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Global Programme Against Trafficking in Human Beings

Rapid Assessment: Human Smuggling and Trafficking from the Philippines

Prepared by

the United Nations Interregional Crime and Justice Research Institute
(UNICRI)

and

the Australian Institute of Criminology
(AIC)

November 1999

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Centre for International Crime Prevention

Global Programme Against Trafficking in Human Beings

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Terminology

- *Smuggling* involves the procurement of illegal entry of a person into a State of which that person is not a national, with the objective of making a profit.
- *Trafficking* involves the recruitment, transportation or receipt of persons through deception or coercion for the purposes of prostitution, other sexual exploitation or forced labour.
- A *transnational organised criminal group* means a structured group of three or more persons existing for a period of time and having the aim of committing a serious transnational crime through concerted action by using intimidation, violence, corruption or other means in order to obtain, directly or indirectly, a financial or other material benefit.¹

Abbreviations

- AIC - Australian Institute of Criminology.
- BI – Bureau of Immigration (RP).
- CFO - Commission on Filipino Overseas (RP).
- CICP – Centre for International Crime Prevention.
- DFA - Department of Foreign Affairs (RP).
- DILG - Department of the Interior and Local Government (RP).
- DOJ - Department of Justice (RP).
- DOLE - Department of Labor and Employment (RP).
- DSWD – Department of Social Welfare and Development (RP).
- NAPOLCOM - National Police Commission.
- PNP - Philippine National Police (RP).
- NBI - National Bureau of Investigation (RP).
- NGO – Non-government Organisation.
- ODCCP – United Nations Office for Drug Control and Crime Prevention.
- OFW – Overseas Filipino Worker.
- PCTC - Philippine Centre on Transnational Crime (RP).
- POEA - Philippine Overseas Employment Administration (RP).
- RP - Republic of the Philippines.
- SGIS – Shared Government Information System (RP).
- UN – United Nations.
- UNICRI – United Nations Interregional Crime and Justice Research Institute.

¹ The definitions of smuggling and trafficking are taken from the *Global Programme against Trafficking in Human Beings* (1999); as regards the definition of “organised crime group”, it is important to note that it is still under discussion at the Ad Hoc Committee on elaboration of the Convention Against Transnational Organised Crime.

Introduction

The processes of globalisation pose particular challenges to the international community. The increased ease and speed of travel, and the availability of the latest information technology has increased the capacity of criminal networks to engage in transnational crimes. Technological innovations improve communication within criminal networks, facilitate the falsification of official documents and even improve the capacity of criminal networks to locate and exploit institutional weaknesses in government organisations.

The smuggling and trafficking of human beings has increased throughout the world, owing to this globalisation process and other factors. The problem is exacerbated in size and seriousness by the growing involvement of organised crime groups. The smuggling of migrants by these organised crime groups disrupts established immigration policies of destination countries and often involves human rights abuses. The exploitative nature of the treatment of the victims of trafficking often amounts to new forms of slavery.

Domestic efforts to improve institutional capacity to match the technical competence of sophisticated criminals may be limited by a lack of resources or political will, human resistance to change and corruption. Furthermore, domestic efforts are generally concentrated within national borders. Regional and/or international cooperation is needed to address the transnational elements of organised crime.

The Convention against Transnational Organised Crime and its Protocols

The United Nations is concerned about the human rights violations involved in traditional and modern forms of slavery, such as trafficking in persons, and especially trafficking in women and children. The suppression of slavery, whether in the form of the classical slave trade, or the so-called modern forms of slavery and slavery-like practices, is one of the longest-standing objectives of the United Nations. Moreover, new instruments are currently being developed to prevent and combat all forms of smuggling and trafficking in human beings, and to promote the fight against transnational organised crime involved in trafficking networks.

By Resolution 53/111 of 9 December 1998, the General Assembly established an Ad Hoc Committee open to all States for the purpose of elaborating a new international Convention against Transnational Organised Crime (the draft Convention), and to elaborate three additional instruments. Two protocols are expressly devoted to reinforcing international cooperation against the smuggling of migrants and trafficking in human beings. The focus of the optional protocol relating to trafficking in migrants is on the prevention and suppression of smuggling of migrants, with special attention being paid to the distinction between the criminalisation of trafficking and the protection of victims of that activity (UN General Assembly 1999, 4). The focus of the protocol on trafficking in persons is on trafficking in women and children.

Discussions have been taking place in the Ad Hoc Committee since its first meeting in January 1999, and it is expected that the Convention and additional Protocols will be presented for adoption by a Plenipotentiary Conference to be hosted in Palermo, Italy, in October 2000.

The Global Programme Against Trafficking in Human Beings

In order to better enable governments and the international community to respond to the worldwide problems of human smuggling and trafficking, the United Nations Office for Drug Control and Crime Prevention (UNODCCP)² in March 1999 launched the *Global Programme Against Trafficking in Human Beings*. The Programme aims to bring to the forefront the involvement of organised crime groups in human smuggling and trafficking, and promote the development of effective criminal justice responses to these problems. The Global Programme, consisting of policy-oriented research and targeted technical cooperation, has been developed by the Centre for International Crime Prevention (CICP) and the United Nations Interregional Crime and Justice Research Institute (UNICRI). CICP is in charge of technical cooperation activities, UNICRI is in charge of developing standardised research methodology and of coordinating research in the various projects to be carried out under the Global Programme.

The Global Programme will collect data on different routes for smuggling and trafficking human beings, and the structures and modalities used for transporting and subsequently exploiting them. A global inventory of best practices used in addressing organised crime involvement in smuggling and trafficking, including special legislation and institutional arrangements, will be created.

In close cooperation with respective governments, NGOs and other institutions concerned, a series of “demonstration projects” will be implemented in selected countries. The demonstration projects will assist governments in:

- Counteracting groups involved in human smuggling and trafficking.
- Strengthening crime prevention strategies against the smuggling and trafficking of humans.
- Improving victim witness protection and victim assistance for victims of human smuggling and trafficking.

The processes, impacts and possible side effects of the demonstration projects will be evaluated in close cooperation with national counterparts. By the end of the three-year Programme, a global strategy against human smuggling and trafficking will be formulated in close consultation with relevant national and international organisations and experts, and presented for adoption by the international community at a global forum.

2 See United Nations, Centre for International Crime Prevention (CICP), United Nations Interregional Crime and Justice Research Institute (UNICRI), *Global Programme Against Trafficking in Human Beings*, United Nations, 1999.

The Pilot Project in the Philippines

With large numbers of Filipinos living and working overseas, the government of the Philippines is particularly concerned to address the issue of human smuggling and trafficking, and to better understand the role of transnational organised crime in these activities. The Philippines is actively participating in the preparation of the Convention against Transnational Organised Crime and its protocols, and it strongly supports the development of international and interregional initiatives to combat trafficking in human beings.

The *Global Programme against Trafficking in Human Beings* has started its activities with a pilot project in the Republic of the Philippines. A joint UNICRI-CICP mission was held in Manila during July of 1999. The initial output of the pilot-project is this Rapid Assessment of the situation in the Philippines. This document reflects existing studies and documents on trafficking in human beings, as well as the results of the mission. The document is divided into two main parts and considers:

- the state of existing knowledge with respect to transnational organised crime and smuggling and trafficking activity from the Philippines; and
- institutional responses to transnational organised crime and smuggling and trafficking activity from the Philippines.

It will be noted that while much has been written about the phenomenon of 'trafficking', relatively little information has been collected on the involvement of transnational organised crime in human smuggling or trafficking either in the Philippines, or in the destination countries. There is an urgent need to fill this gap in the knowledge about human smuggling and trafficking. Further research is needed in order to understand the role of transnational organised crime groups in the smuggling and trafficking of human beings, and to develop and implement appropriate technical cooperation activities to combat transnational organised crime.

Part I: The Problem

Smuggling and Trafficking

Smuggling and Trafficking

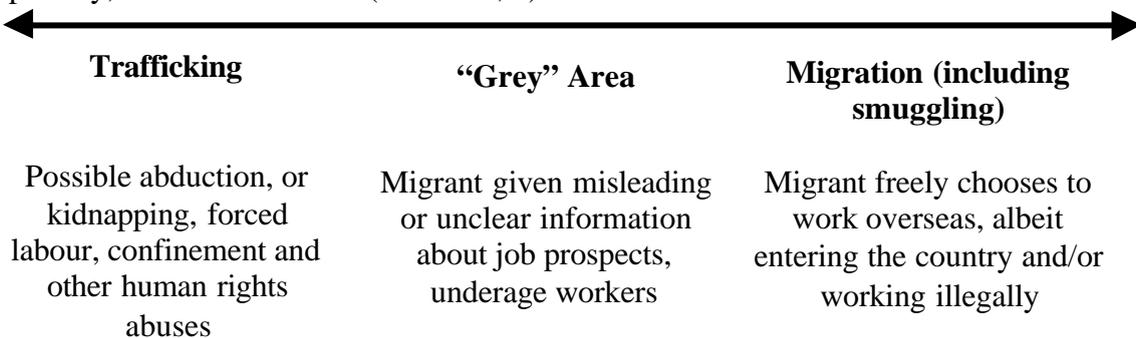
Smuggling is concerned with the manner in which a person enters a country illegally, with the involvement of third parties.

Trafficking is a more complicated concept, because it requires consideration of working conditions, and the involvement of the elements of deceit and coercion. Trafficking is often related to forms of smuggling of migrants. However it is frequently difficult to legally establish whether there were elements of deception and/or coercion, and whether these were sufficient to elevate the situation from one of voluntary migration (including smuggling), to one of trafficking. At present, the meanings of the terms ‘deception’ and ‘coercion’ are being discussed by the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organised Crime.

Smuggling and trafficking are often two sides of the same coin. The organised crime groups that manage the recruitment and smuggling of migrants, are frequently the same groups involved in the exploitation of these migrants abroad. For this reason, persons leaving their country with the assistance of smuggling networks can easily become victims of trafficking. Because of the low risks, and the high income associated with these illegal markets, the size and complexity of transnational organisations profiting from these activities is increasing.

It is worth noting that where children are involved in illegal migration for the purposes of labour, this is generally considered as trafficking, irrespective of their consent or otherwise.³

While the term ‘trafficking’ can apply to both men and women equally, the literature suggests that trafficking in women is a growing phenomenon. According to the United Nations Special Rapporteur on Violence Against Women, women are particularly targeted by traffickers because of “their unequal bargaining power and vulnerability to exploitation”. The Special Rapporteur also notes that trafficking in women is fuelled by poverty, racism and sexism (UN 1999, 4).



3 The Convention on the Rights of the Child (CRC) sets the age of majority at 18 years, unless by domestic law the age of majority is attained earlier (CRC Article 1). As there are considerable variations in the ages of majority set by domestic law, whether a person is a child or not must be decided on a country by country basis.

Statistics

There are presently no accurate statistics available on the magnitude of human smuggling or trafficking. Reasons for this include:

- the likelihood that the majority of people who are smuggled or trafficked are never detected by immigration authorities. As such, interception statistics considerably under-represent the size of the problem;
- the lack of systems to collect data on people who are intercepted and/or turned around at airports;
- the lack of incentive for migrants who have been smuggled or trafficked to divulge information about whether they are part of a larger organised activity, if they are intercepted;
- the use of different definitions of smuggling and trafficking, between countries and between international agencies.

There are, however, some estimates of the numbers of undocumented migrants⁴, a group which has some degree of overlap with those who have been smuggled or trafficked. In a recent study, Hugo (1999, 6) noted the following estimates of the numbers of undocumented migrants living in various countries in South-East Asia: 1.4 million in Malaysia in 1997, 250,000 in Singapore in 1993, 1 million in Thailand in 1998, 200,000 in the Philippines in 1995, 1000 in Brunei in 1997, 1 million in Cambodia in 1995. Hugo acknowledges that these figures are notoriously inaccurate, as there are no accurate counts of illegal or undocumented migrants – as such, he presents these figures simply as an indication of the scale of movement (Hugo 1999, 4).

Push and Pull Factors for Migration

There are many incentives, both real and perceived, for people to migrate to richer countries through legal and illegal channels. Considerable wealth disparities typically distinguish origin and destination countries. Many people from the world's poorer countries are understandably attracted by the higher income, better standard of living and employment prospects in richer countries (see Table 1, below).

There may also be a demand, real or perceived, for migrant labour in destination countries. For example, rapid economic growth in countries such as Singapore, Hong Kong and Japan has seen the emergence of a large middle class, who do not want to work in menial or low-status positions. These and other countries also have an aging population. This has resulted in a demand for overseas migrants who are willing to perform the so-called '3D jobs' – those that are dirty, difficult and dangerous (Yukawa 1996, 27). Criminal interests may also perpetuate misinformation about a demand for labour to their own advantage. For example, migrants who have been apprehended attempting to enter Australia illegally report having being told that there are plenty of jobs for migrants, as a result of the year 2000 Olympic games.

4 Undocumented migrants include those who have entered and/or who remain in a country, without the proper authority of that country (IOM 1995, 3).

Most countries retain some degree of control over the labour migration intake, either by restricting the number of working visas that can be issued, or requiring migrants to possess certain skills or characteristics. Similarly, many countries restrict access to migration for their population, for example by setting age limits or skills requirements. These factors limit the opportunity to migrate to those people who fall within the requirements of the origin and destination countries. There are clearly many more people who wish to work overseas than there are places in legitimate migration programs. Legitimate programs may also be expensive, time consuming and/or cumbersome. For these reasons, many people turn to the assistance of organised crime to facilitate their entry into another country. These migrants may be victimised by organised crime groups, either economically, physically and/or sexually.

Table 1: Per Capita Income of Selected Origin and Destination Countries, Determined 1997 (CIA World Fact Book 1998).

<u>Destination countries</u>	<u>Average per capita income (US\$)</u>
Australia	21,400
Canada	21,700
Germany	20,800
Hong Kong	26,800
Italy	21,500
Japan	24,500
Singapore	24,600
United States	30,200
<u>Origin Countries</u>	<u>Average per capita income (US\$)</u>
Cambodia	715
Indonesia	4,600
Myanmar	1,190
Pakistan	2,600
People's Republic of China	3,460
Philippines	3,200
Thailand	8,800

Organised Crime

It is not known exactly how much of the global smuggling and trafficking activity is controlled by organised crime groups. The literature does, however, suggest a strong link between the global trade in drugs, guns and other illicit commodities, and human smuggling and trafficking:

In practice, a criminal group with already-trained personnel, already-acquired means, already-tested trafficking routes,

already-developed corruption networks, and already-existing contacts in different countries of the world, will move into new illicit markets (adding new activities to the ones in which it already specialises) (Adamoli 1998, 17).

The ‘inter-dependency’ of criminal activities reflects the motivation of sophisticated organised crime groups to maximise profits, either by diversifying into new criminal markets, and/or by minimising risk to the organisation. Beare has noted that people smuggling or trafficking is one of the most profitable, and lowest risk activities (Beare 1999, 272-273).

Organised crime groups, including those involved in human smuggling and trafficking, are increasingly decentralised and flexible in their organisation. This flexible structure allows for the prompt re-organisation of illicit activities according to demand, the number of competitors and threats from law enforcement. This flexibility is improved by the incorporation of small sub-units of criminal specialists, who provide particular services and expertise that might otherwise be outside of the scope of the criminal organisation (Adamoli et al 1998, 11). Indeed, there are a number of specialist roles that are potentially involved in the smuggling or trafficking process.

The literature notes that individuals and organisations involved in smuggling and trafficking have varying levels of organisational structure, and commitment to those processes. According to Schloenhardt (1999, 18-20), individuals and criminal groups involved in smuggling and trafficking may also limit their activities to one or more of the following roles:

- *investors*, those who put forward funding for the operation, and oversee the entire operation. These people are unlikely to be known by the everyday employees of the operation, as they are sheltered by an organisational pyramid structure that protects their anonymity;
- *recruiters*, who seek out potential migrants and secure their financial commitment. These people may be members of the culture and the community from which migrants are drawn;
- *transporters*, who assist the migrants in leaving their country of origin, either by sea, land or air;
- *corrupt public officials or protectors*, who may assist in obtaining travel documents, or accept bribes to enable migrants to enter/exit illegally;
- *informers*, who gather information on matters such as border surveillance, immigration and transit procedures, asylum systems, law enforcement activities;
- *guides and crew members*, who are responsible for moving illegal migrants from one transit point to the other or helping the migrants to enter the destination country;
- *enforcers*, who are primarily responsible for policing staff and migrants, and for maintaining orders;
- *supporting personnel and specialists*, which may include local people in transit points who might provide accommodation and other assistance;
- *debt-collectors*, who are in the destination country, to collect fees;
- *money-movers*, who launder the proceeds of crime, disguising their origin through a series of transactions or investing them in legitimate businesses.

With respect to Asia, there are several well-established transnational organised crime groups that operate throughout the region. The better known of these include the ethnic Chinese *triads*, based largely in Hong Kong but also in many other parts of the world, and the Japanese *yakuza* (MacFarlane 1999, 49).

Ethnic Chinese organised crime groups are said to be involved in the smuggling and trafficking of migrants, particularly from the Peoples Republic of China (PRC) but also from other countries in the region. According to Bolz, Chinese triads and other forms of organised crime have taken over human smuggling from smaller organisations, because of the low risk and high profits associated with the activity:

Earnings from the illegal immigrant trade is estimated to total \$3.2 billion per year, yet is punishable in the United States by a maximum sentence of only five years in jail. Most who are convicted under current laws are sentenced to less than six months (Bolz 1995, 148).

Members of ethnic Chinese organised crime are said to be stationed at transit points, such as Thailand and Bangkok, and also at destination points, such as Hong Kong, Singapore, Australia and the United States.

The Japanese Yakuza have also been involved in various criminal activities, including human smuggling and trafficking. According to Adamoli *et al*:

The Yakuza maintains a significant presence throughout much of South-East Asia, where Japanese criminals have become a major organising force in the sexual slavery of women (Adamoli *et al* 1998, 79).

There are suggestions that the Yakuza is branching out into the PRC. Yakuza have been implicated in the smuggling of Chinese workers into Japan for cheap labour, and in the smuggling of women from the PRC, Taiwan and South-East Asia into Japan to work in the sex industry. In April 1993, three members of the Yamaguchi-gumi, the largest Japanese gang, were arrested in Kumamoto Prefecture while attempting to smuggle 145 Chinese into Japan (Adamoli *et al* 1998, 80). It appears that there may be links between Japanese organised crime and ethnic Chinese organised crime, at least in Korea (Adamoli *et al* 1998, 81) and Taiwan (Bolz 1995, 149).

In addition to the high profile, well-established organised crime operations, there are numerous lesser-known criminal groups operating in every country throughout the region. These groups may cooperate with one another, when it is opportune for them to do so.

There are also many companies and individuals who operate in the 'grey' area of the law, offering travel, immigration or employment services that facilitate smuggling or trafficking, but that do not of themselves constitute criminal conduct. These individuals

and companies may have varying degrees of complicity in the smuggling and trafficking processes.

Effects of Smuggling and Trafficking

Human smuggling and trafficking can have particularly serious consequences for the migrants involved. People who are brought into destination countries through illegal means are generally considered to be parties to a criminal transaction, in the eyes of the law. They may, for example, have bribed public officials, purchased false travel documents or conspired to circumvent immigration requirements by arriving without the knowledge of the authorities. There is, however, evidence to suggest that people who are transported by organised crime groups are subject to victimisation - economically, physically and/or sexually. People who use illegal networks may endure harsh and/or dangerous travelling conditions for extended periods of time. There are numerous examples of smugglers using overcrowded, unseaworthy vessels with tragic consequences. Law enforcement officials speak of the ruthlessness of some smugglers who would rather sink a boatload of would-be migrants, rather than get caught. There are also reports of sexual and physical assaults on migrants on these journeys (Chin 1997, 188). Migrants may have been deceived about the destination country, its immigration rules, and/or the nature of the employment that they will be able to secure.

Once in the destination country, people who have been smuggled may find that their economic opportunity and security are jeopardised by their lack of legal status and civil rights:

While aspirations include improved economic security and a better life, access to employment is limited to the informal sector and underground economy. As employees they may be exploited – receiving wages lower than the base level necessary for survival, working long hours, and working in conditions that are poor or even unsafe. Such employment, however, may provide undocumented migrants the only jobs and income they can get (IOM 1995, 28).

People who have been smuggled may also have been charged large sums of money for the illegal service. This practice may result in a virtual ‘debt bondage’ between the migrant and members of organised criminal groups. The IOM notes cases of illegal Chinese immigrants, who work in restaurants linked to organised crime and spend their nights locked up in prison-like dormitories, after handing over all of their day’s earnings.

There is evidence that individuals involved in smuggling and trafficking may use extreme violence as a form of control and to secure payment from the migrants and their families. A study of life for illegal migrants inside ‘safe-houses’ in New York found that the migrants were:

... repeatedly punished and tortured by debt collectors who do not hesitate to use cruel and unusual measures to force their

captives' families and relatives to deliver the smuggling fees as soon as possible (Chin 1997, 189).

In many of these cases, the line between smuggling and trafficking is unclear. A migrant may have consented to being smuggled but not to the violence or extortion that they suffer along the way. Situations that may have begun as voluntary participation in smuggling may transform into situations of trafficking, where the initial consent is vitiated by deception or coercion.

There are anecdotal reports of people having been kidnapped or abducted by traffickers but these reports remain unverified, and no studies have been undertaken of the effects of these crimes. In the absence of such evidence, it is only possible to speculate about the effects that such an experience might have on a victim. It is likely that the absence of the victim's consent, and the clandestine nature of the trafficking, would mean that victims would be vulnerable to physical, emotional and sexual abuse for as long as they were under the control of their captors. It is likely that victims of these forms of trafficking may also experience significant psychological problems, similar to those experienced by people who have been exposed to highly stressful, life-threatening or catastrophic events, including serious crimes. If this is the case, victims of trafficking would be liable to suffer mental illness, including post-traumatic stress disorder, depression, anxiety, insomnia and suicidal ideation.

Despite the horrific experiences of some people who have been smuggled or trafficked, there is generally no distinction drawn within national legal systems between illegal migrant workers and victims of trafficking. As such, both are often subject to arrest and deportation under existing national immigration laws (United Nations 1999, 2). This raises the important question of whether people in these situations should be considered as offenders, victims or possibly even both.

The activities of smugglers and traffickers may also have an adverse impact on the domestic economies of countries of origin and destination. There are considerable economic costs associated with the enforcement of immigration laws, such as the cost of detention facilities and deportation. There may also be long term costs to the domestic economy of countries who continue to rely on cheap migrant labour, at the expense of the development of high-technology production (Tigno 1999). Diplomatic relationships between countries may be damaged if there is a perception that one country is not taking sufficient steps to stem the flow of illegal migrants or the trafficking flows.

The Philippine Situation

The Philippines is a major source of labor in the world market, second only to Mexico. It is estimated that 7 million Filipinos are now working overseas and at least 2 million of them are in undocumented conditions. Female work migration is a strong component of this flow. Migration flow is generally managed by recruitment agencies and placement firms that arrange migrants' travel and work, and a part of them operate out of the law. Even if a complex institutional framework increasingly establishes regular channels to migration, the number of intermediaries proposing illegal services to

the Filipino population for facilitating undocumented or irregular migration seems to be on the increase. Overseas employment was first allowed by the Philippine government in 1974 as a temporary solution for unemployment and a tight balance of payments. Since this time, millions of Filipinos have travelled in search of better employment opportunities abroad (Go 1996, 159; Yukawa 1). Go notes that:

What started in 1974 as a short-term remedy for the problems of unemployment and balance of payments has today acquired a life of its own (Go 1996, 163).

Filipinos are now working in over 150 countries around the world, and remitting billions of dollars each year. The Bangko Sentral ng Pilipinas reports that remittances by overseas Filipino workers amounted to 1.28 billion US dollars from January to March 1999 (source: Briefing by Philippine Overseas Employment Administration).

Initially, migration from the Philippines was directed to developed countries outside of Asia. However, the remarkable growth of countries such as Japan, Hong Kong and Singapore, resulted in a huge increase in intra-regional migration in Asia. It has been noted that:

As these countries approached full employment, and as their own population moved into better paying jobs, a vacuum was created in the so-called 3-D (dirty, difficult, dangerous) jobs. To fill the demand for workers at the low-end and unskilled jobs in manufacturing, the plantation, agriculture and fisheries, and domestic services, receiving countries (some reluctantly, some more openly) turned to foreign workers (Battistella and Asis 1998, 2).

Many Filipinos can speak English, and are well educated, so they found it relatively easy to access labour markets in other parts of the world (Abella 1992, 22). Filipinos found that they were able to earn higher wages working in these host countries than in the Philippines, resulting in a net economic gain for migrant workers, even taking into account the high cost of travelling abroad (Go 1996, 162-165; Carino 1992, 15-19; Abella 1992, 22-23).

In the 1990's, the desire to work abroad continues to be fuelled by economic problems in the Philippines. The Philippine economy has suffered from the combined effects of the recent financial crisis in Asia, and the downturn in primary production caused by El Nino. According to Salvador, a World Bank survey indicated that, as a result of these two crises:

- about half of Filipino families have changed their eating patterns, resorting to cheaper foods or cutting down on extra meals;
- around 7% had children who had dropped out of school;
- about 17% experienced reduced incomes, whilst working longer hours;
- approximately 20% had a family member who had lost a job (Salvador 1999, 2).

This survey estimated that the crises have affected 76% of the lowest 40% income bracket, and 54% of the middle and high income brackets (Salvador 1999, 2). In these troubled economic times, it is likely that the supply of potential overseas workers will continue in the Philippines. Indeed, a 1999 Report has confirmed that the Philippines remains among the top four countries in the world where irregular migrants originate, the other countries being the PRC, Indonesia and Myanmar (Battistella and Skeldon for IOM, 1999).

In addition to the large numbers of Filipinos who have used legal mechanisms to obtain employment overseas, large numbers of Filipinos work abroad in undocumented situations. In 1999, the Department of Foreign Affairs estimated that 7 million Filipinos are now working overseas, 3 million of whom are undocumented (Briefing by Department of Foreign Affairs). The International Labour Organisation has estimated that in 1997, there were 4,668,800 Filipinos with regular status abroad, and 1,776,600 Filipino workers of irregular status abroad (SEAPAT).

In contrast to official channels, there are entire networks of intermediaries who can facilitate migration outside of legitimate channels. These channels may be quicker, more convenient and cost effective for both the migrants and their employers in the destination countries (Lim and Oishi 1996, 90-91).

Factors that have been identified as encouraging illegal immigration from the Philippines include bureaucratic delays and the cost of processing applications (Pillai 1996, 143). Employers might also find the prospect of hiring an illegal worker more attractive in countries, such as Singapore, where employers of legal migrant workers are required to pay large cash bonds to the government. Battistella and Skeldon (1999, 11) have noted that irregular migration is often determined by the demand for cheap labour in the economy.

Methods of Departure and Entry

Generally speaking, a prospective migrant may seek to exit or enter a country legally or illegally. There are many possible combinations, and these may be further complicated by the involvement of organised crime groups. Beare (1999, 25-26) has categorised the possible combinations, not mutually exclusive, as follows:

- *Legal – legal*: the migrant applies for immigrant status, gains legal entry and remains in the country as a legal migrant.
- *Illegal – legal*: this may include those migrants who enter a country illegally, using false documents or evading immigration restrictions, and who seek to change their status after arrival.
- *Legal-illegal*: this group is said to comprise the largest percentage of the ‘illegal’ migrant population. These migrants enter the country legally with time-specific visas and then fail to return to their countries of origin.
- *Illegal-illegal (independent)*: this group enters the country illegally and remains illegal but without the assistance of organised criminal groups;

- *Illegal-illegal (indentured)*: this category is perhaps the most vulnerable, in that they are undocumented, and also at the mercy of the criminals who assisted their passage and employment. These migrants have incurred large debts for their passage and these may take long periods of time to repay.
- *Legal-legal (indentured)*: legal entry into a country does not ensure easy entry – and legal entry does not immunise one from being under the control of those people who helped to finance the arrival. Legal status may improve job prospects, however, the amount of money to pay back may still mean that crime is a necessary or attractive option.

Migration from the Philippines can be categorised along similar lines, as organised crime groups have been known to intervene at one or more of the various stages of the migration process. Strict regulations in the Philippines limit the labour migration abroad and a system of control on labour recruiters has been articulated. If a Filipino does not have a valid passport, a legitimate work permit, or a tourist visa, he/she could seek to use false documents or to exit the country through the ‘escort system’, that is, by trying to pay a bribe to an airport or immigration official and by-pass immigration controls. Alternatively, a migrant could seek to travel through the ‘Southern back-door’, an area of the Philippines that is subject to minimal official surveillance and is physically close to Malaysia. The Southern Back Door is considered a sizeable problem. These methods of illegal exit may be facilitated by organised crime groups and/or, sometimes, by corrupt officials. As a result of consultations between the Philippine and Malaysian governments, Border Crossing Stations between the two countries have recently been opened. The successful operation of these Stations is, however, currently limited by lack of resources.

With respect to *entry*, if the destination country is a member of ASEAN, there is no requirement for the Filipino migrant to have a visa if their intended stay is less than 30 days. Some Filipino workers use the ASEAN countries as a jump-off point for further migration to third countries. Cyprus and the former Yugoslavia have also been identified as major transit points for the transport of migrants to the USA and Western Europe (Briefing by the Commission for Filipino’s Overseas).

Migrants who can enter destination countries through illegal methods, including the ‘escort’ system noted previously, or through the use of fraudulent documents pay a fee for such services. According to Tigno (1999), Filipinos pay traffickers or brokers around US\$3400 to gain illegal entry to Malaysia. Part of this recruitment sum is taken as a percentage from the salary on a monthly basis, once the migrant is in the destination country. The fees paid by Filipinos to go to Taiwan are around US\$1500-1800, depending on the current exchange rate (Tigno 1999).

Moreover, once in the destination country, Filipino workers who were otherwise in the country legally may become undocumented, either because of overstay, or through taking up employment in contravention of their tourist visa.

According to the Department of Foreign Affairs, the escort system is also commonly used to transport illegal migrants into the Philippines (Briefing by Department of Foreign Affairs). This suggests the presence of some degree of corruption within certain

departments at the airports. Indeed, senior staff of BI openly acknowledge that corruption is widespread within the Bureau. The Bureau of Immigration is currently undertaking an all-out drive against corruption. To this end, attempts are being made to computerise the Bureau. (Briefing by the Bureau of Immigration).

Document Fraud

There is evidence of document fraud in the Philippines. In 1998, 4200 passports were reported stolen in the province of Isabella, while 1240 were allegedly lost in the Department of Foreign Affairs Office in Lucena. There is also evidence of document fraud facilitated by travel agencies (Salvador 1999, 7). According to the Italian Embassy in Manila, there are many travel agencies that can prepare fake documents, such as bank certificates, titles of property, permits to work and registration to courses, in order to obtain an Italian visa. For example, in July 1999, a group of 23 Filipinos submitted applications for tourist visa's to the Italian Embassy, enclosing fake documentation. When they were separately interrogated, they responded that they had paid 200,000 pesos (approximately US\$5000) to the travel agency for the documentation. Their families had sold property and contracted loans in order to meet these fees (Press Release by the Italian Embassy in the Philippines).

Filipinos can also travel to other countries, where they can avail themselves of short-term no-visa requirements, and wait for fraudulent documents to be produced. In some cases, specialist traders abroad can produce a passport for a customer within 48 hours – either by photo-substituting a stolen passport, or using forged documents. In other cases, however, obtaining a fraudulent passport can take months, so illegal migrants hide out while they wait for their false documents.

Trafficking in Women

Trends in Female Migration

A considerable amount of research has been undertaken into the issue of the feminisation of migration from the Philippines. With respect to documented female overseas Filipino workers (OFWs), it is known that:

- more than half of land-based OFWs are female (POEA records indicate that 122,117 women, and 97,641 men were newly hired for land-based work in 1997);
- these women are mostly aged 20 to 34 years;
- the majority of these women work in Asia as domestic helpers and entertainers. A smaller number of women work in the Middle East (Go 1996, 161).

While not strictly within the category of OFWs, a significant number of Filipino women travel overseas and marry foreign nationals, particularly men from Japan, Canada, the United States and Australia (Navarro-Tolentino 1992, 24 in Cunneen and Stubbs 1997, 15). Many of these women work in their new country, or provide domestic services at home.

Less is known about female undocumented workers. It is estimated that there are at least equal numbers of undocumented and documented female OFWs. It is likely that women who migrate through illegal channels will find employment in sectors that are unregulated, such as work that takes place in private homes, the sex industry or small businesses. Undocumented migration by Filipino women appears to be concentrated in certain destination countries. For example, there are no recent reports of undocumented female Filipino workers in the Middle East, other than Kuwait. There are, however, reports of undocumented female OFWs in Japan, Singapore, Hong Kong, Italy and Germany.

It has been argued that the concentration of female OFWs, documented and undocumented, in domestic service has particular implications for their vulnerability to abuse and maltreatment. Domestic workers generally work alone, in private households: unlike a factory or shop floor, the domestic workplace is a private place, not open to scrutiny or regulation. According to Wong:

The containment of labour within the private sphere of the household is the lynchpin for this particular system of subordination and dependency (Wong 1996, 132).

Instances of exploitation, abuse or violence are unlikely to be witnessed by anyone outside of the employer's family.

Domestic workers usually have little private space, as they generally live with their employers. This lack of privacy, combined with the power imbalance of being a foreign domestic worker in another person's home, can have a profound psychological impact on domestic workers. Furthermore, some employers exploit the power imbalance, verbally, physically or sexually abusing domestic workers, who may have little or no support networks and no opportunity for redress. According to Cheng, many domestic workers:

... endure fear of being misunderstood, of making mistakes, of being terminated, of offending employers, of being intimidated, of being assaulted verbally and physically, and of being raped (Cheng 1996, 145).

Against these negative characteristics of domestic work, Cheng has noted that, compared to women of other nationalities, Filipino domestic workers are more visible and vocal in demanding their rights as workers. Cheng suggests that this may be due in part to the political culture of the Philippines, which has strong influences from both the leftist tradition and western democratic thinking, both of which value rights and equality. Filipino domestic workers are also known for forming local communities, and for regular attendance at church, both of which allow the development of a support system and assist in breaking down the isolation of the household (Cheng 1996, 149-150).

It has also been argued that the concentration of Filipino women in the entertainment industry presents particular risks to these migrants. According to the Coalition Against Trafficking in Women:

The more women who go abroad as entertainers or domestic helpers, the higher the number of victims of prostitution. Philippine Overseas Employment Administration figures say that out of the 31674 new composers and performing artists the agency processed in 1997, more than 30,000 are women. And out of this number, 24,808 went to Japan as entertainers. Entertainment is the main channel of prostitution in Asia (CATW Primer on Trafficking).

The Primer on Trafficking from which this statement was taken from does not specify how organised crime groups participate in the entertainment industry. It is known, however, that many women who leave on entertainer visas, end up working in the sex industry, as prostitutes, strippers or erotic masseurs.

Two Studies on 'Trafficking'

Two recent, major reports have sought to improve the accuracy and reliability of the knowledge in this area:

- The *Pilot Project Against Trafficking in Women*, a two year bilateral Project between the Government of the Republic of the Philippines and the Royal Government of Belgium, which began in August 1996, and finished with the release of a summary report in 1999. Research was undertaken by academics from the Ateneo de Manila University in Metropolitan Manila, Philippines, and the University of Ghent, in Belgium.
- The report on *Trafficking in Women to Japan for Sexual Exploitation: A Survey on the Case of Filipino Women*. This study was carried out under the supervision of IOM, and financed by the Asian Women Fund from Japan (AWF). Research was undertaken in collaboration between: academics from the Ateneo de Manila University in Metropolitan Manila, Philippines; Aurora de Dios, Chairperson, Committee Against Trafficking in Women in the Philippines; and academics from the Kwansai Gakuin University, and the National Institute of Population and Social Security Research, Tokyo, Japan.

From these two documents, it is possible to make some generalisations about trafficking in women, from the Philippines. With respect to pre-departure, most women actively seek out overseas employment or marriage to an overseas national, on the advice of their family or friends. Economic reasons are generally most influential.

Depending on their destination, women seeking overseas employment are assisted by a recruiter, who suggest a particular job and secure the necessary documentation, or informal networks such as family and friends. In some cases, women knowingly use fraudulent documents or an 'escort', arranged with the assistance of a third party. In

these cases, organised crime groups may be involved, and corruption in the origin and destination countries may play a role. In other cases, recruiters secure legitimate travel documents, such as a tourist, entertainer or contract worker visa. Again, depending on the destination, women seeking husbands may use informal networks, such as family and friends, the services of a marriage broker or the Internet.

Pilot Project Against Trafficking in Women

The Pilot Project includes case studies of women who have migrated for employment or marriage, either to Iran, Belgium, Kuwait. These case studies provide details of each of these women's circumstances prior to, during and after migration, including how they travelled, their expectations and their actual experiences. Three of these case studies can be considered as case studies of victims of trafficking.

A case study documents the experience of a woman, who was told she would work as an entertainer in Europe. The first suggestions that she had that this was not the case, was when the plane on which she was travelling landed in Iran. It is not specified in the case study what work she undertook in Iran, other than it was "not at all what she had expected". It is noted that she was

... unwilling to give details of her stay in Iran, her subsequent escape to Europe, and her working conditions as a prostitute in Belgium, Switzerland and the Netherlands. She did not want people to know since she was afraid the information might reach her relatives and friends in the Philippines (Ateneo 1999, 112).

A second case study documents the experiences of a woman, who married a Belgian National after a period of courtship in the Philippines. She returned with him to Europe, where he literally forced her to work as a prostitute in Antwerp and Amsterdam. She notes that she was:

...Ivan's prisoner. I could not go anywhere, not even the backyard. He constantly guarded me armed with a pistol or a revolver even while I was asleep or in the bathroom. He would beat me up whenever he was drunk (Ateneo 1999, 116).

According to the case study, the woman ultimately escaped from Ivan and is now on the run from him.

Another case study illustrates the experience of a woman who worked in Kuwait as a domestic servant. She experienced contract substitution, attempted rape, fraud on the part of the recruiting agent and non-payment of wages. For the nine-months she worked in Kuwait, she received only 25 dinars (Ateneo 1999, 130).

These three case studies indicate that:

- there are documented cases of women becoming victims of trafficking. These particular women experienced different kinds of fraud, deception, violence and/or forced labour;
- these particular cases involved women who had left the Philippines willingly, with legitimate travel documents, to a seemingly legitimate offer of employment overseas or to live with their husband.

The case studies also highlight the manner in which people become particularly vulnerable once overseas. According to the report, main factors include:

- isolation from regular support networks;
- lack of control over employment conditions, with no-one to advocate on their behalf;
- lack of control over accommodation, transport or other resources;
- lack of money to escape difficult or dangerous situations;
- confiscation of travel documents, by their employers on arrival; and
- lack of knowledge about, or access to support services available to OFWs in destination countries.

The case studies also suggest the diffusion of:

- stereotypes of Filipino women as compliant, and sexually available; and
- the perception of Filipino women as little more than commodities, capable of being bought and sold between third parties without their consent.

IOM Study

In 1997, the International Organisation for Migration (IOM) undertook a research study into the “trafficking”⁵ of Philippine women to Japan “for the purposes of sexual exploitation”. It is assumed throughout the IOM report that prostitution is a form of sexual exploitation.

The IOM conducted a study in Metro Manila of 100 women who had been trafficked to Japan, within the IOM definition. These women were identified with the assistance of NGOs in Metro Manila, and interviewed by the researchers using a survey developed in coordination with NGOs.

5 The IOM defines trafficking as “Any illicit transporting of women internationally and/or trade in them for economic or other personal gain. This will include some or all of the following elements: facilitating the illegal movement of women to other countries with or without their consent or knowledge; deceiving migrant women about the purpose of the migration, legal or illegal; controlling the women’s lives through coercion, abuse or physical violence, debt bondage or threats to reveal their illegal/illicit status and activities to the local authorities or their families back home; physical or sexual abuse of women as a means of gaining control over them to facilitate further illicit activity; sale or trade of women for the purpose of employment, marriage, prostitution, or other activity for profit”.

The IOM study showed that the average age of the sample of “trafficked women” was 19, and that fifty percent of these women were unmarried. Nearly half of the women (47%) had finished secondary school and a smaller percentage had attained university or technical school qualifications (10% and 9% respectively). The occupation of these women in the Philippines prior to departure is unremarkable – 21 women were unemployed, 6 had never worked, 11 had worked in “GRO related work” (guest relations officers, a euphemism that covers workers in the sex industry). Women were selected from the Metro Manila area, which biases the sample in favour of urban women. It is significant that 71 women gave ‘family financial situation’ as their reason for going to Japan.

The study provides information about recruitment networks and processes. From these results, it appears that the majority of women migrated with the assistance of recruiters, agents or intermediaries of some description. Approximately one half of the women (54%) used fake passports. The majority of women took a direct route to Japan, and most had little difficulty entering the country, as they had valid visas as tourists, entertainers or contract workers. The IOM report states that only 2 women entered Japan “illegally”. It must be inferred that this result does not include the 54 women who made use of false passports.

The majority of women surveyed had worked in the sex industry in Japan (77%). Only a small percentage of these women had known that this would be the case prior to their departure from the Philippines (11%). The majority of the women were closely controlled by their employers - many women had their passports confiscated (84%), and lived in residences provided by their employers (94%). According to the IOM report;

While recruiters cite [the provision of accommodation] as one of the employment benefits, this so-called benefit becomes a means by which the employers control avenue (sic) their female workers. Some of the women reported that their bedrooms did not have windows, and if they had, they were discouraged from looking out (IOM, 1998, 35-36).

It appears from the study that the working conditions of these women were intolerable:

Sixty-six percent said that they did not have control over their working hours nor the freedom to refuse their clients’ sexual demands. Some complained that even if they services customers the whole night, they could not refuse if other customers also wanted to take them out the following day. At work, they have to be alert, charming, and entertaining, otherwise they would be slapped for being slow or sloppy.

Forty-seven percent suffered physical or sexual violence from their clients, employers, agents, promoters, or managers. They were slapped or beaten by their managers or by the club’s security men and victimised by sado-masochistic clients (eg: being burnt by cigarettes).

The IOM report provides information about the work status of these 100 women upon their return to the Philippines:

The majority of returnees are currently unemployed while some are again working as prostitutes. Most of the women expressed a desire to return to Japan or migrate to other countries because of the urgent need to earn more money for their families. In fact, most of the women in the sample have been to Japan several times. Despite the harsh working conditions, they still prefer working in Japan because of the high pay for the same work (prostitution) in the Philippines. Furthermore, there is a greater stigma attached to prostitution in their own country. The lack of opportunities and employment in the Philippines compels them return to Japan even though they are aware of the risks. The women also feel that they have learnt a great deal from their previous experience and are certain that they won't fall into the same traps again.

The minority of the trafficked women who do not wish to return seem to harbour deep anger or are still dealing with their trauma of working in Japan.

“Willing Victims”: Controversial Issues

The desire of these “trafficked” women to return to Japan emerges in the IOM study, raises the difficult issue of the “willing victim”. This issue was drawn to the attention of the mission by many sources. “Willing victims” include those people who are prepared to accept extreme working conditions, generally overseas, just so they can earn an income and support themselves and their family.

The phenomenon of the willing victim must be considered in the context of poverty and unemployment in the Philippines. The Department of Social Welfare and Development told the mission that more than 35% of the population in the Philippines lived below the poverty line, and that line was drawn when a person did not have the resources to feed, clothe or secure accommodation for themselves.

There are poverty alleviation programs in place in the Philippines but it is nonetheless arguable that the existing level of state-provided welfare is inadequate. People who are unemployed, single parents, homeless or elderly receive little or no government financial assistance. In this environment, it is little surprise that there is an never-ending supply of “willing victims”, eager to accept the most menial, dangerous or degrading work, so long as it pays enough to allow the worker to feed themselves and their family.

Studies on “trafficking”, such as the Pilot Project, have noted the relevance of these extreme economic conditions. The Pilot Project states that:

Obviously, the long term solution lies in the improvements in the economic conditions in the country, whereby those who desire to be productive have jobs (Ateneo 1999, 89).

The economic aspect of the trafficking problem is also highlighted in a recent draft report, prepared by USAID⁶:

Root causes of trafficking include poverty; lack of economic opportunities; lack of education; the growing disparity between rich and poor, rural and urban; the enormous profitability of exploiting women; lack of systems which penalise traffickers; rampant corruption; and women's low status in society. It is these social, political, and economic forces that make women and children vulnerable to trafficking (USAID 1999, 5).

The USAID Report notes that the economic profile of "trafficked" women from the Philippines is slightly different from the profile of women trafficked from other countries, such as Bangladesh or Nepal. In comparison to these countries, socio-economic indicators such as education and income levels are relatively positive in the Philippines. The USAID Report notes that trafficking continues nonetheless. It is suggested that:

The growth in advertising and consumerism among youth is promoting a notion of perceived poverty which increases vulnerability to trafficking (USAID 1999, 22).

It is further noted that although per capita income is higher in the Philippines than in other countries in the region, the income inequality is high too, with a significant proportion of the population living below the poverty line (USAID 1999, 22).

Trafficking in Children

The available literature suggests that it is presently difficult for a Philippine child to leave the country without the permission of their parents and considerable checking by the relevant authorities. Legislative protections include the following requirements:

- children (that is, persons under the age of 18) are not allowed to travel alone to a foreign country without a travel clearance issued by the Department of Justice or a written permit issued under oath by both natural or adoptive parents, or the legal guardian or other person having legal custody of the child (RA 7610, s8);
- children who travel with one parent need a travel permit, that is signed by the parent who will stay behind in the Philippines (RA 7610, s10);

6 In January 1999, USAID's Asian Near East (ANE) Bureau fielded two teams of experts to appraise the situation and to determine whether USAID could make a contribution in stemming trafficking in women and children (especially girls), for both sexual and labour purposes.

- supporting documents for such travel permits include certified true copies of the child's passport or other travel documents; the child's birth certificate and marriage certificate of the parents (if this is not available, then other proof of the child's age and filiation); and proof that the child will not become a public charge in the country of destination (RA 7610, s12);
- child trafficking, or the "trading and dealing in children", and attempted child trafficking, is an offence punishable by a prison term, up to life imprisonment (RA 7610, s7).

It is likely, however, that it is still possible to circumvent these requirements either through the escort system, the use of fraudulent documents, or posing as the family of the child during travel. There is little verifiable information available about the trafficking in children from the Philippines.

Involvement of Organised Crime in Smuggling and Trafficking

The involvement of organised crime groups in smuggling and trafficking is to be expected, given the presence of organised crime groups in the Philippines. In 1994, there were 780 known organised crime groups in the Philippines. Most of these groups operated in the National Capital Region (Adamoli et al 1998, 85). The activities of these groups included kidnapping, car-theft and international gun-running.

It has been noted previously that criminal syndicates, like legitimate commercial enterprises, will diversify in order to meet customer demand and to maximise profit. Despite this, no studies have been undertaken specifically on the involvement of organised crime groups in human smuggling and trafficking from the Philippines. In the absence of specific research in this area, it is not possible to know whether this is because organised crime is not involved in this activity, or because little is yet known about the involvement of organised crime in this activity. As Tigno has noted:

Better studies need to be undertaken that will look into the activities, strategies and the organisation of criminal syndicates engaged in human trafficking and labour brokering (Tigno 1998, 39).

It is possible to extract some information about the involvement of organised crime groups based in the Philippines and abroad in smuggling and trafficking of women from the Pilot Project and the IOM study. Both studies suggest that organised crime groups are involved at various stages of the smuggling and trafficking process. For example,

- The women studied in the IOM project were asked a question about the involvement of Japanese organised crime: "Was Japanese Yakuza involved in your work? (Yes/No)" Forty-six percent answered in the affirmative, suggesting that in some cases, organised crime groups were "involved" in the businesses that employed these women (IOM 1998, 36). The Pilot Project makes no comment on the involvement of organised crime in Belgium.

- The IOM study found that 54 out of the 100 “trafficked” women had used fake passports, suggesting the presence of organised crime groups in the production, theft or procurement of fraudulent travel documents. The Pilot Project did not find high levels of use of fraudulent documents. It was found that except for one illegal entry, all of the respondents entered the country of destination legally as overseas contract workers, tourists or spouses with marriage permits. It is possible that the different findings might reflect peculiarities of the different routes, Philippines – Japan, Philippines – Belgium.
- The Pilot Project noted the prevalence of corruption in government agencies and departments dealing with the processing of the women migrant’s travel and work documents. The Pilot Project noted the involvement of government employees in provision of escort services which facilitate the irregular exit of women (Ateneo 1999, 17).
- The IOM study and the Pilot Project note that women generally travel by air. Beare has noted that if air travel is used, the smugglers/traffickers have to be adept at obtaining or creating false documentation, stolen or false passports or other documents. Alternatively, ‘real’ documents may be used, that do not match the people. If the people cannot match the documents, due to lack of language or cultural skills, bribery is the answer (Beare 1999, 31).

These findings indicate the involvement of organised crime groups at various stages of the smuggling/trafficking process.

Research has been undertaken into the involvement of organised crime groups in people smuggling/trafficking in Japan, by the National Police Agency of that country. Information on this subject is available in the 1998 *White Paper*. It is noted in this document that:

- There are many cases of document forgeries to make entry into and stay in Japan appear legal. In 1997, of 380 cases of illegal entry using forged passports, 29 involved Philippine Nationals.
- There are many cases of foreigners forging endorsement stamps for status of residence, entering marriages of convenience for the purpose of obtaining residence, and forging certificates of alien registration.
- There is a rapid increase in mass human smuggling cases, behind which are the organised activities of the Snake Head, an international smuggling contractor.
- There are cases of foreign brokers introducing jobs in tie-ups with Japanese brokers.
- There are cases of *Boryokudan* groups (organised crime groups) being involved in recruitment-related offences involving foreign workers (the nationality of these foreigners is not stated), such that profits gained from helping foreigners find jobs are considered to form sources of revenue for *Boryokudan*.

- There are cases involving Boryokudan groups and ‘public-morals’ offences⁷ by foreign women (National Police Agency 1998, 106-107).

These findings clearly indicate the involvement of organised crime groups in people smuggling/trafficking in Japan, including smuggling/trafficking that originated from the Philippines.

The involvement of organised crime groups in smuggling and trafficking from the Philippines have also been focussed on by the Italian Embassy in the Philippines and the Italian police. Investigations confirm that many travel agencies are totally or partially controlled by organised crime groups, including international organised crime groups such as the Chinese triads in Binondo, and Chinatown districts in Manila. The Embassy estimates that there are several hundreds (at least 700) of travel agencies involved in such activity in the Philippines. The major activity of recruiting for smuggling and trafficking seems to occur in the region of Batangas, south of Luzon, and many travel agencies are in the district of Malate (Italian Embassy in Manila).

It is clear that organised crime groups are involved in the smuggling and trafficking of human beings from the Philippines, but the level and nature of this involvement is not clear. There is a need for further, targeted research in this area, in order to facilitate the development and implementation of appropriate criminal justice responses.

7 “Public morals offences” include brothel keeping, and other offences connected with prostitution.

Part II: The Response

Responses to Smuggling and Trafficking

The government of the Philippines has instituted various legislative and administrative responses relevant to counteract human smuggling and trafficking. The government has also undertaken measures for the improvement of data collection, and fosters international cooperation in an effort to prevent and combat human smuggling and trafficking. Many non-government organisations (NGOs) have also implemented programs aimed at preventing human smuggling and trafficking, and reducing the social problems associated with these criminal activities. NGOs frequently work in cooperation with government departments and agencies.

Government Responses

Legislation Relevant to Smuggling/Trafficking

The Philippines is very concerned by the potential problems caused by migration. Recently, several efforts have been made to increase the regulation of the recruitment and placements of workers abroad. Philippine legislation provides for the protection of migrant workers and their rights.

Regrettably however, there is no law in the Philippines that squarely address trafficking in human beings. There are instead laws that pertain to similar or related acts that may be used to bring traffickers to face criminal prosecution. These would include Republic Act 8042 which is the Migrant Workers and Overseas Filipinos Act, Republic Act 6955 or the Mail Order Bride Law, Republic Act 7610 or the Law on Protection of Children Against Child Abuse. Aside from these, there are various laws that relate to the trafficking process. These include, amongst others, laws that regulate the provision of recruitment services to prospective migrants and passport applications, and laws that criminalise certain activities, such as the manufacture or production of fraudulent documents.

The *Migrant Workers and Overseas Filipinos Act (1995)* regulates inter alia, the provision of licenses to recruiters, and criminalises illegal recruitment. The government regulates recruiters through the provision of licenses to individuals and agencies who meet certain standards. It is a criminal offence to be an “illegal recruiter”. According to section 6 of this Act, “illegal recruitment” includes the activity of recruiting workers for overseas employment without a license. “Illegal recruitment” can also occur where a recruiter, licensed or unlicensed, commits certain acts, including the following:

- furnishing or publishing false notices or information about employment;
- furnishing or publishing false documents in relation to recruitment or employment;
- recruiting or placing workers in employment harmful to public health or morality, or the dignity of the Philippines;
- contract substitution;
- withholding or denying travel documents for monetary consideration.

The penalty for “illegal recruitment” is a minimum term of 6 years imprisonment and two hundred thousand pesos. Where a “syndicate” is involved (that is, there is collusion

between three or more people) or where the crime is of a “large scale” (that is, there are three or more victims), the crime is considered one of “economic sabotage” and the penalty is life imprisonment and a fine of five hundred thousand pesos.

The issuance of passports is governed by the *Philippine Passport Act 1996 (RA 8239)*. In order to obtain a passport, a Philippine citizen must comply with certain administrative requirements, such as completing the necessary application form and providing certified copies of certain documents, such as a birth certificate, a marriage certificate, a baptismal certificate, or a certificate of naturalisation.

First-time applicants must apply for the passport in person, in order to prove that he or she is the same person as the person claimed in the application form. If the application is for renewal of an existing passport, a licensed travel agent may file for the passport on the applicant’s behalf. The travel agent is then responsible for the authenticity or *bona fides* of the supporting documents being presented to meet the requirements for the application for passports.

If a passport is lost, it must be reported to the Department of Foreign Affairs or relevant Post overseas, with an affidavit stating the circumstances of such loss or destruction. A new passport will not be issued for 15 days following the submission of the affidavit.

There are various offences connected with passport fraud, contained in the Passport Act:

- Making a false statement in an application for a passport (P15,000 to 60,000 and imprisonment of not less than three years, but less than ten years);
- Using a passport which was secured by false statements (P15,000 to 60,000 and imprisonment of not less than three years, but less than ten years);
- Travel and recruitment agents who are convicted of offences relating to false statements shall in addition to these fines and imprisonment, have their license revoked;
- Forgery of passports or travel documents (P60,000 to 150,000, and imprisonment of more than 6 but less than 15 years)
- Forgery of more than 5 passports or travel documents is considered “massive forgery tantamount to national sabotage” (P250,000 to 1,000,000 and imprisonment of more than 7 years but less than 17 years);
- Using or attempting to use another persons passport, or defacing a passport (P60,000 to 150,000 and imprisonment of more than 6 but less than 15 years);
- Holding more than one passport (P15,000 to 60,000 and imprisonment of 18 months but less than 6 years).

There are also offences related to falsification or forgery of documents, instruments, signatures or entries in records, contained in the Revised Penal Code.

Republic Act 6955 declares unlawful the carrying of a business of matching foreigners and Filipino women for marriage. The penalties are imprisonment of not less than 6 years and 1 day but not more than 8 years; and a fine of not less than P8,000.00 but not more than P20,000; and deportation after service of sentence, if offender is a foreigner.

Article 36 of the *Labour Code* empowers the Labor Secretary to restrict and regulate recruitment and placement of workers. The Department of Labour (DOLE) has issued a series of orders that are potentially relevant to trafficking (Dole Orders No. 3 and 3A of 1994, and No. 21 of 1996). Together, these Orders provide guidelines for the deployment of performing artists from the Philippines. Only those Artists who pass a skills and academic test will be provided with an Artists Record Book (ARB), and only those artists who have an ARB may be employed overseas for this purpose. There is an age restriction of 21 years or over. Before obtaining an entertainer visa, artists are required to present a showcase, partly to show that they are prepared, partly to show that they are *bona fide* entertainers.

Draft Legislation

Two Bills are presently before the Congress of the Philippines that seek to address the issue of trafficking in women, one introduced in the Senate, and the second introduced in the House of Representatives (see further Appendix Two). The Bills are aimed to institute policies to suppress trafficking in Filipino women, establish the necessary institutional mechanisms for the protection and rehabilitation of victims of trafficking and provide penalties for its violations. The Bills likewise propose the implementation of counseling programs by the different concerned agencies. An Inter-agency Council Against Trafficking will be established to be composed of the different agencies involved in combating trafficking in human beings.

The House of Representatives Bill (HR Bill) is based on the findings of the Pilot Project, and defines trafficking in accordance with that document⁸. The Senate Bill does not define ‘trafficking’ but stipulates various offences. If either of these Bills receives the approval of the Parliament, a need for capacity building will arise. There will be a particular need for training for police, prosecutors, and judges.

Draft legislation is presently before the House of Representatives, based on the US Racketeer-Influenced and Corrupt Organizations (RICO) Act⁹ (see Appendix Three).

8 The House of Representatives Bill defines “Trafficking in women and minors” to include “acts involved in the recruitment, transfer, or deployment of women and minors through legal or illegal means with or without the victims consent, or knowledge within or across national borders for purposes of prostitution, work or services, marriage or adoption as provided for in RA 8043 including other similar arrangements characterized by forced labor and slavery-like practices, sexual exploitation and other similar acts with attendant coercion, violence, threat of violence, abuse of authority, debt-bondage, deception, and other forms of coercion as well as acts hereinafter specifically provided for in this Act.”

9 The US Act, enacted in 1970, is an incredibly powerful and far-reaching piece of legislation. The Act does not define ‘organised crime’ but rather defines an ‘enterprise’ and ‘racketeering’. It allows for prosecution of continuing criminal enterprises, involving two or more crimes in a racketeering pattern. The Act has been applied in the United States to prosecute organised criminal groups, commodity traders and gang members (McFarlane 1999, 28).

Government Departments

There are a variety of government departments and agencies that are mandated to serve the needs and interests of OFWs¹⁰. At the Departmental Level these include the Department of Foreign Affairs (DFA), the Department of the Interior and local Government (DILG), the Department of Justice (DOJ), the Department of Social Welfare (DSWD), and the Department of Labor and Employment (DOLE). Other agencies include the Commission on Filipinos Overseas (CFO), Bureau of Immigration (BI), National Bureau of Investigation (NBI), Philippine Overseas Employment Agency (POEA), National Police Commission (Napolcom), Philippine National Police (PNP), and the Philippine Center on Transnational Crime (PCTC).

Specifically, the *Commission on Filipinos Overseas* (CFO) is mandated by law to:

- advise and assist the President and Congress in policy formulation regarding Filipinos overseas,
- develop and implement programs promoting the interest and well-being of Filipinos overseas, and
- serve as forum for the preservation and enhancement of the social, economic and cultural ties of Filipinos overseas with the Philippines (Conspectus Foundation 1999, 11).

Pursuant to the second mandated function, the CFO runs:

- the Migrant Social and Economic Integration Program, which is designed to prepare migrant Filipinos for the practical and psychological problems resulting from international migration.
- the Policy Development and Data Banking Program, which involves multi-disciplinary policy-oriented research on migration. Research is concentrated on the economic, social, legal, and administrative environment relevant to the status of overseas Filipinos.
- Pre-Departure Counselling for Migrant Workers.
- Pre-departure Guidance and Counselling Program for fiancées and spouses of foreign nationals (Conspectus Foundation 1999, 11-12).

The CFO has also developed educational resources, such as booklets for children of several ages, containing information on working overseas, and some of the risks involved. Several thousand of these booklets have been distributed but the extent to which they have actually been used is not known.

In Pre-Departure Guidance and Counselling sessions for fiancées and spouses of foreign nationals, CFO counsellors determine whether the would-be spouse has sufficient information regarding her/his intended foreign spouse, the person or agency who

10 For an excellent summary of all government programs and policies relating to migration, see Conspectus Foundation Inc, *Report on Existing Policies, Agencies and Mechanisms Addressing Migration*, Committee on Special Concerns, National Commission on the Role of Filipino Women, the Philippines, March 1999.

introduced them and/or arranged the marriage, and the impending departure, to protect the Filipino from victimisation. Information, such as the name of the foreign national, is cross-checked against a serial-sponsors database, to determine if the sponsor has an information file with the CFO. According to the CFO, the information system has been useful in keeping track of names and profiles of foreign nationals who may be involved in trafficking and serial sponsorship. If it appears that the Filipino is at risk of being trafficked, exploited or otherwise victimised, the prospective migrant will be so informed. This information does not in any way prevent the prospective migrant from marrying the foreign national. Furthermore, statistics indicate that the majority of those who come in for counselling are already married to the foreign national¹¹. Nonetheless, it is likely that information gained during these interviews would be invaluable to understanding the level of involvement of organised groups in marriage brokerage services.

Certificates are given to those who have attended CFO pre-departure employment or marriage sessions, and authorities at the airports are required to ask for these certificates. Airport authorities can not, however, stop an intending Filipino migrant from departing the country simply because the migrant does not have a certificate. The right of all Filipinos to travel is enshrined in the Constitution.

The *Department of Foreign Affairs* (DFA) has numerous policies and programs on migration. These were codified into the present Migrant Workers and Overseas Filipinos Act of 1995 (R.A. 8042), which established the position of Legal Assistant for Migrant Workers Affairs and the establishment of a Legal Assistance Fund, of which undocumented migrants may partake. The Legal Assistance Fund is intended to cover, inter alia, lawyer's fees for foreign lawyers hired by the Legal Assistant for Migrant Workers Affairs to represent Filipino migrant workers charged in cases abroad where the maximum penalty imposable is death (Conspectus Foundation 1999, 14).

The DFA extends services to Filipinos abroad, including the legal assistance referred to above, through Philippine embassies and consulates which are open to all Filipino migrants, whether documented or undocumented, without need of any special requirement or qualification. Resource Centres for Women, which can house 17 persons at a time, can provide shelter for migrant Filipino's in distress until their repatriation. These may be found in countries where there are at least 20,000 documented Filipinos. At present, there are 25 such centres all over the world (Conspectus Foundation 1999, 14).

Embassies also have Repatriation Funds which are used to pay for the Filipino national's travel expenses for return to the Philippines should it be proven, that neither the migrant nor his/her family in the Philippines has the means to pay for the same (Conspectus Foundation 1999, 14).

The *Overseas Workers Welfare Administration's* (OWWA) task is essentially the administration of a trust fund comprised of contributions of foreign-based employees.

11 Of those who were counselled in 1989 and 1996 respectively, 66.3% and 80.2% were already married. (Conspectus Foundation 1999, 12-13).

Its mandate is the protection of the welfare of registered overseas workers and their dependents and the maintenance of the viability of the trust fund. The details of this mandate are divided into two types of programs and services:

- security and protection: OWWA programs and services are available overseas through the Filipino Workers Development Centres (FWDC), which operate 24 hours daily, 7 days weekly. There are currently 25 FWDCs abroad. Services include legal and medical/welfare assistance, priority beneficiaries being victims of rape, abuses and maltreatment and similar emergency cases. Social counselling for women OFWs and their female dependents is offered, both at pre-deployment and on-site through FWDC's, to stem the adverse effects of international migration.
- re-integration: these include economic, psychological and social, and skills and career developmental programs (Conspectus Foundation 1999, 17-18).

The *Philippine Overseas Employment Administration's* (POEA) priority programs for 1999 include:

- Bilateral and multi-lateral negotiations with host countries (especially the Kingdom of Saudi Arabia, United Arab Emirates, Kuwait, South Korea, Japan, Taiwan, Singapore, and Malaysia) and international organisations (such as GATT, WTO and APEC) for the protection of Filipino OFWs through selective deployment.
- Public information and education programs on the risks and rewards of overseas employment.
- Networking of POEA's computer information system for a shared government information system.
- The Anti-Illegal Recruitment (AIR) Drive, with the cooperation of NGOs, special prosecutors and fiscals, police agencies, volunteer groups and paralegal groups (Conspectus Foundation 1999, 18-19).

The POEA pre-employment and pre-departure programs for migrant workers are intended to inform migrant workers about the benefits and risks of overseas employment, in an effort to facilitate gainful employment, but also to protect jobseekers from being victimised by illegal recruiters. The POEA information programs have recently been expanded so as to reach school children and members of the general public. The POEA has reached an agreement with the Department of Education, and the Department of Foreign Affairs, to include learning modules on labour migration in the elementary and high school curriculum. The POEA also provides pre-employment education through regular programs on three radio stations (POEA Briefing).

The AIR drive operates alongside pre-employment and departure programs. The AIR Drive involves a nationwide media campaign about the realities of migration and against illegal recruitment, and remedial programs designed to assist victims of illegal recruitment. The nature of the assistance is basically legal, that is, law enforcement with the cooperation of law enforcement agencies, and prosecution of offenders. Memoranda of agreement have been entered by the POEA with the PNP and DOJ, thus creating a 'one-stop-shop' for remedial assistance at the POEA AIR Drive offices. The aim is to correct the POEA's lack of police power to ensure the effective enforcement of laws against illegal recruiters.

The POEA also conducts pre-departure screening for entertainers, who are seeking to work overseas. Individuals who pass the pre-departure academic and skills tests are issued with an Artists Record Book (ARB), a document that is required for the processing of the employment contract of the entertainer, for the pre-departure showcase preview¹² of group performers, and for exit clearances at the international airport and other exit points. The ARB contains detailed information on the holder, including a photo of the holder, the holder's birthdate, thumb marks, eye colour, height, weight, and skills category. The ARB also contains information about the holder's training, academic and skills test, overseas deployment and the agency responsible for these (see generally, POEA 1998). It is well-known that the entertainer visa is used by some individuals and organisations, to assist Filipino women to enter a country where they will work in the sex industry.

The POEA regulates the accreditation of recruitment agencies. It is thought that these agencies are frequently the first step of the trafficking process. The law requires that recruitment agencies obtain a license from the local government, and accreditation from the POEA (see Legislation Relating to Smuggling and Trafficking, below). These will not be granted if the operator of the agency has a previous criminal record, or has engaged in previous illegal recruitment practices. If it is discovered that an agency is participating in illegal behaviour, the agency will lose its license and its accreditation. The POEA prints a list of accredited (and therefore, legal) recruitment agents, every two weeks.

In practice, this system of regulating recruiters seem to be very effective. It is said that recruiters, including those with accreditation, continue to be involved with trafficking activities. The system is complicated, and there are many players. It is not known to what extent law enforcers pass on their information to those responsible for licensing.

The Start Up Mission was not made aware of any efforts being undertaken by the Prosecution Division of the Department of Justice (DOJ) to specifically address the problems of smuggling and trafficking, there being no special law on the matter yet. However, the Prosecution Division of the DOJ, in cooperation and coordination with the different government agencies/offices, such as the DFA, POEA, CFO, NBI, etc., investigates and prosecutes cases relative to violations of the Philippine Passport Act of 1996, the law on Mail-Order Brides, the provisions of the Labor Code on illegal recruitment and specific provisions of the Revised Penal Code, among others. The Department of Justice also has an internal *Task Force on Protection of Women Against Abuse, Exploitation and Discrimination*. In the first quarter of 1999, the Task Force had 53 cases, which mainly concerned sexual offences against women in the Philippines.

12 Group performers are required to present a Pre-Departure Showcase Preview, a 15-45 minute preview of their work, such as singing and dancing, to officers of the POEA. The stated purpose of this preview is to ensure that performers are well prepared (POEA 1998, 19). The un-stated purpose of this preview is to ensure the legitimacy of groups of 'entertainers' leaving to work overseas.

The mission was not made aware of any particular steps being taken by the Department of Justice (DOJ) to specifically address the problems of smuggling and trafficking. However, the DOJ participates in a number of intergovernmental committees, such as the *Taskforce on Illegal Recruitment* (see further, Intergovernmental Taskforces, below). The Department of Justice also has an internal *Task Force on Protection of Women Against Abuse, Exploitation and Discrimination*. In the first quarter of 1999, the Task Force had 53 cases, which mainly concerned sexual offences against women in the Philippines.

The Department of Justice maintains a Witness Protection Programme, pursuant to R.A. 6981, for the purpose of protecting important witnesses and granting them certain rights and benefits to ensure their appearance in investigative bodies/courts; thus providing a more effective administration of justice. Recently, the program has been decentralised to the Regional Prosecution Offices so that witnesses from the provinces need not come to Manila. They can now file their applications directly with the Regional State Prosecutors.

As a constituent of the DOJ, the *National Bureau of Investigation* is responsible for investigative services and research pertaining to crimes. The NBI is a member of the Migrant Assistance and Information Network (MAIN)¹³, a network established by the CFO, and as such is tasked to investigate and recommend for prosecution persons and entities involved in illegal recruitment. The Special Investigative Services of the NBI have fourteen Manila-based investigative units, including the Anti-Graft Division, the Anti-Organised Crime Division, the Anti-Illegal Recruitment Division, the International Airport Investigation Division, and the Interpol Division.

A record of cases of illegal recruitment filed for investigation with the NBI from 1981 to 1996 shows that the number peaked in 1983 at 2,330 with 93% recommended for prosecution. In the last five years, excluding 1997, the average number of cases investigated by the NBI is 1 130, an average of 65% of which was recommended for prosecution. Data on the sex of complainants for these years are not available because records with the Anti-Illegal Recruitment Division were destroyed by fire that happened on January 28, 1997 (Conspectus Foundation 1999, 15-16).

NBI's Anti-Illegal Recruitment Division is based in Manila, with no extension nor equivalent in the regions. Investigation of illegal recruitment cases in the provinces is processed alongside other criminal complaints, which may result in their being given a lesser priority (Conspectus Foundation 1999, 16).

The Philippine Government have also recently established the *Philippine Centre On Transnational Crime*. While the Centre is still in the set-up stage, it has a far reaching

13 MAIN include also the Department of Foreign Affairs, the Department of the Interior and Local Government, the Department of Labour and Employment, the Department of Social Welfare and Development, the Bureau of Immigration, the Commission on Filipinos Overseas, the Commission on Human Rights, the National Commission on the Role of Filipino Women, the Overseas Workers Welfare Administration, the Philippine Information Agency and the Philippine Overseas Employment Administration (CFO 1999, 16).

mandate. According to Executive Order No. 62, of 15 January 1999, the mission of the Centre is to formulate and implement a concerted program of action of all law enforcement, intelligence and other government agencies for the prevention and control of transnational crime. The Centre has the mandate to establish a shared central database among government agencies for information on criminals, methodologies, arrests and convictions on various transnational crimes, including trafficking in human beings.

Intergovernmental Task Forces

In July 1998, the President of the Philippines created the *Presidential Anti-Organized Crime Task Force* (Presidential Executive Order 8 July 1998) to address criminality and corruption. The Task Force has the mandate to investigate and prosecute all criminal syndicates and their protectors. The Task Force is composed of selected Philippine National Police and Armed Forces of the Philippines members, and representatives from other branches of government. It is mandated to implement a fast-track anti-crime and anti-graft and corruption agenda, and adopt appropriate measures to ensure an effective anti-crime drive. The Task Force is also empowered to cause or direct the immediate arrest, investigation and speedy prosecution of crime syndicates, government officials and employees and their cohorts, with due regard to constitutional processes, and to recommend the passage of appropriate anti-crime issuances and legislation (CFO 1999, 14).

In July 1998, the President of the Philippines created the *Presidential Anti-Organized Crime Commission* and its *Task Force* (Presidential Executive Order 8 July 1998) to address organised / syndicated criminal groups, criminality and corruption. The Commission, chaired by the President and comprised of high-level government officials, has general control and supervision over the Task-Force. The Task Force, on the other hand, has the mandate to investigate and prosecute all criminal syndicates and their protectors. The Task Force is composed of selected Philippine National Police and Armed Forces of the Philippines members, and representatives from other branches of government. It is mandated to implement a fast-track anti-crime and anti-graft and corruption agenda, and adopt appropriate measures to ensure an effective anti-crime drive. The Task Force is also empowered to cause or direct the immediate arrest, investigation and speedy prosecution of crime syndicates, government officials and employees and their cohorts, with due regard to constitutional processes, and to recommend the passage of appropriate anti-crime issuances and legislation (CFO 1999, 14).

The *Taskforce on Illegal Recruitment* is chaired by the POEA. The members of this Taskforce are the Department of Justice (DOJ), the Philippine National Police (PNP) and the Presidential Anti-Crime Task Force. This Task Force do not appear to have directly dealt with 'trafficking' cases or 'organised crime' cases, but it is likely that there may have been some overlap between their case load, and instances of human smuggling or trafficking. The following data were made available:

Illegal Recruitment Cases as of June 1999	
Balance Forwarded (Dec 1998)	107
Received (Jan-June 1999)	229
<u>Total</u>	<u>336</u>
Filed in court	78
Dismissed	42
Pending	216
<u>Total</u>	<u>336</u>

In 1998, there were 197 cases referred by the Department of Foreign Affairs on falsification of public documents, a violation of RA 8239.

On the occasion of the UN mission in the Philippines, the DFA established the *Inter-Office Task Force on Human Trafficking* (DFA Order No. 17 of 1999, 12 July 1999). The Task Force is intended to provide a more coherent and comprehensive approach to issues concerning human trafficking, including the implementation of the Philippine Pilot Project on Human Trafficking. The Task Force is also to prepare for the future involvement of the DFA in similar endeavours, such as the chairmanship by the DFA of the Inter-Agency Council on Human Trafficking, proposed in the two anti-trafficking Bills before the Philippine Parliament (see Appendix 2: Draft Anti-Trafficking Bills).

The Task-Force has already undertaken several tasks. In August 1998, the DFA issued a Foreign Service Circular, requesting posts:

- to provide the Department with a comprehensive report on cases of trafficking in Filipinos within their respective jurisdictions; and
- to cite, where possible, the history of the case, assistance extended by the Post and problems encountered in the delivery of the service, and recommendations on how the Government could fast track solutions to these problems.
- to cite the operation of extradition or mutual assistance treaties.
- to contact host governments, in order to forge cooperative agreements aimed at addressing the issue of human trafficking. The Circular stated that the Republic of Philippines - Belgian Pilot Project should be considered as a model.

International Cooperation

The Philippines acknowledges that international cooperation is of utmost importance to combat trafficking in human beings. The country is a member of Interpol. The Philippines has also entered into several bilateral agreements that are relevant to smuggling and trafficking of human beings. The Philippines and Malaysia have a Memorandum of Agreement with respect to the exchange of police-liaison officers. The Philippines and Australia have a memorandum with respect to the commercial sexual exploitation of children (*Memorandum of Understanding Between the Government of Australia and the Government of the Republic of the Philippines for Joint Action to Combat Child Sexual Abuse and Other Serious Crimes*, signed on 11 October 1997). The Philippines have arrangements with some 39 countries, with respect to the issuing

of immigration visas to Philippine nationals¹⁴. Bilateral agreements are also at work with the United Kingdom. Agreements also exist in Hong Kong and Italy with International Social Services, to assist victims of trafficking.

While these bilateral arrangements are important, they are not sufficient to address the problems of smuggling and trafficking. The increase in international cooperation is fundamental to combating the smuggling and trafficking of human beings. For this reason, the Convention on Transnational Organised Crime, and its two protocols on smuggling of migrants and trafficking in persons, especially women and children, will provide the legal framework for harmonising different legal systems and stress the importance of a legally binding instrument to overcome the problems traditionally associated with international cooperation and mutual assistance. The Philippines government is participating in the Ad Hoc Committee, and strongly supports the construction of new international instruments to combat transnational organised crime.

Data Collection

An important development in the area of data collection is the Shared Government Information System (SGIS), established by section 20 of the Migrant Workers and Overseas Filipinos Act. The SGIS is intended to capture information that is presently contained in existing databases and files across government departments and agencies. The SGIS also anticipates the linking of computer facilities, in order to promote exchange and sharing of data between concerned government departments and agencies (CFO 1999, 10).

The CFO, as a participating agency, have begun to implement this system. In 1999, the CFO, in conjunction with the Canada International Development Agency (CIDA), developed a system for gathering accurate and reliable statistics on Filipino international migration. According to the CFO, the system was set up in such a way that it will contribute to the SGIS, alongside contributions from other Philippine government agencies. The system will make available on a regular basis statistics on various aspects of Filipino international migration useful for describing the trends, demographics and situation of Filipino migrants as well as for evaluating existing and alternative migration policies (CFO 1999, 9).

The CFO have also recently developed a Case Monitoring System, to effectively document and monitor cases of OFWs experiencing problems. According to the CFO, the information system will ultimately be shared with the DFA for effective monitoring and documentation of assistance-to-nationals cases. The Case Monitoring System is intended to be harmonised with the information system of other government agencies which will participate in the SGIS (CFO 1999, 9-10).

14 Algeria, Argentina, Australia, Belgium, Canada, Cape Verde, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Gabon, Germany, Federal Republic of Greece, Guatemala, Indonesia*, Ireland, Israel, Japan, Malaysia*, Malta, Mexico, Monaco, Netherlands, New Zealand, Pakistan, Papua New Guinea, Senegal, Singapore, Spain, Sweden, Switzerland, Union of Soviet Socialist Republic, United Kingdom, United States, Uruguay, Vietnam, Yugoslavia (*only to foreign women married to nationals of Indonesia and Malaysia).

There is no assessment on the extent to which other agencies have begun implementing this system. It seems that some agencies are not yet computerised, and/or existing systems are incompatible with the system developed by the CFO. The SGIS is nonetheless a very important endeavour, as it will generate information not only on migration in general but also on trafficking activity from the Philippines.

As noted above, the Philippine Centre for Transnational Crime (PCTC) is mandated to establish a shared central database among government agencies for information on criminals, methodologies, arrests and convictions on various transnational crimes, including human trafficking. The PCTC is still in the start-up phase, so there are no results as yet from this important venture.

Non-governmental Responses

NGOs Concerned with Smuggling and Trafficking

There are many non-government and church-based organisations that actively assist those affected by smuggling and trafficking (see further Conspectus Foundation 1999, 19-23). The Catholic Church, through its international networks and various migrant-focused organisations, provides counselling, referral and crisis care for OFWs in many countries. There are various non-governmental migrant centres, which assist migrants in particular circumstances. For example, the Batis Centre for Women assists mostly female migrants who have worked in Japan as entertainers. Other Centres, such as KAIBIGAN, the Kanlungan Center Foundation, and SENTRO provides services such as information and training, legal intervention services or advocacy services. There are several networks of NGOs who seek to combat the problems of smuggling and trafficking, particularly of women for the purposes of prostitution. These include MIGRANTE, Women Overseas Workers NGO Network, the Philippine Migrant Rights Watch, the Network Opposed to Violence Against Women (NOVA), and the Coalition Against Trafficking in Women - Asia Pacific¹⁵.

The Philippine Network Against Trafficking in Women (PNATW) started as a result of the Belgian government-supported pilot project against trafficking in women. The PNATW continues to lobby the government for the introduction of anti-trafficking legislation, such as that currently before the House of Representatives (see Appendix 2). The Belgian government pilot project has resulted in the production of several videos and broadcast programmes, about the risks of working abroad.

15 The mission organised two meetings with NGOs. These were attended by DAWN, Kanlungan Centre, Women in Development Foundation, Inc., Asian Women's Human Rights Council, CATW – Asia Pacific, UGAT Foundation, Inc., Help OFW Prisoners' Empowerment (HOPE) Foundation, Inc., Centre for Overseas Workers, Kaibigan Ng OCWs, Inc., Albert Schweitzer Familienwerk Foundation, Inc., WEDPRO, Third World Movement against the Exploitation of Women, Episcopal Commission for the Pastoral Care of Migrants – Catholic Bishops' Conference of The Philippines, Kapisanan ng mga Kamag-anak ng Migranteng Manggagawang Pilipino, Inc., Philippine Network against Trafficking in Women, Conspectus Foundation, Inc., International Catholic Migration Commission.

Data Collection

Various NGOs have information on smuggling and trafficking but this information is yet to be collected in a systematic manner. There may be issues about the willingness of NGOs to share their information with government departments and agencies. The ability to assure clients of the confidentiality of their information is generally of the utmost importance to NGOs. Probably, many victims of smuggling, trafficking or other crimes would not seek the assistance of NGOs if they thought that their confidential information might be given out to government departments or agencies.

Analysis of Responses to Smuggling and Trafficking

On the face of it, there exists considerable administrative and legislative efforts to address problems associated with migration, such as illegal recruitment, the provision of false information to prospective OFWs, and document fraud. Despite these apparently strict laws, the trafficking problem still persists. Among the factors determining this situation, it was reported to the mission that there continue to be:

- large numbers of recruiters who operate without a license;
- licensed recruiters who engage in illegal practices, such as contract substitution¹⁶, the advertisement of non-existent jobs and document fraud (Briefing by the Department of Foreign Affairs); and
- a flourishing trade in fraudulent travel documents, including passports that have been forged, altered, stolen or obtained through the presentation of fraudulent documents;
- links between these recruiters (legal and illegal) and deceptive or coercive practices overseas; and
- links between these recruiters (legal and illegal) and organised crime groups overseas.

Several reasons for the apparent failure of the law were suggested to the mission by various government agencies and NGOs, including:

- the lack of mechanisms to monitor recruiters;
- the lack of enforcement of legislation;
- the lack of resources allocated to government services, such as the criminal justice system;
- the lack of awareness of trafficking issues by law enforcement and prosecution officials;
- the presence of some degree of corruption;
- the insufficient victim/witness protection scheme;
- the lack of coordination between and within government departments and agencies;
- the lack of coordination at the international level.

16 Contract substitution is where a prospective migrant has agreed to a work contract with certain conditions, for example, the rate of pay, or the nature of the work. Upon arrival in the receiving country, the migrant discovers that the job is in fact of a different nature or for different conditions.

Lack of Mechanism to Monitor Recruiters

According to the Department of Social Welfare and Development (DSWD), despite on-going efforts, there is a lack of mechanisms to monitor recruiters, particularly with respect to their recruitment of women and girls for employment, settlement overseas or marriage to foreign nationals. Without mechanisms to monitor illegal recruitment, it is suggested that illegal recruitment will continue to thrive.

Lack of Enforcement

According to NGOs, the laws with respect to illegal recruitment are not enforced - police rarely take action, and prosecutions are generally unsuccessful (Open Forum discussion with selected NGOs). There are reports that the Migrant Workers and Overseas Filipinos Act has rarely been used to prosecute illegal recruiters or smugglers.

It is difficult to reconcile this information with the information provided by the Philippines Overseas Employment Administration (POEA), that victims of illegal recruiters are provided with a 'one-stop shop' in the offices of the POEA, where they can access members of the Philippine National Police and the National Prosecution Service (NPS). The NPS reports that between January and June of 1999, it received 220 cases of illegal recruitment. Many of these cases are still pending (Briefing by the National Prosecution Service). If this 'one-stop shop' is operating effectively, it would appear that there should be many successful prosecutions under the Migrant Worker and Overseas Filipinos Act. Data from the POEA shows that there were 1162 cases of illegal recruitment in 1996, 863 in 1997 and 1067 in 1999. During this time, 159 establishments practicing illegal recruitment activities were closed down (Reported in Sinag, 1999, 2). Compared with the proportions of the illegal recruitment problem, the amount of illegal recruitment cases prosecuted seems to be small.

The poor track record of enforcement of the anti-illegal recruitment legislation suggests that similar difficulties may be experienced with the proposed anti-trafficking or anti-organised crime legislation. It is important to note that the draft anti-trafficking bills seeks to put in place methods of ensuring that the legislation is used, such as the inter-agency committee (see Appendix 2). It is likely that such innovations will need to be matched with other forms of institutional capacity building.

Resources

The mission identified that the criminal justice system is characterised by a lack of resources. Resources for the investigation and prosecution of criminal cases related to trafficking in human beings are scarce. Sufficient levels of personnel and means are essential: for example, the provision of computerized case management systems for prosecutors may lead to an increase in efficiency, and a decrease in delays and possibly even corruption.

As a further example, the Bureau of Immigration still operates on a paper-based system, a system which may foster corruption and inefficiency, in the absence of the resources

needed to undertake a full-scale computerisation of the Bureau. Furthermore, the Bureau does not appear to have adequate resources to police the Southern-Back Door, a departure point for many illegal migrants. A sufficient allocation of resources is necessary for the proper functioning of government departments.

Lack of Awareness of Trafficking

There is a need to increase the awareness of law enforcement and prosecution on trafficking in human beings as a criminal justice concern, and to create and improve mechanisms of cooperation among them. Enhanced training and specialised programmes for law enforcement officers, public prosecutors and judges would contribute to more effectively counter organised criminal groups involved in trafficking.

Impact of Institutional Corruption

The role of institutional corruption in the smuggling and trafficking of human beings was mentioned to the mission by several government departments. Indeed, the existence of corruption within government departments and agencies, and within the criminal justice system itself, was acknowledged by the President of the Philippines, President Joseph Estrada, in his State of the Nation Address in 1999.

Insufficient Victim/Witness Protection Scheme

It appears that victims/witnesses may be unwilling to participate in prosecutions, because of insufficient victim/witness protection programmes. The existing witness protection scheme is limited in scope, and is only available for a limited number of cases. Special procedural measures to protect witnesses in court, such as remote testimony techniques, are not in place. Victims generally prefer to rely on the support of NGOs, rather than the assistance of the criminal justice system.

Lack of Coordination: Domestic Level

Problems with a lack of enforcement of legislation may also be the result of problems inherent in the criminal justice system itself. The mission noted the weak degree of coordination between the police and prosecutors, a factor which may lead to the erroneous dismissal of cases. A higher level of cooperation between police and prosecution seems to be indispensable to the successful prosecution of organised crime matters, such that an institutional mechanism for coordination is needed.

Similar problems may be experienced within and between government departments and agencies. Conspectus Foundation have noted that processing an immigration problem entails passing information layer by layer within organisations, thereby compromising the timeliness and relevance of intervention. Furthermore, though government departments and agencies are theoretically working towards the same goals, often they tend to operate independently, unaware of the efforts being undertaken by other departments or agencies. According to Conspectus, the result is a system characterised by an unwieldy amount of organisations existing for migrant concerns, duplication and inefficiency (Conspectus 1999, 10).

Lack of Coordination: International Level

Smuggling and trafficking are by nature transnational crimes. An effective criminal justice response requires close cooperation not only between agencies at the national level, but also between countries of origin, transit and destination. From a first assessment, it appears that cooperation and coordination in this context must be improved. The finalisation of the draft United Nations Convention Against Transnational Organised Crime, and its Protocols, will have a positive effect on international cooperation, particularly in regard to mutual legal assistance and extradition in criminal matters.

Conclusion

Smuggling of migrants and trafficking in human beings are serious problems in the Philippines. The Government of the Philippines have already undertaken a number of steps toward preventing and resolving the issue of smuggling of migrants and trafficking in human beings. At the national level, detailed regulations address the illegal recruitment practices. Legislation designed to curb the problem of illegal immigration services and 'mail-order' marriage services is available. There are government institutions that are tasked with the mission of protecting Filipino migrant workers and many organisations, including NGOs, care for the social problems of the victims.

Certain difficulties have, however, been identified with aspects of the response to the issues of human smuggling and trafficking.

Little information is collected or made available as to the scope of trafficking from the Philippines, the involvement of organised crime groups and the routes used. It appears, however, that in the Philippines the trafficking process primarily starts with illegal recruitment. Strict labour recruitment regulations, based on the system of licenses, are not working effectively. Despite requirements that applicants for licenses be screened for past criminal history, and that illegal behaviour be punished by a loss of accreditation or license, the illegal recruitment industry is growing. There are reports that the laws with respect to illegal recruitment are rarely enforced – police rarely take action, and prosecutions are generally unsuccessful.

Resources for the investigation and prosecution of criminal cases related to trafficking in human beings are scarce. Furthermore, officials may be unaware of the issues related to human smuggling and trafficking. While legislation exists that criminalizes certain aspects of trafficking in human beings, law enforcement and prosecution officials may not have received adequate training on investigating and prosecuting cases of human smuggling and trafficking, including the need to cooperate extensively during investigations. As such, law enforcement actions and prosecutions against traffickers are rarely effective.

The role of institutional corruption in facilitating the smuggling and trafficking of human beings was mentioned by several government departments. Indeed, the existence of corruption within government departments and agencies, and within the criminal justice system itself, was acknowledged by the President of the Philippines, President Joseph Estrada, in his State of the Nation Address in 1999.

At present a large number of government agencies and departments address aspects of human smuggling and trafficking in their respective areas of competence. There is a need to strengthen the national coordination of those agencies including their cooperation with the criminal justice system, in order to achieve a more focused and streamlined approach.

The smuggling of migrants and trafficking in human beings are not simply domestic issues. Smuggling and trafficking are by nature transnational crimes that require

strategies to be developed at the regional and international level. Further to existing (bilateral) agreements, specific structures for cooperation between the Philippines, transit and destination countries on issues relevant to trafficking, should be sought, particularly as it relates to the involvement of organised criminal groups. The formulation at the international level of joint policies and recommendations and the harmonisation of practical action should strongly contribute to the prevention of trafficking in human beings. The expected adoption of the draft United Nations Convention Against Transnational Organised Crime, and its Optional Protocols in the year 2000 should have a positive effect on the development of national legislation and international cooperation, particularly in areas such as extradition and mutual legal assistance in criminal matters. The participation of the Philippines in the United Nations Global Programme against Trafficking in Human Beings reflects the Governments strong commitment to tackle the problem.

While Government policies focus on social and preventive aspects of the trafficking problem, more attention may have to be paid to the victim's role in the criminal justice system. The victim's cooperation is generally essential to the success of criminal investigations and prosecutions. Further to the existing witness protection scheme, policies would have to reflect general measures to increase the victim's readiness to seek assistance and cooperate with the authorities, including means to improve the victim's security and social situation and status in the criminal justice procedure.

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Appendix 1: Selected Legislation

Republic Act No. 6955 (Mail Order Brides)

Sec. 1. It is the policy of the State to ensure and guarantee the enjoyment of the people of a decent standard of living. Towards this end, the State shall take measures to protect Filipino women from being exploited in utter disregard of human dignity in their pursuit of economic upliftment.

Sec. 2. Pursuant thereto, it is hereby declared unlawful:

- (a) For a person, natural or juridical, association, club or any other entity to commit, directly or indirectly, and of the following acts;
 - 1) To establish or carry on a business which has for its purpose the matching of Filipino women for marriage to foreign nationals either on a mail order basis or through personal introduction;
 - 2) To advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier, or any other propaganda material calculated to promote the prohibited acts in the preceding sub-paragraph;
 - 3) To solicit, enlist or in any other manner attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals either on a mail order basis or through personal introduction for a fee;
 - 4) To use the postal service to promote the prohibited acts in sub-paragraph 1 hereof;
- (b) For the manager or officer in charge or advertising manager of any newspaper, magazine, television or radio station, or other media, or of an advertising agency printing company or other similar entities, to knowingly allow, or consent to the acts prohibited in the preceding paragraph.

Sec. 3. In case of violation of this Act by an association, club, partnership, corporation, or any other entity the incumbent officers thereof who have knowingly participated in the violation of this Act shall be held liable.

Sec. 4. Any person found guilty by the court to have violated any of the acts herein prohibited shall suffer an imprisonment of not less than six years and one day but not more than eight years, and a fine of not less than eight thousand pesos (P8, 000) but not more than twenty thousand pesos (P20, 000): Provided, that if the offender is a foreigner, he shall be immediately deported and barred forever from entering the country after serving his sentence and payment of fine.

Sec. 5. Nothing in this Act shall be interpreted as a restriction on the freedom of speech and association for purposes not contrary to law as guaranteed by the Constitution.

Sec. 6. All laws, decrees, orders, instructions, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 7. This Act shall take effect upon its publication for two (2) consecutive weeks in a newspaper of general circulation.

Republic Act No. 8042 (Migrant Workers and Overseas Filipino's Act)

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Sec. 1. Short title. This Act shall be known and cited as the "Migrant Workers and Overseas Filipinos Act of 1995".

Sec. 2. Declaration of Policies:

- (a) In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas in general, and Filipino migrant workers, in particular.
- (b) The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.
- (c) While recognising the significant contribution of Filipino migrant workers to national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.
- (d) The State affirms the fundamental equality before the law of women and men and the significant role of women in nation building. Recognising the contribution of overseas migrant women workers and their particular vulnerability's, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.
- (e) Free access to the court and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.
- (f) The rights of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment its recognised and guaranteed.
- (g) The State recognises that the ultimate protection to all migrant workers is the possession of skills. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers.
- (h) Non-governmental organisations, duly recognised as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect.
- (i) Government fees and other administrative costs of recruitment, introduction, placement and assistance to migrant workers shall be rendered free without prejudice to the provision of Section 36 hereof.

Nonetheless, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them.

Sec. 3. Definitions. For purposes of this Act:

- (a) “Migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a legal resident; to be used interchangeably with overseas Filipino worker.
- (b) “Gender-sensitivity” shall mean cognisance of the inequalities and inequities prevalent in society between women and men and commitment to address issues with concern for the respective interests on the sexes.
- (c) “Overseas Filipinos” refers to dependents of migrant workers and other Filipino nationals abroad who are in distress as mentioned in Section 24 and 26 of this Act.

I. DEPLOYMENT

Sec. 4. Deployment of Migrant Workers.

The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognises any of the following as a guarantee on the part of the destination country for the protection and the rights of overseas Filipino workers:

- (a) It has existing labour and social laws protecting rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- (c) It is concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- (d) It is taking positive, concrete measures to protect the rights of migrant workers.

Sec. 5. Termination or ban on deployment. Notwithstanding the provisions of section 4 hereof, the government, in pursuit of the national interest or when public welfare so requires, may, at any time, terminate or impose a ban on the deployment of migrant workers.

II. ILLEGAL RECRUITMENT

Sec. 6. Definition. For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilising, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the labour Code of the Philippines, that any non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

- (a) to charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labour and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
- (b) to furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) to give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labour Code;
- (d) to induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- (e) to influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- (f) to engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- (g) to obstruct or attempt to obstruct inspection by the Secretary of Labour and Employment or by his duly authorized representative;
- (h) to fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labour and Employment;
- (i) to substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labour and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labour and Employment;
- (j) for an offer or agent of a recruitment or placement agency to become an officer or member of the board of any corporation engaged in travel agency or to be engaged in the management of a travel agency;
- (k) to withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labour Code and its implementing rules and regulations;
- (l) failure to actually deploy without valid reason as determined by the Department of Labour and Employment;
- (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale it shall be considered an offence involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offences are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

Sec. 7. Penalties.

- (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than 12 years and a fine of not less than two hundred thousand pesos (P200,000.00) nor more than five hundred thousand pesos (P500,000.00).
- (b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, that the maximum penalty shall be imposed if the person illegally recruited is less than 18 years of age or committed by a non-licensed or non-holder of authority.

Appendix 2: Draft Anti-Trafficking Bills

Anti-Trafficking Bill (Senate, July 1999)

Sec. 1. Title. This Act shall be known as the "Anti-Trafficking in Filipino Women Act of 1999".

Sec. 2. Declaration of State-Policies. It is hereby declared to be the policy of the State to ensure the full realization of and respect for human rights. In pursuit of this, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity. Women shall be afforded protection against violence and exploitation, and definite measures will be taken to suppress the trafficking in Filipino women.

It shall likewise be the policy of the State to promote an active and visible policy of mainstreaming gender perspective in all efforts aimed at addressing the attendant issues to migration and violence against women.

The State shall afford protection to women who are most vulnerable to exploitation and shall provide services to rehabilitate women who are victims of exploitation, violence, and trafficking, including those who are threatened or endangered by circumstances owing to their status and conditions in life.

Specific measures will be instituted, not only to rehabilitate victims of trafficking, but also importantly, to mitigate pressures for involuntary migration and servitude by women.

Sec. 3. Pursuant thereto, it is hereby declared unlawful for a person, natural or juridical, association, club or any other entity to commit, directly or indirectly, any of the following acts:

- (1) To recruit, transfer, and deploy a woman within or across national borders for work or services through coercion, violence, threat of violence, abuse of authority, debt-bondage, deception, and other forms of coercion. Debt-bondage is the pledging of personal services and labour for an indefinite period of length and nature of service, including marriage as a security for a debt.
- (2) To procure, entice or lead away, for purposes of prostitution, another person, even with the consent of that person.
- (3) To exploit the prostitution of another person, even with the consent of that person.
- (4) To keep, manage or knowingly finance and take part in the financing of a brothel;
- (5) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of another.

As used in this act, prostitution shall refer to the business of inducing another person to perform the act of sexual intercourse with another person, either

voluntarily or involuntarily, for money or profit, or other economic, social and psychological consideration. Those liable shall include the pimp, the procurer of the service, parents, owners of the establishments, and other individuals who use various schemes to exploit women.

- (6) To introduce or match for a fee, profit, or any other material of economic consideration, any Filipino woman to a foreign national for marriage;
- (7) To produce, print, own, or have in possession unissued, tampered, or fake counselling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proofs of compliance with government regulatory and pre-departure requirements;
- (8) To receive or agree to receive money or thing of value in exchange for sexual services or assistance in securing the services of a female who would indulge in sexual activities with the procurer of service;
- (9) To use any mode of advertisement, whether in print or in broadcast including through information technology, in promoting the trafficking of Filipino women and matching Filipino women for marriage or other illicit relationships with foreign nationals;
- (10) To use threat or violence on another to force the later to marry a foreign national through the mail-order bride scheme.
As issued in this Act, mail-order bride scheme is the process of matching for a fee, profit or any material and economic consideration, Filipino women for marriage to foreign nationals through the use of various platforms for communications such as tri-media facilities, information technology, and even personalised marketing or direct selling;
- (11) To prevent a Filipino woman, by coercion, intimidation, threat of violence, or authority derived from family relationship from living a relationship with a foreign national that is characterised by domestic violence;
- (12) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing Filipinos;
- (13) To take advantage of individuals applying for certifications and other documentations from Government agencies or accredited individuals or agencies by coercing or intimidating them into complying with requirements beyond those that are prescribed by government guidelines, including the charging of excessive fees, or requiring gifts or other material items, for services prescribed in this Act;
- (14) To organise sex tours for purposes of prostitution. Sex tourism is a program organized by travel and tourism-related establishments and even private

individuals which consists of tourism packages or activities, utilising and offerings escort services of women as enticement for tourists.

- (15) To recruit women under the pretext of lawful employment, whether domestically or for foreign employment, but actually for purposes of prostitution;
- (16) To withhold any, information from proper authorities on perpetrators of domestic violence, trafficking by organized crime, operators of mail-order bride schemes, and prostitution;
- (17) To solemnise wedding between a Filipina and a foreign national without the proper authorisation and license as provided for in the Family Code, for profit, fee, other material considerations;
- (18) To offer or contract marriage with a Filipina for purposes of offering selling or trading the Filipina to engage in illicit sexual activities or prostitution, or to subject the Filipina to domestic servitude.

Sec. 4. Penalties and Sanctions. The following penalties and sanctions are hereby established for the offences enumerated in Section 3:

- (a) Any person found guilty of committing any of the acts enumerated in Section 3 hereof shall suffer the penalty of *reclusion temporal* in its minimum period and a fine of Three hundred thousand pesos (P300,000.00), unless the victim in less than eighteen (18) years of age for which the penalty of *reclusion temporal* in its maximum period and a fine of Five hundred thousand pesos (P500,000.00) shall be imposed; *Provided*, That if the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country again, which offence is non-probational; *Provided, further*, That any foreign national found to have violated Section 3 (7), shall be punished in accordance with this law, if a bilateral agreement for extradition is enforced.
- (b) If the offender is an agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment found to be serving as front or cover for any of the acts enumerated in Section 3, the officials thereof and other persons responsible or involved in the illegal activities as enumerated in Section 3 shall be held for damages of not less than Five hundred thousand pesos (P500,000.00) and its license to operate cancelled and revoked without prejudice to the penalties and sanctions to be imposed on said offender.
- (c) Those who profit or are advantaged therefrom, whether as manager, head, official, or owner of the agency, tour or travel agency, club or establishment, or place of entertainment, friendship or pen pal club, advertising agency, or publishing company serving as front or cover, shall likewise be held severally liable and shall be imposed the penalty prescribed in the foregoing paragraph (b) of this section.

- (d) If the offender is an ascendant, parent, or guardian of the female person, the penalty to be imposed shall be *reclusion temporal* in its maximum period and a fine of Five hundred thousand pesos (P500,000.00).
- (e) If the offender is an accredited counsellor or counselling centre as provided for in Section 7 of this Act, the penalty shall be *reclusion temporal* in its maximum period and a fine of Three hundred thousand pesos (P300,000.00). If the offender is a counselling centre the officials thereof and other persons responsible or involved in the illegal activities as enumerated in Section 3 shall be imposed the penalty as provided herein.
- (f) If the offender is a licensed recruitment agency which hires and deploys performing artists/entertainers under the pretext of gainful employment but actually for prostitution, the penalty to be imposed against the owner, operator, and the officials who have direct control and management of such recruitment agency shall be *reclusion temporal* in its maximum period and a fine of Five hundred thousand pesos (P500,000.00). The license of the recruitment agency will be revoked and said agency will be banned perpetually from engaging in the subject business. The principals, accomplices, and accessories shall be held liable under paragraph (b), Section 4 of this Act.
- (g) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counselling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments, or other individuals or groups, who fail to observe the prescribed procedures and the requirements as provided for by laws, rules, and regulations, shall be held administratively liable, without prejudice to possible criminal liability should the evidences indicate that they have directly or indirectly committed any of the offences listed in Section 3 of this Act.

Sec. 5. *Counselling, Intervention, and Rehabilitation Programs.* The Government shall establish and implement counselling programs for victims of prostitution and trafficking, as well as in intermarriages. For this purpose, the following agencies are hereby mandated to implement the following programs:

- (a) Department of Social Welfare and Development - shall implement counselling programs and rehabilitation programs for victims of prostitution, domestic violence, and trafficking. This agency shall establish rehabilitation centres in various parts of the country and mobilise private sector support in generating resources and support to these initiatives.
It shall develop a system for accreditation among non-government organisations for purposes of establishing centres and programs for intervention in various levels of the community.
- (b) Department of Foreign Affairs - This agency shall make available its resources and facilities available overseas for victims of trafficking and domestic violence. It shall likewise maintain an inventory of existing support, counselling, and

rehabilitation programs, and other services overseas to assist victims of trafficking and domestic violence.

As such, this department shall establish working and effective linkages with agencies, offices, individuals, and organisations overseas that provide these services to women.

- (c) Department of Labor and Employment - This agency shall establish counselling centres, in coordination with DSWD for victims of trafficking through illegal recruitment.
- (d) Commission on Filipinos Overseas - This agency shall establish and implement a pre-marriage, on-site, and pre-departure counselling program for women in intermarriages, as authorised under its existing mandate and structure. It shall establish the necessary guidelines, rules, and regulations for this purpose. CFO shall continue to conduct guidance and counselling services as pre-departure requirement, and as a pre-requisite to the issuance of passports to Filipino fiancées and spouses of foreign nationals. It shall develop and implement guidance and counselling services locally and abroad, through an expanded system of representation, in order to adequately prepare Filipino fiancées and spouses of foreign nationals for their settlement and integration overseas.

Sec. 6. *Pre-marriage counselling.* Filipino women, between the age of eighteen (18) to twenty five (25), who are marrying foreign nationals and who are applying for marriage license in consonance with the provisions of the Family Code of the Philippines, shall be required to undergo pre-marriage counselling.

In addition to the requirements for the issuance of a marriage license as provided for in the Family Code, they shall be required to submit a counselling certificate issued by the Commission on Filipino Overseas (CFO) or by a marriage counsellor duly accredited by CFO, to the effect that the Filipino has undergone marriage counselling. Marriage license shall not be issued without this counselling certificate. Other requirements, in consonance with the counselling program shall be instituted.

This may include documentary and other requirements essential to the counselling process for purposes of ensuring the best interest and protection of the Filipina.

Sec. 7. *Accreditation of Counsellors and Counselling Centres.* CFO shall develop a system for the accreditation of counsellors and counselling centres for in consonance with efforts to expand the coverage of social services and involve the non-Government organisations in efforts to address the problems of trafficking in women.

The accredited counsellors and counselling centres will extend the pre-marriage counselling and on-site counselling as discussed in the foregoing Section. For this purpose, CFO shall establish the guidelines, conditions, requirements, and accountability mechanism for this accreditation system and the conduct of counselling services by the private sector.

To sustain the viability of this effort, CFO may authorise the accredited counselling centres and counsellors to charge fees which the former will prescribe.

The accredited counselling centres and counsellors shall in no way charge nor collect fees or impose requirements other than those to be prescribed by CFO. They shall conform with the specific requirements and conditions as stipulated in the guidelines to be established by CFO. Violators to this effect shall be charged-accordingly.

Sec. 8. *Inter-agency Council Against Trafficking.* There, is hereby established an Inter-Agency Council Against Trafficking. This Council shall be chaired by the Secretary of Foreign Affairs and shall have the following as members:

- (a) Secretary of Social Welfare and Development
- (b) Secretary of Interior and Local Government
- (c) Secretary of Tourism
- (d) Secretary of Labor and Employment
- (e) Secretary of Department of Education, Culture and Sports
- (f) Secretary of Justice
- (g) Chairperson, National Commission on the Role of Filipino Women
- (h) Chairperson, Commission on Human Rights
- (i) Director-General, Technical Education and Skills Development Authority
- (j) Executive Director, Commission on Filipino Overseas
- (k) Commissioner, Bureau of Immigration
- (l) Director, National Bureau of Investigation
- (m) Administrator, Philippine Overseas Employment Administration
- (n) Three (3) representatives from women's non-government organisations (NGOs) with a track record of involvement in the prevention of trafficking in women. These representatives shall be nominated by the government agency representatives of the council created herein, for appointment by the President for a term of three years.

Members of the Council may designate their representatives to meetings who shall have a rank of no lower than an Assistant Secretary or equivalent.

Sec. 9. *Functions of the Council.* Council shall have the following powers and functions:

- (a) Formulate a comprehensive program to suppress the trafficking in women and girls;
- (b) Promulgate rules and regulations as in maybe necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in women;
- (e) Coordinate the conduct of massive information dissemination and the various issues and problems attendant to trafficking through the Local Government Units, agencies concerned, and Non-Government Organisations;

- (f) File cases against individuals, agencies, institutions, or establishments that violate the provisions of this Act;
- (g) Formulate a program for the rehabilitation of returning victims in cooperation with DOLE, TESDA, CHED, DSWD, and Local Government Units and NGOS;
- (h) Take steps through the Local Government Units to intensify the apprehension of local violations of Article 341 of the Revised Penal Code, and to receive the fines exacted from them;
- (i) Secure from any department, bureau, office, agency, or instrumentality of the government such assistance as may be needed;
- (j) Coordinate the conduct of research efforts on the trafficking of women as basis for policy formulation and recommendation;
- (k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking and sexual exploitation in women and girls;
- (l) Recommend measures to eliminate international trafficking in Filipino women and girls through bilateral and/or multilateral arrangements; and
- (m) Exercise all the powers and perform such other functions necessary to attain the purpose and objectives for which the Council is organized.

Sec. 10. *Secretariat to the Council.* The Department of Foreign Affairs shall establish the necessary secretariat for the council.

Sec. 11. *Community Education.* The members of the Council as identified in this Act shall jointly implement and conduct community awareness and education programs to enhance public understanding on the issues attendant to migration, and trafficking in women, in particular. For this purpose, Migrants Advisory and Information Network (MAIN) Desks shall be established in all local government units in existing regional as well as provincial off-ices of the member-agencies of the Council.

Community education shall be used as a principal strategy in promoting public awareness on the issues of trafficking in women, as well as in generating support to efforts aimed at Suppressing the trafficking in women and other attendant issues.

Sec. 12. *Legal Protection of Trafficked Victims.* Victims of trafficking and/or forced labour and slavery like practices shall not be imprisoned or detained for facts relating to their predicament.

Sec. 13. *Legal Assistance Fund.* The victims of trafficking shall be considered under the category "overseas Filipino in distress" and may avail of the Legal Assistance Fund created by Republic Act No. 8042, subject to Guidelines as provided by law.

Sec. 14. *Repatriation of Victims in Trafficking.* The Department of Foreign Affairs shall have the primary responsibility for the repatriation of traffic victims.

Sec. 15. *Reporting Requirements.* The council created under this Act shall submit to the President of the Philippines and to Congress a bi-annual report on the policies, programs, and activities relative to the implementation of this Act.

Sec. 16. *Funding.* The amount needed to implement the provisions of this Act shall be charged against the current year's appropriations of the respective agencies concerned. Thereafter, such sums as may be necessary for the continuous implementation of this Act shall be included in the annual General Appropriations Act.

Sec. 17. *Implementing Rules and Regulations.* The appropriate member agencies of the Inter-Agency Council Against Trafficking shall draft the necessary implementing rules and regulations within sixty (60) days upon the effectivity of this Act.

Sec. 18. *Non-restriction of Freedom of Speech and of Association.* Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association for purposes not contrary to law as guaranteed by the Constitution.

Sec. 19. *Repealing Clause.* All laws, presidential decrees, executive orders, and rules and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

Sec. 20. *Separability Clause.* If for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

Sec. 21. *Effectivity.* This Act shall take effect immediately upon its approval.

Anti-Trafficking Bill (House of Representatives Bill No. 7199)

Sec. 1. Title. This Act shall be known as *the "Anti-Trafficking in Filipino Women and Minors Act of 1999"*.

Sec. 2. Declaration of State Policies. It is hereby declared that the State values the dignity of every human person and guarantees the respect of human rights. Likewise, the State recognizes the equal rights of men and women. In pursuit of this, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity. Women and children shall be afforded protection against violence and exploitation, and definite measures will be taken to eliminate the trafficking in Filipino women and minors.

It shall likewise be the policy of the State to promote an active and visible policy of mainstreaming gender perspective in all efforts aimed at addressing the attendant issues to migration and violence against women and minors.

The State shall afford protection to women and minors who are most vulnerable to exploitation and shall provide services to support the victims of exploitation, violence, and trafficking, including those who are threatened or endangered by circumstances owing to their status and conditions in life.

Specific measures will be instituted, not only to support victims of trafficking, but more importantly, to mitigate pressures for involuntary migration and servitude by women and minors.

Sec. 3. Definition of Terms.

- (a) Trafficking in women and minors - shall refer to acts involved in the recruitment, transfer, or deployment of women and minors through legal or illegal means with or without the victims consent, or knowledge within or across national borders for purposes of prostitution, work or services, marriage or adoption as provided for in RA 8043 including other similar arrangements characterised by forced labor and slavery-like practices, sexual exploitation and other similar acts with attendant coercion, violence, threat of violence, abuse of authority, debt-bondage, deception, and other forms of coercion as well as acts hereinafter specifically provided for in this Act.
- (b) Minors - refer to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.
- (c) Prostitution - as provided for in this Act, is the sale, purchase and exchange of women and minors for sexual exploitation, cash, profit or other economic considerations by an individual, including but not limited to, the pimp, procurer of the service, parents, owners of establishments such as disco bars, sauna baths, massage clinics, hotels and restaurants, and any other person who use various schemes to prostitute women or minors.
- (d) Work or Services - includes all domestic, sexual or other services rendered, regardless of whether these services are recognized as work covered by an employment contract or not, including those that take place as a result of marriage.

- (e) Forced Labor and Slavery-Like Practices - refer to the extraction of work or services from any woman and minor by means of enticement, violence or threat of violence, including deprivation of freedom, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion.

Sec. 4. *Acts of Trafficking in Women and Minors.* It shall be unlawful for any person or groups to commit any of the following acts:

- (a) To recruit women and minors for purposes of prostitution or forced labor and slave-like practices, under the pretext of lawful domestic or foreign employment;
- (b) To offer or contract marriage with women and minors for purposes of offering, selling, or trading them to engage in illicit sexual activities or prostitution, or to subject them to forced labor or slavery-like practices;
- (c) To introduce or match for a fee, profit, or any other material or economic consideration, any Filipino woman to a foreign national for marriage under a mail-order bride scheme as provided under Republic Act No. 6955, for the purpose of prostitution or forced labor or slavery-like practices, making the preceding as aggravating circumstance, thereby making it punishable under this Act.

Mail-order bride scheme shall refer to the process of matching for a fee, profit, or any material and economic consideration, Filipino women for marriage to foreign nationals through the use of various recruitment and advertising activities or techniques, utilizing various platforms for communication such as tri-media facilities, information technology, and even personalized marketing or direct selling;

- (d) To advertise, publish, print or distribute, or cause the advertisement, publication, printing, broadcasting, or distribution of any brochure, flyer, or any propaganda material, including through information technology, like the internet, calculated to promote trafficking in women and minors through marriage or other similar relationships with foreign nationals;
- (e) To entice, encourage, persuade a person by fraud or by deceit, coercion, intimidation, or by abuse of any position of confidence or authority or having legal charge, including use of parental, sibling, and other authority by family relationship, to solicit for prostitution or forced labor;
- (f) To maintain and hire women and minors to provide sexual services to foreign nationals through organized sex tours and travel plans to the Philippines;
- (g) Through promises, threats, violence or any device or scheme, to procure, induce, persuade, entice a woman or minor to indulge in illicit sexual activities or to work in a club, place of entertainment or establishment with the knowledge that such club, place of entertainment or establishment is used for any such purpose;
- (h) To recruit women and minors to provide the military forces with sexual services;
- (i) To adopt or facilitate the adoption of Filipino minors pursuant to Republic Act No. 8043 or other similar practices for purposes of forced-labor and slavery-like practices or sexual exploitation, making the preceding as aggravating circumstance, thereby making it punishable under this Act.

Sec. 5. *Related Acts.* The following related acts which promote trafficking in women and minors shall likewise be declared unlawful:

- (a) To undertake sex tours and travel plans consisting of tourism packages or activities utilizing and offering women and minors for sexual services;
- (b) To lease or sublease any dwelling house, with the knowledge that the lessee/sub-lessee will use it for prostitution, bonded labor and slavery-like practices;
- (c) To produce, print, and issue or distribute unissued, tampered, or fake counselling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements;
- (d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing Filipinos; and
- (e) To facilitate, assist and help in the exit of women and minors from the country at international and local airports, and seaports who are in possession of unissued, tampered or fake travel documents.

Sec. 6. Confidentiality. At any stage of the investigation, prosecution and trial of a complaint against trafficking in women and minors, the police officer, prosecutor, the judge, as well as the parties to the complaint shall recognize the right to privacy of the offended party and the accused. Towards this end, the police officer, prosecutor, or the judge to whom the complaint has been referred may, whenever necessary to ensure fair and impartial proceeding and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial, and that the name and personal circumstances of the offended party and/or the accused, or any other information tending to establish their identities and such circumstances or information on the complaint shall not be disclosed to the public.

It shall likewise be unlawful for any editor, publisher, announcer or producer in case of television, producer and director of a film in the case of the movie industry, to cause undue and sensationalized publicity of any case of trafficking in women and minors that shall result to the moral degradation, humiliation and defamation of the victim.

Sec. 7. Prosecution Of Cases. Any person who has knowledge of the commission of any act as enumerated herein may file a complaint for trafficking.

Sec. 8. Penalties and Sanctions. The following penalties and sanctions are hereby established for the offences enumerated in Sections 4 and 6;

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 hereof shall suffer the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* and a fine of not less than One Million Pesos (P1,000,000.00) nor more than Two Million Pesos (P2,000,000.00). Provided that if the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country again. Provided, further, that the Philippines shall enter into bilateral agreements to ensure prosecution of foreigners in other jurisdictions.
- (b) If the offender is an agency, corporation, association, club or establishment, or any place of entertainment committing any of the acts enumerated in Section 4, the owner, president, head manager, or any responsible official shall suffer the

penalty of *reclusion temporal* in its medium period to *reclusion perpetua* and a fine of not less than One Million Pesos (P1,000,000.00) nor more than Two Million Pesos (P2,000,000.00). The registration with the Securities and Exchange Commission and license to operate of the agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked.

- (c) Any person who shall commit any of the related acts as enumerated under Section 5 shall suffer the penalty of *prision mayor* in its medium period to *reclusion temporal* in its minimum period and a fine of not less than Five Hundred Thousand Pesos (P500,000.00) nor more than One Million Pesos (P1,000,000.00).
- (d) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counselling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments, or other individuals or groups, who fail to observe the prescribed procedures and the requirements as provided for by laws, rules, and regulations, shall be held administratively liable, without prejudice to possible criminal liability should the evidences indicate that they have directly or indirectly committed any of the offenses listed in Section 5 of this Act.
- (e) Any editor, publisher, announcer or producer in case of television, producer and director of a film in the case of the movie industry, tri-media facilities and information technology, who violate Sec. 6 of this Act shall be liable for damages. When the offended party is a child below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Sec. 9. *Programs that Address Trafficking in Women and Minors.* The Government shall establish and implement preventive, rehabilitative and protective programs for victims of trafficking, forced labor and prostitution. For this purpose, the following agencies are hereby mandated to implement the following programs:

- (a) Department of Foreign Affairs (DFA) - shall make available its resources and facilities overseas for victims of trafficking regardless of their manner of entry to the destination country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas.
- (b) Department of Social Welfare and Development (DSWD) - shall implement counselling programs for victims of trafficking. It shall provide temporary shelter to traffic victims in need. It shall develop a system for accreditation among non-government organizations for purposes of establishing centers and programs for intervention in various levels of the community.
- (c) Department of Labor and Employment (DOLE) - shall ensure the strict implementation of rules and guidelines relative to the employment of women locally and overseas. It shall likewise monitor, document and report cases of trafficking in women and minors involving labor recruiters and recommend appropriate sanctions to the Department of Justice.
- (d) Department of Tourism (DOT) – shall formulate corrective and enforcement measures to stop sex tourism packages which contribute to the increase in the trafficking of women and minors.

- (e) Department of Education, Culture and Sports (DECS) and the Commission on Higher Education (CHED) – shall integrate in the subject on social studies core messages on migration and trafficking in elementary, secondary and tertiary levels with emphasis on their implications and social costs to Filipino women.
- (f) Department of Justice (DOJ) – shall initiate the filing of complaints involving trafficking in women as defined in this Act and shall ensure the prosecution of guilty parties.
- (g) Department of Health (DOH) – shall make available its resources and facilities in providing confidential health care to trafficked victims.
- (h) Department of the Interior and Local Government (DILG) – shall institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in women and minors.
- (i) Local Government Units (LGUs) – shall monitor and document cases of trafficking in women and minors in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act, and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in women and minors through the establishment of a Migrants Advisory and Information Network (MAIN) desks in municipalities/provinces in coordination with Department of the Interior and Local Government (DILG), Philippine Information Agency (PIA), the Commission on Filipino Overseas (CFO), and other concerned agencies and non-government organizations. They shall encourage and support community based initiatives which address the trafficking in women and minors.
- (j) Commission on Filipinos Overseas (CFO) - shall establish and implement a pre-marriage, on-site, and pre-departure counselling program for women in intermarriages, as authorized under its existing mandate and structure. For this purpose, it shall establish a network of service providers from the national government, local government units, civic and private organizations, and other community workers for purposes of providing accessible pre-marriage counselling services to the public, this network shall be developed and operationalized through a system of accreditation to be undertaken by CFO. It shall establish the necessary guidelines, rules and regulations for this purpose.
The CFO shall continue to conduct guidance and counselling services as a pre-departure requirement, and as a pre-requisite to the issuance of passports to Filipino fiancées and spouses of foreign nationals. It shall develop and implement guidance and counselling services locally and abroad, through an expanded system of representation, in order to adequately prepare Filipino fiancées and spouses of foreign nationals for their settlement and integration overseas and extend necessary intervention to Filipinos in intermarriages in times of distress.
- (k) Commission on Human Rights (CHR) – shall conduct advocacy and training programs relating to women’s rights; investigate, monitor and help the state prosecutor in cases involving women victims of human rights violations; grant financial assistance to victims of human rights violations in accordance with CHR Resolution No. 96-060.
- (l) National Commission on the Role of Filipino Women (NCRFW) – shall actively participate and coordinate the formulation of policies addressing the issue of

trafficking in women and minors in its policy documents as well as its special concerns.

- (m) Bureau of Immigration (BI) – shall ensure compliance by the Filipino fiancées and spouses of foreign nationals proceeding abroad to assume permanent residency with the guidance and counselling requirement as provided for in this Act.

The BI shall strictly adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure.

- (n) National Bureau of Investigation (NBI) – shall conduct surveillance, monitor and investigate recruiters, travel agencies, hotels and other establishments suspected to be engaged in trafficking in women and minors in coordination with the Department of Social Welfare and Development (DSWD), the Bureau of Immigration (BI), Local Government Units (LGUs), and non-governmental organizations; and take appropriate measures in the prosecution of violators.

The NBI shall step-up its coordination and cooperation with the International Police Organization (INTERPOL) in the elimination of transnational trafficking.

- (o) Philippine Overseas Employment Administration (POEA) – shall formulate and implement a system of providing legal and financial assistance to women and minor victims of trafficking who are undocumented, in addition to its original mandate.

Sec. 10. *Legal Protection of Trafficked Victims.* Victims of trafficking and/or forced labor and slavery-like practices shall not be imprisoned or detained for facts relating to their predicament.

Sec. 11. *Inter-Agency Council Against Trafficking.* There is hereby established an Inter-Agency Council Against Trafficking. This Council shall be chaired by the Secretary of Foreign Affairs and co-chaired by the Secretary of Department of Social Welfare and Development and shall have the following as members:

- (a) Secretary, Department of Labor and Employment
- (b) Secretary, Department of Tourism
- (c) Secretary, Department of Education, Culture, and Sports
- (d) Secretary, Department of Justice
- (e) Secretary, Department of Health
- (f) Secretary, Department of the Interior and Local Government
- (g) Executive Director, Commission on Filipinos Overseas
- (h) Chairperson, Commission on Human Rights
- (i) Chairperson, National Commission on the Role of Filipino Women
- (j) Commissioner, Bureau of Immigration
- (k) Director, National Bureau of Investigation
- (l) Administrator, Philippine Overseas Employment Administration
- (m) Administrator, Overseas Worker's Welfare Administration
- (n) Administrator, National Statistics Office
- (o) Director-General, Technical Education and Skills Development Authority
- (p) Director General, Philippine National Police
- (q) Executive Director, Philippine Information Agency
- (r) Three (3) representatives from women's non-government organizations (NGOs) with a track record of involvement in the prevention of trafficking in women and

minors. These representatives shall be nominated by the government agency representatives of the Council created herein, for appointment by the President for a term of three (3) years.

Members of the Council may designate their representatives to meetings who shall have a rank no lower than an Assistant Secretary or its equivalent.

Sec. 12. *Functions of the Council.* The Council shall have the following powers and functions:

- (a) Formulate a comprehensive program to suppress the trafficking in women and minors;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in women and minors;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the local government units, agencies concerned, and Non-Government Organizations;
- (f) Recommend to file cases against individuals, agencies, institutions, or establishments that violate the provisions of this Act;
- (g) Formulate a program for the re-integration of victims in cooperation with DOLE, TESDA, CHED, DSWD, LGUs and NGOs;
- (h) Take steps through the local government units to intensify the apprehension of local violations of Article 341 of the Revised Penal Code, and to receive the fines exacted from them;
- (i) Secure from any department, bureau, office, agency, or instrumentality of the government such assistance as may be needed;
- (j) Complement the shared government information system for migration established under Republic Act 8042 with data on cases of trafficking in Filipino women and minors, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in women and minors which shall form the basis for policy formulation and program direction;
- (k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking and sexual exploitation in women and minors;
- (l) Recommend measures to eliminate international trafficking in Filipino women and minors through bilateral and/or multilateral arrangements; and
- (m) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives for which the Council is organized.

Sec. 13. *Secretariat to the Council.* The Department of Foreign Affairs shall establish the necessary secretariat for the Council.

Sec. 14. *Other Services for Trafficked Victims.*

- (a) Legal Assistance Fund - The victims of trafficking shall be considered under the category "Overseas Filipino in Distress" and may avail of the Legal Assistance Fund created by Republic Act 8042, subject to guidelines as provided by law.

- (b) The Country Team Approach - The country approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine Embassies abroad shall provide protection of victims of trafficking insofar as the promotion of their welfare, dignity and fundamental rights are concerned.
- (c) Overseas Filipino Resource Centers - The services available to overseas Filipinos as provided for by Section 19 of Republic Act No. 8042 shall also be extended to trafficked victims regardless of their legal status in the destination country.

Sec. 15. *Repatriation of Victims in Trafficking.* The Department of Foreign Affairs with the Overseas Workers and Welfare Administration shall have the primary responsibility for the repatriation of trafficked victims.

Sec. 16. *Reporting Requirements.* The Council created under this Act shall submit to the President of the Philippines and to Congress an annual report on the policies, programs, and activities relative to the implementation of this Act.

Sec. 17. *Funding.* The amount needed to implement the provisions of this Act shall be charged against the current year's appropriations of the respective agencies concerned. Thereafter, such sums as may be necessary for the continuous implementation of this Act shall be included in the annual General Appropriations Act.

Sec. 18. *Implementing Rules and Regulations.* The appropriate member agencies of the Inter-Agency Council Against Trafficking shall formulate the necessary implementing rules and regulations within sixty (60) days upon the effectivity of this Act.

Sec. 19. *Non-restriction of Freedom of Speech and of Association.* Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association for purposes not contrary to law as guaranteed by the Constitution.

Sec. 20. *Repealing Clause.* All laws, presidential decrees, executive orders, and rules and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

Sec. 21. *Separability Clause.* If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

Sec. 22. *Effectivity.* This Act shall take effect immediately upon its approval.

[Not yet approved]

Appendix 3: Draft Anti-Organised Crime Bill

Racketeer-Influenced and Corrupt Organizations Bill

Sec. 1. Title of the Act. This Act shall also be known as the “Racketeer-Influenced and Corrupt Organizations (RICO) Act of 1998”.

Sec. 2. Declaration of Policy. It is the policy of the State to promote and maintain a sound economy anchored on legitimate business enterprises and transactions and fueled by honest capital derived from legitimate and lawful sources and activities. It is likewise the policy of the State to curb organized and sophisticated crimes and the laundering of the proceeds of these crimes into legitimate business and activities by depriving the criminals the opportunity to enjoy the proceeds of their wrongdoings.

Sec. 3. Liberal Construction. The provisions of this Act shall be liberally construed to effectuate the policy declared under this Act. However, the constitutional rights of any person accused under this Act shall not be impaired.

Sec. 4. Definitions. For purposes of this Act, the words and phrases used herein shall, unless the context indicated otherwise, mean and understood to mean as follows:

- a) “Person” is any individual, association, partnership, corporation, entity or any group of individuals, associations, corporations or entities.
- b) “Enterprise” is any legitimate business or establishment formed as corporation, partnership, single proprietorship, formal or informal association, or as a group of individuals whether possessed of juridical personality or not.
- c) “Racketeering activity” means:
 - (i) any of the following offenses penalized under the Revised Penal Code: murder (Art. 248);homicide (Art.249), kidnapping (Art. 267, as amended by RA 7659), slavery (Art. 272), fraudulent insolvency (Art. 314), estafa (Art. 315), destructive arson (Art. 320 to 326-B, as amended by P.D. No. 1613, PD No. 1944 and RA 7659), robbery (Arts. 293 to 303) brigandage (Arts. 306 to 307), theft (Arts. 308 to 310); corruption of minors (Art. 340), white slave trade (Art. 341), or incriminating machinations (Art. 363), punished by the Revised Penal Code;
 - (ii) any of the following offenses punishable under Title Four, (Crimes Against Public Interest) Chapter One (Forgeries), Sections 1 to 4 and 6, of the Revised Penal Code: counterfeiting the great seal of the Government of the Philippine Islands, forging the signature or stamp of the Chief Executive (Art. 161), using forged signature or counterfeit seal or stamp (Art. 162), making and importing and uttering false coins (Art. 163), mutilation of coins, (Art. 164), selling of false or mutilated coins, without connivance (Art. 165), forging treasury or bank notes, or other documents payable to bearer (Art. 166), counterfeiting, importing, and uttering instruments not payable to bearer (Art. 167), illegal possession and use of false treasury or bank notes or other instruments of credit (Art. 178), falsification of public documents (Art. 170), falsification of public officer, employee, or notary or ecclesiastical minister (Art. 171), falsification by private individual and use of falsified documents (Art. 172), falsification of wireless, cable, telegraph

and telephone messages, and use of said falsified messages (Art. 173), false medical certificates, false certificates of merits or service, etc. (Art. 174), using false certificates (Art 175), manufacturing and possession of instruments or implements for falsification (Art. 176); and Chapter Three (Frauds), Sections One (Machinations, Monopolies and Combinations) and Two (Frauds in Commerce and Industry), all of the Revised Penal Code; any act which is indictable under the National Internal Revenue Code, as amended, in connection with the collection of taxes and other revenues due to the government and under R.A. No. 1935, as amended by P.D. No. 84, "The Tariff and Customs Code", such as tax evasion and technical smuggling; any act penalized under Title I, Chapters I, II and III of P.D. No. 442, "The Labor Code of the Philippines", as amended by P.D. No. 2018 and R.A. No. 8042 ("The Migrant Workers and Overseas Filipinos Act of 1995"), dealing with large-scale illegal recruitment and illegal placement of Filipino workers abroad;

- (iii) "Graft and corrupt practices", such as those acts which are penalized under Title Seven (Crimes Committed by Public Officers), Chapters Two (Malfeasance and Misfeasance in Office), Three (Frauds and Illegal Exactions and Transactions) and Four (Malversation of Public Funds or Property), all of the Revised Penal Code; any act indictable under the provisions of R.A. No. 3019, "The Anti-Graft and Corrupt Practices Act", as amended; "Plunder" as defined under R.A. No. 7080, as amended by R.A. 7659; and
 - (iv) violation of special penal laws against illegal possession of firearms, ammunition or explosives, and gun running (P.D. No. 1866 as amended by R.A. 8294); gambling and betting, cockfighting, (P.D. No. 1602), and transmission of gambling information; carnapping (R.A. No. 6539 as amended by R.A. No. 7659); fencing (P.D. No. 1612); illegal logging (P.D. No. 705); illegal fishing (P.D. No. 704); illegal quarrying (RA 7942); importation, manufacture, sale, administration, delivery, distribution and transportation, or otherwise dealing in narcotic or other dangerous drugs (R.A. No. 6425, as amended by P.D. Nos. 44, 1675, 1683, 1708, B.P. Blg. 170, and R.A No. 7659), falsification/forgery of land titles (Sections 118-119, Act No. 496, as amended); securities (B.P. Blg. 178, as amended), bank frauds (R.A. No. 7653, "The New Central Bank Act", in relation to R.A. No. 7400 amending R.A No. 3591, "The Charter of the Philippine Deposit Insurance Corporation"); insurance fraud, murder for insurance, insurance license franchising; sexual and economic exploitation of children (R.A. No. 6710); economic exploitation of the disabled and the mendicants (P.D. No. 1563); professional squatting (R.A. Nos. 772 and 7279); unauthorized or illegal wiretapping (R.A. No. 4200); obstruction of criminal justice and tampering with evidence (P.D. No. 1829); violation of immigration laws by syndicates; electronic and computer software piracy and/or fraud; large scale estafa, black marketing and hoarding, and cartels; and anti-trusts schemes, practices and devices.
- d) "Pattern" of racketeering activity requires at least two (2) predicate acts of racketeering activity, one of which occurred after the effectivity of this Act and the other occurring either within ten (10) years before the one occurring after the

effectivity of this Act or within ten years after the one occurring after the effectivity of this Act.

- e) "Racketeering investigator" is a prosecutor so designated by the Secretary of Justice who shall be charged with the duty of enforcing or carrying into effect this Act and who shall also serve as racketeer document custodian.
- f) "Dummy" is a person secretly acting for another who is apparently representing his own interests, tool of another.
- g) "Sequestration" means taking into custody by the court of any asset, fund, or other property, as well as relevant records, papers and documents in order to prevent their concealment, destruction, impairment, or dissipation pending the determination whether the said asset, fund or property is ill-gotten or a result of any illegal activities punished under this Act.

Sec. 5. Prohibited Activities. It shall be unlawful for any person to: Knowingly participate, either directly or indirectly with or in an enterprise conducting a pattern of racketeering activity.

Receive any money or property derived directly or indirectly, from a pattern of racketeering activity, or act as dummy of any person in order to hide or conceal money or property acquired through racketeering activities as defined herein.

Use or invest directly or indirectly, any part of the money or property received or derived, directly or indirectly, from a pattern of racketeering activity in any interest in or the establishment or operation of any business.

Acquire or maintain through a pattern of racketeering activity, directly or indirectly any interest in or control of any business enterprise.

Conspire in the conduct of any unlawful acts provided herein.

Sec. 6. Penalties. Any person who commits any of the prohibited activities under Section 5 of this Act shall, upon conviction, be penalized by imprisonment of not less than ten (10) years nor more than twenty (20) years and if found guilty of a racketeering activity for which the maximum penalty includes life imprisonment or death, the penalty shall be life imprisonment or death, and a fine of not less than One Hundred Thousand Pesos (P100,000.00) nor more than One Million Pesos (P1,000,000.00).

Sec. 7. Forfeiture. In addition to penalties provided in the preceding Section, any person convicted of any prohibited activities provided under Section 5 hereof shall forfeit in favor of the Philippine Government:

1. any interest acquired or maintained through racketeering activity or a pattern of racketeering activity;
2. any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which any person has established, operated, controlled, conducted, or participated in the conduct of such unlawful acts; and
3. any property constituting, or derived from any proceeds which the person obtained directly or indirectly, from racketeering activities.

All rights, titles and interest in property described in the preceding paragraph shall be vested in the Philippine government upon the commission of the act giving rise to forfeiture under this Section. The manner of disposition thereof shall be in accordance with Section 14 of this Act.

Sec. 8. *Jurisdiction.* Any of the regional trial courts of the place where any element of any of the racketeering activity constituting the pattern of racketeering activity has been committed including those with jurisdiction over heinous crimes, shall have jurisdiction over cases filed under this Act and applications for forfeiture including petitions for temporary restraining order or injunction under the next succeeding section regardless of the location of any property subject to forfeiture or where the person resides or where the enterprise is located.

Sec. 9. *Sequestration.* All known properties of the defendant shall be subject to sequestration upon the filing of a criminal complaint against him by the Department of Justice.

Sec. 10. *Temporary Restraining Order.* A temporary restraining order effective for sixty (60) days may be issued upon application by the Secretary of the Department of Justice without notice or opportunity for a hearing before, during or after the filing of the information directing the defendant or any person acting on his behalf to desist from disposing and to preserve the availability of the property for forfeiture, if the Philippine government demonstrates that there is probable cause to believe that the property would be subject to forfeiture and that the provision of notice will jeopardize the availability of the property for forfeiture.

Sec. 11. *Preliminary Injunction.* Within sixty (60) days after the issuance of a temporary restraining order, the court shall conduct a hearing with notice to all parties concerned. A writ of preliminary injunction shall be issued if the court determines that:

- a) There is substantial probability that the Philippine government will prevail on the issue of forfeiture and that failure to issue the writ will result in the property being destroyed, removed, disposed of or otherwise made available for forfeiture; and
- b) The need to preserve the availability of the property through the writ outweighs the hardship on any party against whom it is directed.

Sec. 12. *Evidence Required.* In the hearing for the prosecution of cases filed under this Act, the sole testimony of a participant or conspirator, if credible, can be the basis for conviction of the other defendants: Provided That, for purposes of the hearing for the writ of preliminary injunction, the court shall not be bound by the technical rules on evidence under the rules of court; Provided further, that the evidence was taken without violating the constitutional rights of the accused.

Sec. 13 *Judgment of Forfeiture.* Upon conviction of person under this section, the court shall enter a judgment of forfeiture of the property in favor of the Philippine government and shall authorize the Secretary of Justice to seize all properties ordered forfeited: Provided, That the judgment of forfeiture in the original case shall be without prejudice to the right of the government to initiate further forfeiture proceedings on

properties of the accused which may later on be discovered as part of the proceeds of the commission of the crime of racketeering.

Sec. 14. *Disposition of Forfeited Property.* Following the seizure of the property, the Secretary of Justice shall direct the disposition of the property by sale or any other commercially feasible means pursuant to existing laws, rules and regulations on the sale of government properties. Any property, right or interest not exercisable by or transferable for value to the Philippine government shall expire and shall not revert to the defendant, nor shall the defendant or any person acting on his behalf be eligible to purchase forfeited property at any sale held by the Philippine government.

The proceeds of any sale or other disposition of property shall be deposited in the National Treasury under a special account and shall not be used until the defendant's appeal, if any, has finally been decided. If the defendant's conviction is reversed, the amount shall be returned to the defendant.

Sec. 15 *Restitution of Property to Victims.* The court entering the judgment of conviction and forfeiture, upon finality of the decision, shall hear petitions by victims of racketeering activity for restitution of property or compensation. The court may order portions of the proceeds of the sale of forfeited property deposited with the National Treasury to be paid to the victims.

Sec. 16. *Rights of Third Parties.* No party claiming an interest in property subject to forfeiture may:

- a) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property; or
- b) Commence an action at law or equity nor may any court issue a restraining order or injunction against the Philippine government concerning the validity of his alleged interest in the property subject to forfeiture.

However, any person, other than the defendant asserting a legal interest in property ordered forfeited may, within thirty (30) days from publication by the Secretary of Justice of the judgment for forfeiture in two (2) national papers of general circulation in the Philippines, petition the court for a hearing to adjudicate the validity of his alleged interest in the property.

If, after hearing, the court determines that the petitioner has established by preponderance of evidence that: a) the petitioner has legal rights, or interest in the property; or b) the petitioner is a bonafide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was acquired through a racketeering act or otherwise subject to forfeiture, the court shall amend the order of forfeiture in accordance with its findings.

Sec. 17. *Substitution of Other Properties.* The court shall order the substitution and/or forfeiture of any other property of the defendant equivalent to value of any property described in Section 7, if any of the said properties:

- a) Cannot be located upon the exercise of due diligence;
- b) Has been transferred or sold to a third party who acquired the same in good faith;

- c) Has been placed beyond the jurisdiction of the courts;
- d) Has been substantially diminished in value; or
- e) Has been commingled with other property which cannot be divided without difficulty.

Sec. 18. *Civil Remedies.* a) The Secretary of Justice may initiate civil action in any of the regional trial courts of the place where any element of any racketeering activity constituting a pattern of racketeering activity has been committed which shall have jurisdiction to prevent or restrain unlawful acts provided under Section 5 hereof, irrespective of where the person resides or is found or where the enterprise or property is located by issuing appropriate orders, including but not limited to:

- 1) Ordering any person to divest himself of any interest, direct or indirect in any enterprise;
- 2) Imposing reasonable restrictions on the future activities or investments of any person including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or
- 3) Ordering the dissolution or reorganization of any enterprise, making provision for the rights of innocent persons.

A final judgment rendered in favor of the Philippine government in any criminal proceeding shall be an estoppel for the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceedings brought by the Philippine government.

Any person injured in his person, business or property or his heirs, by reason of prohibited activities under Section 5 hereof, may sue therefor in the appropriate regional trial court as provided in the preceding paragraph and may be entitled to recover threefold the damages he sustains and the cost of the suit, including reasonable attorney's fees against all persons found guilty under this Act.

Sec. 19. *Expedited Action.* In any civil action instituted under the preceding Section, the regional trial court shall expeditiously try and hear the case, giving preference to the same over all other civil cases.

Sec. 20. *Subpoena Duces Tecum.*

- a) Whenever the Secretary of Justice has reason to believe that any person or enterprise may be in possession or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a criminal or civil proceedings, apply with the court for the issuance of a subpoena duces tecum thereon, requiring such person or enterprise to produce such materials for examination.
- b) Any person who has been duly served with subpoena duces tecum shall make available the required materials for inspection, copying or reproduction to the custodian designated therein at any place agreed upon and shall certify under oath that the copies are true reproductions of the original, which certified copies shall be admissible in court as originals.

- c) While in the possession of the custodian, no material so reproduced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Secretary of Justice.

Sec. 21. *Statute of Limitations.* One of the predicate acts of racketeering must have been committed within ten (10) years of the date of the information, otherwise violations of this Act shall be deemed to have prescribed.

Sec. 22. *Consolidation of Cases.* The trial for criminal liability for each predicate act of racketeering activity shall be consolidated with the court hearing the RICO case.

Sec. 23. *Repealing Clause.* All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby amended, repealed or modified accordingly.

Sec. 24. *Separability Clause.* If, for any reason or reasons, any part or provision of this Code shall be held unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Sec. 25. *Effectivity.* This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

