodia formed specialized units and organizations within the public justice system.<sup>79</sup> A prominent unit within the Cambodia National Police is the Anti-Human Trafficking and Juvenile Protection Police (AHTJPP), which is comprised of experienced, informed, and proactive members of law enforcement who are dedicated to pursuing and investigating trafficking in persons cases.<sup>80</sup> AHTJPP officials receive training on how to successfully investigate and prosecute these cases to reduce the prevalence of trafficking in Cambodia.<sup>81</sup> Because victim cooperation is critical to successful investigation and prosecution of trafficking cases, AHTJPP officials are trained on how to use victim-centered investigation processes and techniques.<sup>82</sup>

In an effort to promote inter-agency coordination throughout the country, Cambodia formed the National Committee for Counter Trafficking (NCCT) in 2009.<sup>83</sup> NCCT is considered by some to be “one of the government’s most significant achievements in the

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<sup>73</sup> Cambodia, *supra* note 13.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Cambodia, *supra* note 13.

<sup>79</sup> Buckley, *supra* note 61.

<sup>80</sup> *Id.* at 15. The Cambodian National Police has partnered with numerous groups from around the world to train its AHTJPP officers to improve the knowledge and skills of its law enforcement. *Id.* at 16.

<sup>81</sup> *Id.* at 7.

<sup>82</sup> *Id.* at 17.

<sup>83</sup> *Id.* at 27.

fight to combat trafficking in recent years,” because of the “exponential impact that can be achieved” through the collaboration of the nation’s most skilled agencies.<sup>84</sup>

Although Cambodia has made significant improvements to combat trafficking throughout the nation, the country is still considered a “Tier 2” country according to the 2018 TIP Report because it ultimately failed to meet all standards necessary to completely eradicate trafficking.<sup>85</sup> One obstacle to Cambodia’s progress is its own legal system, which is seen as corrupt, weak, and lacking in necessary government resources<sup>86</sup> and thus hinders victims’ willingness to report and cooperate in the prosecution of trafficking cases.<sup>87</sup> However, the country has recently been making significant efforts to improve its rankings and will continue to work towards the elimination of trafficking throughout the nation.

## 2. Vietnam

*Treaties and Agreements.* In 2010, Vietnam and China entered into a bilateral agreement to strengthen co-operation to prevent and combat human trafficking.<sup>88</sup> The agreement provides detailed measures to protect potential trafficking victims, including victim repatriation, victim identity protection, and annual ministry meetings discussing matters on collaboratively combating human trafficking.<sup>89</sup> In addition, both countries have entered into several police co-operation agreements or memoranda, clarifying their mutual interest in combating human trafficking.<sup>90</sup>

*Anti-Trafficking Legislation.* Vietnam has ratified the Palermo Protocol and amended its penal code in 2015 to criminalize all forms of labor trafficking and most forms of sex trafficking.<sup>91</sup> Article 150 of the Vietnam Penal Code adopts the Palermo Protocol’s definition of trafficking to criminalize the use or threat of violence to transfer, receive, recruit, transport, or harbor persons for money, property, other financial interest, sexual slavery, coercive labour, body parts, or other inhuman purposes.<sup>92</sup> Article 151 further criminalizes the labor and sex trafficking of children under the age of 16, Article 153 criminalizes the abduction of a person under the age of 16, and Article 154 criminalizes trading and appropriation of human tissues or body parts.

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<sup>84</sup> *Id.*

<sup>85</sup> Cambodia, *supra* note 13.

<sup>86</sup> *Id.* The rampant corruption in Cambodia has “obstructed law enforcement’s ability to effectively carry out its duties.” *Id.*

<sup>87</sup> The lack of adequate protection for victims, “exacerbated by a lengthy trial process and fear of retaliation by traffickers,” were several factors that affected victims’ willingness to cooperate with law enforcement and government officials for these cases. *Id.*

<sup>88</sup> *Agreement Between the Government of the Socialist Republic of Vietnam and the Government of the People’s Republic of China on Strengthening Co-operation on Preventing and Combating Human Trafficking*, UNITED NATIONS ACTION FOR COOPERATION AGAINST TRAFFICKING IN PERSONS (2010), <http://un-act.org/publication/agreement-between-the-government-of-the-socialist-republic-of-vietnam-and-the-government-of-the-peoples-republic-of-china-on-strengthening-cooperation-on-preventing-and-combating-human-trafficking/>.

<sup>89</sup> *Id.* Art. 2-4.

<sup>90</sup> Luo Yanhua, *Combating human trafficking: China is an Active participant in global co-operation*, PEOPLE’S DAILY (July 13, 2007), [http://paper.people.com.cn/rmrbhwb/html/2017-07/13/content\\_1790422.htm](http://paper.people.com.cn/rmrbhwb/html/2017-07/13/content_1790422.htm).

<sup>91</sup> *Id.* at 455.

<sup>92</sup> The Socialist Republic of Vietnam, Criminal Code, Amended in November 2015, <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

In 2011, Vietnam also passed an Anti-Trafficking Law focusing on forced labor, which came into effect in 2012.<sup>93</sup> However, statistics reveal that the country did not prosecute any suspected traffickers under the labor trafficking provisions of that law.<sup>94</sup>

Vietnam has continued to implement the third phase of the 2016 – 2020 National Anti-Trafficking Action Plan to address forced labor, improve victim services, and implement the revised anti-trafficking statute.<sup>95</sup> To reach its specific targets, the Plan proposed five projects of the program.<sup>96</sup> The first one is propaganda about human trafficking prevention and fighting, with the goal of providing the public with access to information on human trafficking.<sup>97</sup> The second project is on human trafficking prevention, with the goal of providing public access to competent agencies and prosecuting crimes with more efficiency.<sup>98</sup> The third is about reception, verification, protection and assistance for victims, with the goal of providing 100% support for trafficking victims.<sup>99</sup> The fourth is about completing legislation and overseeing implementation of policies and laws on human trafficking prevention, with the goal of perfecting laws on human trafficking in Vietnam.<sup>100</sup> The fifth project is on international cooperation, with the goal of handling 100% of international trafficking cases and implementing 100% of international treaties signed by the Vietnam government.<sup>101</sup> However, the government has not issued sufficient funding to carry out the plan and has been “unable to complete some planned activities absent the approval of implementation circulars.”<sup>102</sup>

### 3. South Korea

*Treaties and Agreements:* South Korea is a signatory to the Palermo Protocol. In 2004, South Korea implemented an Employment Permit System (EPS) in response to concerns regarding the treatment of migrant workers.<sup>103</sup> EPS is a government-to-government migrant labor program that enables employers in various industries like agriculture, fish breeding, and construction to recruit and hire workers from countries (the sending countries) that have signed an MOU with South Korea.<sup>104</sup> As of 2016, South Korea has signed MOUs with 15 countries including China for the EPS system.<sup>105</sup> The purpose of the MOUs is to prevent scandal and corruption in the sending process.<sup>106</sup> In addition, the

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<sup>93</sup> Viet Nam, INTERNATIONAL LABOR ORGANIZATION (2011), [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=91653](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91653).

<sup>94</sup> *Trafficking in Persons Report*, *supra* note 4, at 455.

<sup>95</sup> *Id.* at 456.

<sup>96</sup> *Article One, 4, Decision on Granting Approval for Human Trafficking Prevention and Fighting Program in 2016 – 2020 Period*, No. 2546/QĐ-TTg (2015), available at: <https://vanbanphapluat.co/decision-2546-qd-ttg-granting-approval-for-human-trafficking-prevention-fighting-program-2016-2020>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Trafficking in Persons Report*, *supra* note 4, at 456.

<sup>103</sup> *South Korea's Employment Permit System A Successful Government-to-Government Model? 2* (Open Working Group on Labour Migration & Recruitment, Policy Brief #2), [http://www.madenetwork.org/sites/default/files/policybrief\\_epskorea\\_2015%20%281%29.pdf](http://www.madenetwork.org/sites/default/files/policybrief_epskorea_2015%20%281%29.pdf) [hereinafter *South Korea's Employment Permit System*].

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*; see also YOUNG-BUM PARK & MYUNG-HUI KIM, KOREA'S TEMPORARY LOW-SKILLED FOREIGN WORKER PROGRAM: EMPLOYMENT PERMIT SYSTEM 79 (Human Resource Development Service of Korea 2016).

<sup>106</sup> *South Korea's Employment Permit System*, *supra* note 38.

MOUs include the standards for selecting the foreign workers as well as the selection procedure and obligations of the sending countries like China.<sup>107</sup>

*Anti-Trafficking Legislation.* According to the 2018 TIP report, South Korea is a “Tier 1” country, meaning that it meets the minimum standards in its effort to combat human trafficking.<sup>108</sup> In 2013, the country enacted new anti-trafficking legislation that expanded the prohibitions on trafficking to include labor trafficking (in addition to sex trafficking).<sup>109</sup> Chapter 31, Article 288(2) of the Criminal Act criminalizes the use or threat of use of force or other forms of coercion, fraud, deception or enticement for the purpose of labor exploitation, sex trafficking, sexual exploitation, or the acquisition of organs.<sup>110</sup> The punishment provisions in Article 289 increased the penalty for traffickers from 5–10 years to up to 15 years, which is in line with the penalty in other countries as well as similar to other equally serious crimes like rape.<sup>111</sup>

While these laws are adequate on paper, in practice the implementation is greatly lacking. For example, in 2017, [t]he government did not initiate any prosecutions under the trafficking statute.<sup>112</sup> Furthermore, law enforcement and government officials are still operating under the assumption that trafficking requires kidnapping, buying and selling, force, or confinement.<sup>113</sup> This is evident in the laws themselves as Article 288 is entitled “Kidnapping, Abduction etc.” and Article 289 include the words “buys or sells” in each provision.<sup>114</sup>

In addition to the anti-trafficking statute, South Korea’s Labor Standards Act prohibits forced labor. Article 7 (“Prohibition of Forced Labor”) states: “No employer shall force a worker to work against his own free will through the use of violence, intimidation, confinement or any other means which unlawfully restrict mental or physical freedom.”<sup>115</sup> Again, while this law is adequate on paper, South Korea does not effectively address forced labor trafficking.<sup>116</sup> For example, in 2017, the government held trainings for law enforcement officers regarding sex trafficking, but no trainings were held regarding labor trafficking. In addition, the government used and distributed guidelines on how to identify victims of sex trafficking but did not have similar guidelines to identify victims of labor trafficking.<sup>117</sup>

## 4. North Korea

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<sup>107</sup> PARK & KIM, *supra* note 40.

<sup>108</sup> *Republic of Korea*, U.S. DEPARTMENT OF STATE (2018), <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282685.htm>.

<sup>109</sup> Cho, *supra* note 101.

<sup>110</sup> Hyongbeob [Criminal Act], Act No. 293, Sept. 18, 1953, *amended by* Act No. 14415, Dec. 20, 2016, art. 288(2) (S. Kor.) *translated in* Korea Legislation Research Institute online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=40950&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=40950&lang=ENG) (emphasis added). The other relevant provisions of the Criminal Act are found in Articles 287–289.

<sup>111</sup> Cho, *supra* note 101; *Republic of Korea*, *supra* note 100.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> See Hyongbeob, *supra* note 103, at art. 288 and 289.

<sup>115</sup> Nodong Gijunbeob [Labor Standards Act], Act No. 5309, Mar. 13, 1997, *amended by* Act No. 12527, Mar. 24, 2014, art. 7, *available at* [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&isn=46401](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&isn=46401).

<sup>116</sup> *Republic of Korea*, *supra* note 100.

<sup>117</sup> *Id.*

*Treaties and Agreements:* In 1986, North Korea and China signed the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas. Article 4 of this bilateral treaty states, “Both sides shall mutually cooperate on the work of preventing the illegal border crossing of residents.” Clause 2 of this article stipulates that people who cross the border illegally will be turned over to the other side.<sup>118</sup> In practice, this clause has been invoked mainly for repatriation from China back to North Korea.<sup>119</sup> China does not recognize defectors from North Korea as refugees; instead the Chinese government views them as economic migrants who must be returned to North Korea.<sup>120</sup> The repatriated people likely face persecution, torture, and even death when they are returned to North Korea.<sup>121</sup> The Chinese government does not take into account whether any of the North Koreans being returned are trafficking victims.<sup>122</sup>

*Anti-Trafficking Legislation:* The North Korean government essentially sponsors human trafficking through its use of prison labor camps and by exporting forced labor to foreign companies.<sup>123</sup> In addition, North Korea has not signed or ratified the Palermo Protocol. Article 291 (“Illegal Restriction of Personal Liberty”) of the Criminal Code states: “A person who illegally restricts the liberty of another shall be punished by short-term labour for less than two years. In cases where the person commits a grave offence, he or she shall be punished by reform through labour for less than two years.”<sup>124</sup> While this provision could logically be used to prosecute trafficking cases, it is unclear what laws, if any, were used to prosecute trafficking offenses.<sup>125</sup> One NGO reported that traffickers could be punished based on the number of people he or she exploited, ranging from ten years in a labor camp to the death penalty.<sup>126</sup> But it remains unclear how North Korea prosecutes these cases, although the government seems to use its own discretion widely to prosecute or punish its citizens. Overall, the human trafficking situation in North Korea is exacerbated by the state and the government does not appear to be working toward meeting the minimum standards to combat trafficking.

## 5. Thailand

*Treaties and Agreements:* Thailand is a signatory to the Palermo Protocol and a COMMIT country. It appears that there are no other bilateral treaties beyond the COMMIT structure between China and Thailand. Thailand is also a member of the Association of Southeast Asian Nations (ASEAN), an intergovernmental organization that has worked with the countries in COMMIT to formulate a procedure for victim identification and protection (China is not a member of ASEAN). Because most incidents of identified

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<sup>118</sup> *Id.* at art. 4(2).

<sup>119</sup> Hiroyuki Tanaka, *North Korea: Understanding Migration to and from a Closed Country*, MIGRATION POLICY INSTITUTE (Jan. 7, 2008), <https://www.migrationpolicy.org/article/north-korea-understanding-migration-and-closed-country>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Democratic People’s Republic of Korea*, U.S. DEPARTMENT OF STATE (2018), <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282684.htm>.

<sup>123</sup> *Id.*

<sup>124</sup> The Criminal Law of the Democratic People’s Republic of Korea, *amended in 2009*, art. 291, *translated in* [https://www.hrnk.org/uploads/pdfs/The%20Criminal%20Law%20of%20the%20Democratic%20Republic%20of%20Korea\\_2009\\_%20\(1\).pdf](https://www.hrnk.org/uploads/pdfs/The%20Criminal%20Law%20of%20the%20Democratic%20Republic%20of%20Korea_2009_%20(1).pdf).

<sup>125</sup> *Democratic People’s Republic of Korea*, *supra* note 51.

<sup>126</sup> *Id.*



trafficking occur when the person is in a situation of exploitation, the countries worked collaboratively to formulate indicators to assist frontline officials to understand and identify potential victims.<sup>127</sup> The first responder indicator has two prompts.<sup>128</sup> The first is visual signs warranting further inquiry, listing several signs that should trigger concerns and a decision to make further inquiries.<sup>129</sup> The second is a list of questions that may help front line officials and other first responders to determine if a person might be a victim of trafficking.<sup>130</sup> In 2017, the ASEAN countries enacted the *ASEAN Convention Against Trafficking in Person, Especially Women and Children*, along with Plan of Actions.<sup>131</sup>

*Anti-Trafficking Legislation:* In 2013, Thailand ratified the Palermo Protocol with a reservation of Article 15.<sup>132</sup> The 2008 anti-trafficking law, as amended, criminalized trafficking in persons.<sup>133</sup> In 2016, the Thailand government adopted the Beggar Control Act, making it a crime to force begging and child begging.<sup>134</sup> Regulations on trafficking may also be found in the Anti-Money Laundering Act.<sup>135</sup> The Anti-Money Laundering Office reported that more than 31 million baht (about \$941,190 or ¥6.53 Million) was seized by the Office from suspected traffickers.<sup>136</sup> Regulations may also be found in the Working of Alien Act, which prohibits the engagement of a foreigner for work without a permit.<sup>137</sup> With respect to protection against forced labor, the Labour Protection Act states that an employer shall not require an employee to work overtime on a working day unless the employee's prior consent is obtained on each occasion.<sup>138</sup>

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<sup>127</sup> *ASEAN-COMMIT Indicators of Human Trafficking*, UNITED NATIONS ACTION FOR COOPERATION AGAINST TRAFFICKING IN PERSONS (Mar. 9, 2016), <http://un-act.org/forums/topic/asean-commit-indicators-human-trafficking/>.

<sup>128</sup> *Identifying Victims of Trafficking and Associated Forms of Exploitation: Common Indicators for First Responders, Australia-Asia Program to Combat Trafficking in Persons*, AAPTIP (2016), available at <https://www.aaptip.org/resource/asean-commit-indicators/>.

<sup>129</sup> *Id.* For the first part, the signs that could trigger concern and a decision to make further inquiries might include: signs of control/surveillance; signs of fear/distress/depression/psychological abuse; signs demonstrating lack of familiarity with environment/situation; an inability/unwillingness to communicate; the age/status of potential victims; signs of physical abuse or physical damage; poor physical condition; working environment appears unusually dangerous for the person's age/condition; conditions on the job appear to be very poor; living conditions appear to be very poor. *Id.*

<sup>130</sup> *Id.* For the second part, basic screening questions may include: (1) Has the person not been paid, or paid less than what they expected or were promised? (2) Has the person's expected or promised payment been withheld or deducted? (3) Is the person in a job/situation that was different to the one he or she expected or was promised? (4) Are the conditions of the job and/or the living conditions different than those expected or promised? (5) Has anyone at the workplace/situation made the person feel scared or unsafe? (6) Has anyone tricked or forced the person to do something they did not want to do? (7) Has the person been pressured to have sexual contact with someone? (8) Does the person owe any money or other benefits to their employer or anyone who helped them to get a job/in a situation? (9) Have the person or others in the workplace or situation been harmed or threatened with harm? (10) Has the person been told that they can't leave their workplace/situation or the place where they live? (11) Has the person's identification papers been taken away or withheld? (12) Has the person's ability to communicate with the outside world been restricted? (13) Does the person have access to food, medical services, privacy, and other basic needs? *Id.*

<sup>131</sup> *ASEAN Convention Against Trafficking in Persons, Especially Women and Children*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Nov. 22, 2015), available at <https://asean.org/asean-convention-against-trafficking-in-persons-especially-women-and-children>.

<sup>132</sup> *Palermo Protocol*, *supra*, note 11.

<sup>133</sup> *Id.*; see also *Anti-Trafficking in Person Act, B.E. 2551 (2008)(Thai)*, section 6, 7, 9, 11, 13, 52, available at [http://thailaws.com/law/t\\_laws/tlaw0380.pdf](http://thailaws.com/law/t_laws/tlaw0380.pdf)

<sup>134</sup> *Trafficking in Persons Report*, *supra*, note 4, at 415; see also Control of Begging Act, [http://law.m-society.go.th/law2016/law/download\\_by\\_name/819?filename=594cc68606399.pdf](http://law.m-society.go.th/law2016/law/download_by_name/819?filename=594cc68606399.pdf).

<sup>135</sup> *Anti-Money Laundering Act, B.E. 2542 (1999)(Thai)*, United Nations Public Administration Network, available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019171.pdf>.

<sup>136</sup> *Trafficking in Persons Report*, *supra* note 4, at 415.

<sup>137</sup> *Working of Alien Act, B.E. 2551 (2008)(Thai)*, Thailand Ministry of Labour, available at [http://www.mol.go.th/sites/default/files/downloads/pdf/WORKING\\_OF\\_ALIEN\\_ACT\\_2551\\_DOE.pdf](http://www.mol.go.th/sites/default/files/downloads/pdf/WORKING_OF_ALIEN_ACT_2551_DOE.pdf).

<sup>138</sup> *The Labour Protection Act, B.E. 2541 (1998)(Thai)*, INTERNATIONAL LABOR ORGANIZATION, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/49727/125954/F-1924487677/THA49727%20Eng.pdf>.

## 6. Myanmar

*Treaties and Agreements:* In 2004, Myanmar ratified the Palermo Protocol and in 2005, Myanmar passed the Anti-Trafficking in Persons Law, making the country the first in the Greater Mekong Sub-region to pass an internal anti-trafficking law that corresponded with the definitions and rules set forth in the Palermo Protocol.<sup>139</sup> In 2009, Myanmar signed an MOU on “Cooperation to Combat Trafficking in Persons, Especially Women and Children”, as a response to the Palermo Protocol, also signed by Cambodia, China, Myanmar, Thailand, and Vietnam.<sup>140</sup> Furthermore, Myanmar is a COMMIT country and has made significant efforts in its alliance to the COMMIT countries to strengthen their anti-trafficking efforts.<sup>141</sup>

Myanmar and Thailand, in particular, have jointly collaborated in the fight against trafficking by implementing uniform rules and guidelines to follow in the investigation and prosecution of these crimes.<sup>142</sup> Immediately following the execution of these regulations, both countries then established a Plan of Action to ensure the proper implementation of the MOU in their respective countries.<sup>143</sup> Myanmar and Thailand also hold bi-annual case management meetings “to improve the operational level of return and reintegration.”<sup>144</sup> Myanmar and Thailand have demonstrated strong bilateral cooperation and plan to continue to collaborate in efforts to reduce trafficking in persons throughout their respective countries.<sup>145</sup>

*Anti-Trafficking Legislation:* Myanmar has recently been labeled as “the epicenter of human trafficking and exploitative/unsafe migration in mainland Southeast Asia.”<sup>146</sup> Many women and children who migrate from Myanmar to surrounding countries, including China, are then “subjected to sex trafficking and domestic servitude through forced marriages to Chinese men.”<sup>147</sup> The trafficking epidemic in Myanmar is partly a result of the current problems with the country’s negative treatment of its citizens. For decades, Myanmar was under the influence of military control, and its citizens suffered resulting negative impacts such as “economic mismanagement, human rights abuse[] and repression.”<sup>148</sup> Because of these negative effects, people have migrated from Myanmar to escape the environment of their country; many believe that they will have a more promising future outside of Myanmar.<sup>149</sup> Research has shown that there are over 2.3

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*; Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region, INTERNATIONAL LABOR ORGANIZATION (2004), [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_160937.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_160937.pdf). This MOU reaffirms The United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking, and sets forth rules and guidelines on how the signing countries will implement similar rules in their countries. *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Buckley, *supra* note 61.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* These meetings, held between Myanmar’s Department of Social Welfare and Thailand’s Bureau of Anti-Trafficking in Women and Children (“BATWC”) “are held to coordinate on specific cases and include coordination of family tracing and assessments to ensure the safety of returnees.” *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Buckley, *supra* note 61 at 75.

<sup>147</sup> *Burma*, U.S. DEPARTMENT OF STATE (2018), <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282623.htm>.

<sup>148</sup> Buckley, *supra* note 61 at 77.

<sup>149</sup> *Id.* at 78. Not only is Thailand a prominent destination for Myanmar labor migrants and trafficking, the country more broadly has also been named the “number-one destination in the cross-border trafficking of children and women in the Greater Mekong Sub-region.” *Id.*

million Myanmar immigrants who traveled to Thailand with the hopes of finding better work, and now “qualify as being victims of human labor trafficking.”<sup>150</sup>

Through the Anti-Trafficking in Persons Division (“ATIPD”), Myanmar has established several anti-trafficking efforts throughout the country in response to this epidemic. In 2004, Myanmar established its own Anti-Trafficking Unit comprised of 26 Anti-Trafficking Task Force Units (“ATTF”) located throughout the country.<sup>151</sup> The ATTF and its officers have recently made efforts to “consult and cooperate with law enforcement agencies in China, Laos, and Thailand as part of formal dialogues on trafficking issues.”<sup>152</sup> To aid law enforcement’s ability to prosecute trafficking crimes, the 2005 Anti-Trafficking in Persons Law “criminalized all forms of labor trafficking and some forms of sex trafficking” throughout the country.<sup>153</sup> Additionally, in 2005 The Central Body for the Suppression of Trafficking in Persons (“CBTIP”) was established, along with similar regulating units at a local level.<sup>154</sup> Finally, Myanmar has been implementing “Five Year Plans” for the country to follow and learn from, so that trafficking patterns and informative statistics can be discovered and used to help build successful future plans.<sup>155</sup>

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<sup>150</sup> *Id.* at 76.

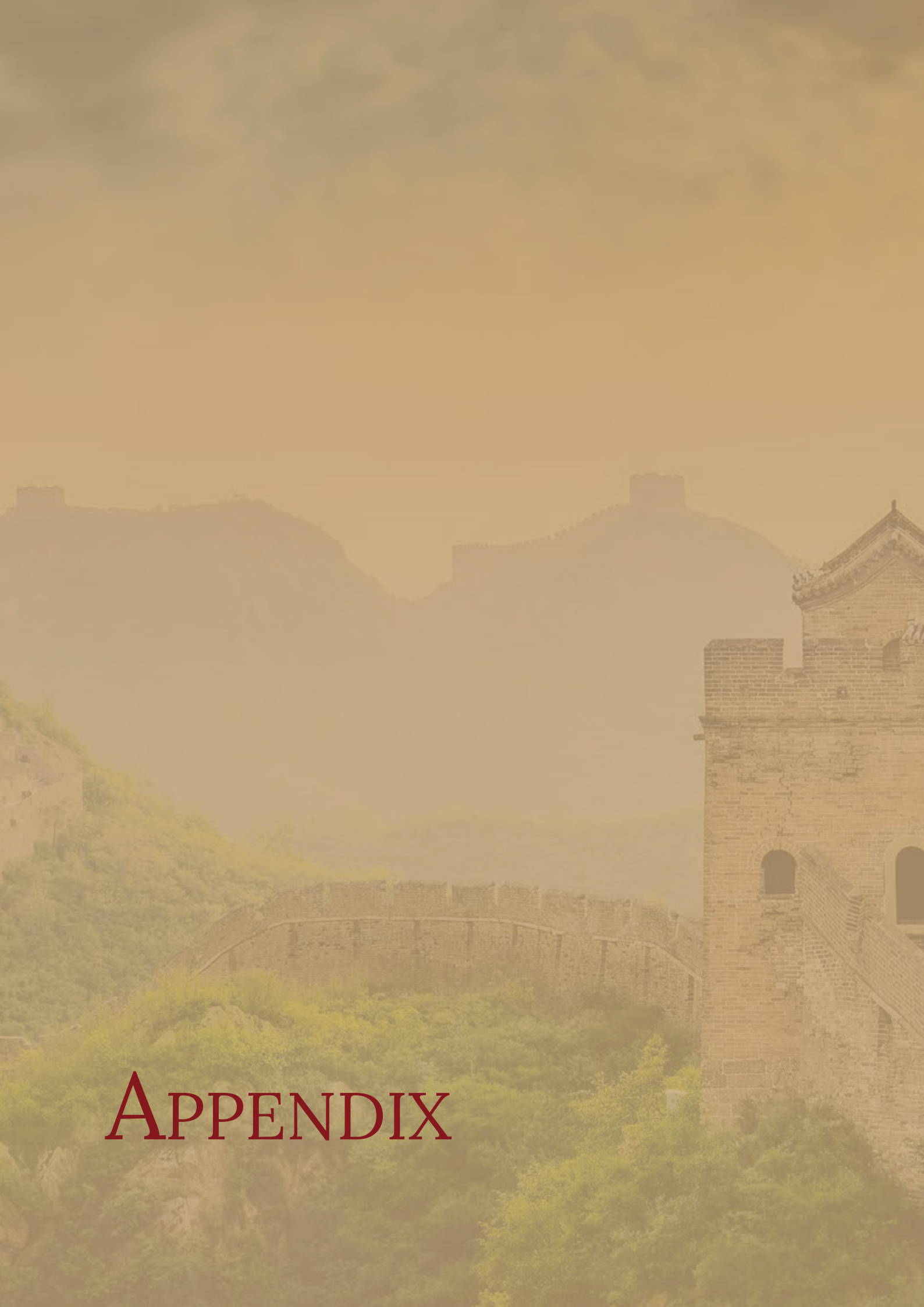
<sup>151</sup> *Id.* at 78.

<sup>152</sup> *Burma, supra* note 134.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* “Analysis under the first plan showed that 777 cases were uncovered and involved over 2,164 perpetrators and 1,717 victims,” broken down into the following sections: forced marriages, labor exploitation, prostitution, child trafficking, forced begging, and sexual exploitation. *Id.*



# APPENDIX

# Appendix 1: Checklist for Conducting Sex Trafficking Interventions

1. Have you secured the victim in a dignified manner?
2. Have you separated the victim and the accused?
3. Have you conveyed to the victim that the operation is to rescue her and not to convict her?
4. Have you ensured that no intimidating questions are asked by the police and that statement is recorded by a woman police officer in the presence of a female social worker?
5. Have you ensured that victim has collected all her property/belongings before leaving the brothel?
6. Have you ensured that victim is provided with immediate assistance like clothing, food medical needs etc.?
7. Have you produced the victim before the local child rights committee or local child welfare authority?
8. Have you ensured that victim is sent to a safe custody of shelter home?
9. Have you ensured that victim receives counselling from a trained professional counsellor?
10. Have you noted down the family details of the victim to initiate tracing of family?
11. Have you shared all relevant facts with regards to trafficking and abuse as disclosed by the victim to the concerned police officer?
12. Have you shared all facts and details with regards to court proceedings with the victim?
13. Have you identified the risk factors before repatriating / re-integrating victim back to family?
14. Have you taken necessary steps to re-integrate the victim back to society and make her self-reliant either through education or vocational training or employment options?

# Appendix 2: List of material evidence and relevance for investigation (CSE Interventions)

## WHAT TO COLLECT DURING INVESTIGATION

- Diaries, notebooks, account books, registers, etc. in the brothel.
- Travel Documents like bus/train/air tickets, papers of travel agents, visiting cards of travel agents, etc.
- Rent agreements, rent receipts, house tax receipts , ration cards, passports, electricity / telephone/water/mobile phone bills, voter IDs, driving licenses, registration papers of vehicles , insurance policies, investment details, bank pass books, money order receipts etc.
- Receipts and registers reflecting expenditure on medicines (including contraceptives, doctor's prescriptions, hospital records indicating termination of pregnancy of victims), cosmetics, pornography etc.
- Photographs, albums, video cassettes, DVDs, CDs, letters, pornographic material , computers, hard discs, brochures, advertisements in media.
- Vehicles used for transporting victims.
- Visitor's list , 'tokens' issued to visitors/clients, documents regarding clients, their classifications (as 'regulars', 'newcomers' etc.)
- Documents relating to the income/ expenditure /assets of inmates of the place, including the personal belongings, etc. of the victims concealed by the exploiters /abusers.

## RELEVANCE FOR INVESTIGATION

- To prove existence of brothel, name of victims etc. in the brothel. (already trafficked, likely to be trafficked), number of victims, details of payments, earnings, names of 'customers', accomplices, conspirators, abettors, traffickers and others.
- To prove movement of persons during trafficking, to link source-transit- destination areas and to link the offenders in the process of the crime.
- To prove the existence and address of the brothel, the people who are managing it and their income and earnings.
- To prove sexual exploitation of victims.
- To prove the sexual exploitation of victims and the existence of an organized network of criminals.
- To prove the transportation of victims from one place to another, linking up places of exploitation and thereby the exploiter's networks.
- To investigate the 'demand' aspect and level of exploitation.
- To establish aspects of illegal detention, level of exploitation of the victims, debt bondage of the victims and also to assess the illegal assets acquired by the exploiters.

# Appendix 3: Aftercare Checklist and Timeline (sex trafficking)

## Rescue / Emergency Assistance (0-2 weeks)

STAGE	TASK	TIMEFRAME
Pre Rescue	Aftercare self-care kit and First aid kit	24 hours before rescue
Rescue	Emergency medical care (including physical and mental health)	Immediately
	Safety and security including complete separation from perpetrator	Immediately
	Counselling regarding rescue process, and next steps by female social worker in a language understood by survivor. Reduce possible trauma during rescue	Immediately
	Collection of personal belongings	Immediately
	Provision of emergency necessities – food, drink, personal hygiene, clothing	Immediately
Post Rescue	Accompany survivor throughout entire process (to police station and shelter home etc.)	Immediately
	Encourage rescued girl to boldly share her statement to the police	Immediately
	Survivor is handed over to protective home and counselled about her stay in protective custody and that she has been kept there for her safety and well-being	Immediately
	Meet the survivor at the shelter home for update and support	Within 24-48 hours
	Collect the relevant facts with regards to the survivor's family and initiates tracing and investigation of family	Within 24-48 hours
	Professional Counsellors meet the survivor and develops individualised counselling plan	Within 24-48 hours
	Accompany survivor for comprehensive medical test	Within 24-48 hours

## Transitional Aftercare (1-2 months)

STAGE	TASK	TIMEFRAME
Determining Long Term plan in the best interests of the survivor	Home Study completed	Within 14 days
	Prepare and support survivor to give statement	Within 14 days
	Support survivor to have medical screening conducted (TB, HIV etc.)	Within 14 days
	Obtain order for placement in shelter home in home district or return to family home	Within 1 month
	Rehabilitation plan drafted in collaboration with survivor and aftercare team based on Home Study	Within 1 month
	Prepare and support survivor for placement in long term aftercare home or return to family home	Within 2 months

## Long Term Aftercare (2-12 months)

### If the survivor is placed in an aftercare home

STAGE	TASK	TIMEFRAME
Ongoing Monitoring	Ensure and monitor professional trauma counselling	Monthly
	Ensure and monitor ongoing medical care if needed	Monthly
	Ensure and monitor education or livelihood activities	Monthly
Legal	Prepare and support survivor during legal obligations before, during and after the trial	As needed
Government Entitlements	Support survivor to apply for all social welfare benefits and documentation entitlements (if not being done by the home)	As needed
Reporting	Review and update rehabilitation plan and provide case updates Record and file all case documentation Update case tracking sheet	Monthly



## If the survivor is returned to their family home

STAGE	TASK	TIMEFRAME
Ongoing Counselling	Counselling by a person with ongoing relationship including: <ul style="list-style-type: none"> <li>• Dealing with stigma/discrimination</li> <li>• Identifying risky situations (marriage, job promises, contact with perpetrators)</li> <li>• Safety plans</li> <li>• Importance of keeping aftercare provider informed about encounters with perpetrators</li> <li>• Personal goals and dreams</li> <li>• Healthy relationships</li> <li>• Family planning</li> <li>• Health &amp; Hygiene – including nutrition, government health facilities and right to access public health care</li> <li>• Budgeting, Savings and insurance</li> </ul>	Within 1 month and ongoing
	Counselling by Psychological Professional including: <ul style="list-style-type: none"> <li>• Dealing with trauma</li> <li>• Personal wholeness and welling being</li> <li>• Unhealthy coping strategies</li> <li>• Self-protection and resilience</li> </ul>	Within 1 month and ongoing
Legal	Prepare and support survivor during legal obligations before, during and after the trail	As needed
Government Entitlements	Support survivor to apply for all social welfare benefits and documentation entitlements as applicable	Apply within 2 months
Economic Empowerment / Education	Facilitate school enrolment	Within 2 months
	Facilitate livelihood training or employment	Within 2 months
	Monitor attendance/success of education or livelihood activities	Monthly
Reporting	Review and update rehabilitation plan and provide case updates Record and file all case documentation Update case tracking sheet	Monthly

## Graduation and Case Closing (after 12 months – 2yrs)

STAGE	TASK	TIMEFRAME
Mid Term Review	Professional Psychological assessment <ul style="list-style-type: none"> <li>Review and update rehabilitation plan</li> </ul>	After 1 year
	Leadership Training/Mentoring (if appropriate and the survivor is willing)	After 1 year
Closure after 2 years of aftercare	Professional Psychological assessment <ul style="list-style-type: none"> <li>Review and update/close rehabilitation plan (if survivor is ready).</li> </ul>	After 2 years
	Volunteer Leadership Position (if appropriate and the survivor is willing)	After 2 years

