



SPC
Secretariat
of the Pacific
Community

PIC's Human Trafficking Legislation from a Human Rights Perspective

SPC / Pacific Regional Rights Resource Team

Gwen Phillips
Senior Trainer

INTRODUCTION

- **Overview PIC's legislative framework.**
- **Focus and gaps in current legislative provisions from a human rights perspective.**
- **Legislative measures that could bring PIC's in line with international standards & best practices.**
- **Practical challenges.**

1. PIC's legislative framework

Several PIC's have adopted legislative measures beginning the process of compliance with international standards

- Palau – Anti Smuggling & Trafficking Act 2005.
- Tonga – Transnational Crimes Act 2002.
- Cook Islands – Crimes Amendment Act 2004.
- Nauru – Immigration Amendment Act 2005.
- Fiji – Immigration Act 2003.
- Vanuatu – Counter Terrorism & Transnational Organised Crime Act 2005.
- Niue – Terrorism Suppression & Transnational Crimes Act 2006.

Cont.

- Cook Islands – Crimes Amendment Act 2004

Other countries rely on existing criminal law provisions where trafficking is not recognised as a specific crime

- Papua New Guinea, Tuvalu, Kiribati, Solomon Islands, Samoa – Criminal/Penal Codes of these countries contain various offences relating to kidnapping, procurement, abduction, child prostitution, detention in a brothel, kidnapping for slavery, obtaining minors for immoral purposes, prostitution & brothel-keeping.

2.

Focus & gaps

- Countries which have started the process of recognizing trafficking as a specific crime have largely incorporated components of the PIFS Counter Terrorism and Transnational Organized Crime Model.
- The predominant mischief targeted is terrorism and transnational organized crime from a border control, security and law enforcement perspective. This is reflected in the preamble of the PIFS model – adopted verbatim in legislation of Vanuatu and Niue.
- Palau has adopted legislation specifically addressing trafficking based to some extent on the Protocol which is referred to in the preamble of the Palau Act.

- Generally component offences are not covered nor does the existing legislation address the possible exploitative outcomes of trafficking.
- Current laws do not adequately reflect the realities and peculiarities of the trafficking trade in PIC's and fall short of international standards and emerging best practices.
- Recent measures can be improved to recognise that trafficking is a serious violation of human rights requiring a human rights and gender perspective underpinning anti-trafficking measures.

cont.

- Existing laws lack a multidimensional approach shown in the absence of awareness, policy or intervention strategies.
- Measures ineffective for deterrence – e.g. no incentives to report so crime remains hidden.
- However what must be commended are the critical first steps in acknowledging the trafficking problem, regional cooperation initiatives, the adoption of legislative measures recognising human trafficking as a specific crime and PIC's commencing the process of law reform in this regard.

3. Legislative changes to bring PIC's in line with international standards and emerging best practices

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking....

(Guideline 4 UN Principles & Guidelines on Human Rights & Trafficking 2002)

- In addition to adopting comprehensive VAW legislation, PIC's should be encouraged to amend or adopt new legislation in accordance with international standards which recognise the primacy of human rights at the centre of all efforts to prevent and combat trafficking including to protect, assist and provide redress to victims. To meet compliance with international standards the legislative measures should:
 - include a precise and comprehensive definition of the crime of trafficking (Article 3a Trafficking Protocol) and criminalize all components covered by the definition of trafficking such as debt bondage, forced labour & prostitution

- contain provisions for administrative civil and criminal liability of all legal persons, for example administrative controls and conditions concerning the licensing and operation of businesses which may serve as a cover for trafficking such as employment agencies, hotels, escort services, massage parlors.
- contain civil liability provisions relating to labour conditions, child labour, non-payment of wages which are also implicated by trafficking.
- provide for effective and proportional criminal penalties, graded offences & aggravating factors.
- contain provisions ensuring assistance to and

protection of trafficked victims which should include:

- (welfare, remedies, security and rights)
- protecting the privacy and identity of victims
- preventing victims from being prosecuted, detained or punished for the illegality of their entry, residence or any consequential activities
- make effective provisions for victims to be given legal information and assistance in a language they understand as well as appropriate social support
- guaranteed protection from summary deportation or return where reasonable grounds to conclude that such action would pose a significant risk to victim and/or family

- consider permitting victims to remain in the country temporarily or permanently in appropriate cases.
- provide for the grant of temporary visas for an initial 1-3 month period so that victims are properly able to consider options.
- contain provisions for the implementation of measures to provide for the physical, psychological and social recovery of victims in cooperation with NGO's and other elements of civil society (emergency housing, counselling, medical assistance, employment, education and training opportunities).

- mandate that the age, gender and special needs of victims be a paramount consideration in all anti-trafficking measures.
- contain provisions that offer victims the possibility of obtaining compensation for damage suffered.
- repatriation provisions should contain a requirement that victims be protected from harm including retaliation.

4. Practical Challenges

- For PIC's practical challenges pose a serious disincentive to ratification of the Convention and the supplementary Trafficking Protocol. Ratification will mean *inter alia* recognition of fundamental rights of victims to receive care and support. Where the realisation of such rights is dependant on expenditure of limited financial resources and competing priorities, implementation of emerging best practices will be problematic.
- However the legislative measures suggested are not necessarily resource driven and there is much scope to build on existing frameworks:

- incorporating a precise and comprehensive definition of the crime of trafficking, providing for effective and proportional criminal penalties does not involve spending money.
- incorporating administrative and civil liability provisions to monitor business operations, labour conditions and non-payment of wages is not new. Government agencies already exist for this purpose.
- protecting the privacy of victims is not resource driven.

- preventing victims from being punished is not resource driven.
- the right to legal information and assistance which may require the service of interpreters may pose difficulties. However administrative measures such as the appointment of panels of suitable persons may be considered as a starting point.
- guaranteed protection from summary deportation or the grant of temporary visas is not resource driven. This is done as a matter of course in other industries.

- the implementation of measures to provide for the safety and social recovery of victims can build on existing frameworks. NGO's such as the Fiji Women's Crisis Centre already possess an extensive network of counselling facilities and partners and has over the past two decades trained and built capacity with partners throughout the Pacific region.
- temporary housing is already provided to unlawful immigrants (awaiting deportation) who are not necessarily victims.
- adopting non-discriminatory provisions recognising the age, gender and special needs of victims is more about political will than resource constraints.

- In conclusion, resource constraints in relatively smaller PIC's cannot be ignored and is an impediment to securing full compliance with emerging best practices and effective enforcement mechanisms. However not all best practices are resource driven. Securing the political will to implement legislative reform compliant with human rights standards is often the greatest obstacle.

Vinaka



SPC
Secretariat
of the Pacific
Community