

# *The Impact of Human Trafficking in ASEAN: Singapore as a Case-Study*

Jaya ANIL KUMAR\*  
jayanilkumar@gmail.com

---

## Abstract

Southeast Asia remains a notorious hotbed for human trafficking. The seriousness of the problem has led to the emergence of various initiatives to combat human trafficking. This paper seeks to address why human trafficking in Southeast Asia remains a contentious issue despite the various initiatives put in place for its eradication. ASEAN Member States, including Singapore, can only resolve the current inertia when it comes to combatting trafficking-in-persons (TIP) by adopting a multidimensional, and multistakeholder approach to the problem. Within Singapore, it is recommended that the Prevention of Human Trafficking Act should be amended such that it provides greater protection for all types of trafficking victims. At the regional level, there is a need for greater collaboration and co-ordination amongst ASEAN bodies in tackling human trafficking, which must be accompanied by comprehensive monitoring, compliance, and enforcement mechanisms.

## I. INTRODUCTION

Southeast Asia has been known to be fertile ground for human trafficking, or trafficking-in-persons [TIP].<sup>1</sup> In 2015, the US TIP Report (hereinafter “US TIP Report 2015”)<sup>2</sup> placed Singapore, Malaysia, Myanmar, Laos, and Cambodia on its “Tier 2 watch list”,<sup>3</sup> and

---

\* LLB (Hons), National University of Singapore. Former Research Assistant, Singapore Management University School of Law. I would like to thank Jacintha Gopal, Gillian Seetoh, and Melody Christa Chen for their dedicated research assistance, and Singapore Management University’s Assistant Professor Mahdev Mohan for his guidance. I would also like to thank the anonymous reviewers for their comments on an earlier draft. All errors remain mine.

1. *Global Report on Trafficking in Persons 2014*, Report of the United Nations Office of Drugs and Crime (UNODC), United Nations Publication, Sales No. E.14.V.10, at 77–80 [*UNODC Global Report*]; Ashley BLACKBURN, Robert TAYLOR, and Jennifer DAVIS, “Understanding the Complexities of Human Trafficking and Child Sexual Exploitation: The Case of Southeast Asia” (2010) 20 *Women & Criminal Justice* 105 at 109.
2. U.S. Department of State, “Trafficking in Persons Report July 2015” (20 September 2015), online: U.S. Department of State <<https://www.state.gov/documents/organization/245365.pdf>>. The US TIP Report is an annual publication of the U.S. Department of State that details challenges related to TIP around the world, and ranks every country according to their domestic measures pertaining to TIP as well as introduces recommended measures on a country-specific level in a bid to improve collective standards in fighting TIP. The report is also part of the US initiative to foster common standards of TIP and to increase awareness of the adequacy and legitimacy of a country’s actions pertaining to the issue.
3. *Ibid.* Countries are ranked respectively on four tiers (Tiers 1 to 3, with Tier 2 watch list ranked after Tier 2) according to their compliance with American Trafficking Victims Protection Act [TVPA] minimum standards of TIP—Tier 2 watch list countries are listed as such because they do not fully comply with TVPA minimum standards and where: “a) the absolute number of victims of severe forms of trafficking is very

placed Thailand on its Tier 3 list. The US TIP Report is the predominant global barometer on anti-TIP initiatives. It indicates that half of the countries in the Association of Southeast Asian Nations [ASEAN] have made inadequate efforts to comply with the minimum standards for combatting TIP. There is an urgent need to identify the causes of this impasse in Southeast Asia, as well as the forces which continue to fuel TIP in the region.

Despite the relatively extensive efforts by the international community to combat TIP, it remains one of the most profitable international criminal activities.<sup>4</sup> The magnitude of this problem in the ASEAN region is largely due to increased globalization, and by extension, a greater involvement of transnational criminal groups perpetuating such activities.<sup>5</sup> Furthermore, increasing social and living costs in regional states provide a viable conduit for such groups to target politically or economically displaced people from within their own countries to further their own trafficking cause. These factors have contributed to the increase of TIP cases in ASEAN states.

The current prevalence of TIP in the region is not for want of regulations. There are a myriad of global and regional initiatives to combat TIP, championed by international organizations like the United Nations [UN] and ASEAN, which have been ratified or followed by a number of ASEAN countries. At the global level, these include the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children<sup>6</sup> (hereinafter “Palermo Protocol on Women and Children”), and the Protocol Against the Smuggling of Migrants by Land, Sea and Air<sup>7</sup> (hereinafter “Palermo Protocol on Smuggling”), which are part of the Convention Against Transnational Organized Crimes.<sup>8</sup> In this paper, the Palermo Protocol on Women and Children and the Palermo Protocol on Smuggling will collectively be referred to as the “Palermo Protocols”.<sup>9</sup> Regional oversight bodies include the ASEAN

---

significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or, c) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional steps over the next year.”

4. United Nations, “Trafficking in Women and Girls: Meeting the Challenge Together” (5 March 2007), online: United Nations <<http://www.un.org/webcast/pc2007.htm>>.
5. *Ibid.*
6. UN Doc A/55/383 (2000), chapter XVIII. This Protocol entered into force on 25 December 2003 and is implemented by the UNODC. The authority of the Protocol is implicit in its authority as one of two binding supplements to the Convention Against Transnational Organized Crime (cited below at fn 7) and commits signatory states in their prevention and tackling of TIP in order to meet common standards of anti-TIP measures. As at September 2015, there are 167 parties to the Protocol.
7. UN Doc. A/45/49 (2000), chapter XVIII. As mentioned above, this Protocol represents the other supplement to the Convention Against Transnational Organized Crime and came into force on 28 January 2004. This deals more broadly with the problem of large-scale TIP in relation to activities entered into by organized criminal groups. As of September 2015, there are 141 parties to the Protocol.
8. UN Doc. A/55/383 at 25 (2000). This Convention came into force on 29 September 2003, and along with the Palermo Protocols as defined above, is also supplemented by the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms. Parties are required to be signatories of the Convention before becoming parties to any of the Protocols listed, and, as of September 2015, there are 185 parties to the Convention. The purpose of the Convention is to foster and enhance international co-operation in dealing with the problems raised.
9. It should be noted that the term “Palermo Protocols” is commonly used to refer to three specific Protocols: the Palermo Protocol on Women and Children (UN Doc. A/55/383 (Annex II, p. 53)), the

Intergovernmental Commission on Human Rights [AICHR] and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children [ACWC]. Recently, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children [ACTIP] was signed by all ASEAN Member States.

Singapore is not immune to the ill-effects of TIP. Its location puts it within easy reach of other countries in the region. Thus, the island-state serves both as a destination for victims of TIP, and as a transit country for regional TIP operations.<sup>10</sup> There is thus a strong impetus for Singapore to ensure that it has adequate regulations to properly tackle TIP at the local and regional levels. Singapore has recently responded to this issue by enacting the Prevention of Human Trafficking Act 2014 [PHTA],<sup>11</sup> which, for the most part, conforms to international laws and standards that prohibit TIP. Shortly afterwards, Singapore also acceded to the Palermo Protocol on Women and Children.<sup>12</sup> While these steps reflect necessary progress, the effectiveness of Singapore's current TIP regime remains in question. This paper will critique the effectiveness of the PHTA and other local initiatives, which serve to regulate TIP.

The remainder of Part I will cover the pertinent facts and figures related to TIP in ASEAN. Part II examines the development of global and regional fora dedicated to combatting TIP. Parts III and IV embark on an in-depth legal analysis of TIP in Singapore, focusing on the recent PHTA and addressing the relevance of Singapore's periodic review by the United Nations Human Rights Council [UNHRC]. Part V canvasses potential areas of reform at the local and regional levels and reiterates the necessity of a context-sensitive regional action plan in looking forward.

### A. Facts and Figures on TIP in ASEAN

About one-third of the global trafficking trade, or about 200,000 women and children, are trafficked annually from Southeast Asia.<sup>13</sup> The majority of this trafficking occurs within the region, with sixty percent of the traffic re-entering major cities in the region.<sup>14</sup> All ASEAN nations, to some extent, serve as source, transit, or destination countries, depending on various pull or push factors that relate to the state in question.

---

Palermo Protocol on Smuggling (UN Doc. A/55/383 (Annex II, p. 53)) and a third protocol, the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (UN Doc. A/55/255). The third protocol will not be discussed in this paper. Therefore, the term "Palermo Protocols" in this paper refers only to the Trafficking and Smuggling Protocols.

10. U.S. Department of State, *supra* note 2 at 303.

11. No. 45 of 2014 [PHTA].

12. Ministry of Home Affairs of Singapore, "Singapore Accedes to the United Nations Trafficking in Persons Protocol" (29 September 2015), online: Ministry of Home Affairs <<https://www.mha.gov.sg/Newsroom/press-releases/Pages/Singapore-Accedes-to-the-United-Nations-Trafficking-in-Persons-Protocol.aspx>>.

13. Annuska DERKS, *Combating Trafficking in Southeast Asia—A Review of Policy and Programme Responses*, International Organisation for Migration Research Series No. 2 (2000), at 5.

14. *Ibid.*

The situation in Thailand is a troubling reflection of the seriousness of TIP in Southeast Asia. Historically, the impoverished northern regions of the country were the primary source of women and children trafficked for commercial sex work in Thailand's urban cities. This pattern has been somewhat altered in the 1990s by women being trafficked from neighbouring countries like Myanmar and Cambodia into Thailand.<sup>15</sup> Commercial sex work is also no longer the predominant cause for TIP, with nationals from the poorer countries in the Mekong subregion being trafficked for other types of work, like agricultural and factory work. As such, Thailand is now a receiving nation for trafficked migrant workers, while remaining a major provider for the international labour market.<sup>16</sup>

The trend experienced by Thailand is largely emblematic of the position of several Southeast Asian countries as a whole.<sup>17</sup> TIP for sexual exploitation is a rampant problem across Southeast Asia. In Indonesia, all of its thirty-four provinces are source and destination points for TIP.<sup>18</sup> Children are victims of sex trafficking in the Batam district of the Riau Islands and West Papua provinces.<sup>19</sup> Women and girls are also forced into prostitution close to mining operations in Maluku, Papua, and Jambi provinces.<sup>20</sup>

Likewise, in Vietnam, some women who go to foreign countries for internationally brokered marriages, mostly to China and increasingly Malaysia, are later forced into domestic labour or the sex trade.<sup>21</sup> In both Indonesia<sup>22</sup> and Vietnam<sup>23</sup>, it has been increasingly reported that trafficked victims meet their captors on the Internet. Men lure girls into relationships and coax them into travelling abroad, where they are trafficked for labour or sex.<sup>24</sup>

TIP for the purpose of forced labour is also an increasing trend. In particular, women trafficked for domestic servitude accounted for about sixty percent of the victims assisted by the International Organization for Migration in Indonesia between 2008 and 2010.<sup>25</sup> In Thailand, trafficking for forced labour accounted for more than twenty-five percent of the victims detected in 2011.<sup>26</sup> The UN Inter-Agency

---

15. *Ibid.*, at 16–17. The incidence of TIP cases in the region bring out the comparative severity of the problem particularly in ASEAN. The significance of this is the need to properly tackle such a regional issue in order to dramatically reduce the number of TIP cases globally.

16. *Ibid.*, at 17.

17. Whilst it has been observed that the problems of TIP differ in various countries due to economic, sociocultural, and historical factors (see Derks, *supra* note 13 at 32), one should note that the context in which the situation in Thailand is reflective of a regional problem is accurate insofar as TIP *movements* are concerned—for Thailand to be a source country, another Southeast Asian country surely is a destination country. As a destination country, most countries in the region would surely qualify as a source country.

18. U.S. Department of State, *supra* note 2 at 187.

19. *Ibid.*

20. *Ibid.*

21. *Ibid.*, at 362.

22. MTV Exit, “The New Cyber Trend in Human Trafficking: How to Stay Safe Online” (28 November 2013), online: MTV Exit <<http://exitslavery.org/human-trafficking-goes-cyber-stay-online/>>.

23. U.S. Department of State, *supra* note 2 at 363.

24. *Ibid.*

25. UNODC *Global Report*, *supra* note 1 at 36.

26. *Ibid.*

Project on Human Trafficking [UNIAP] reported on trafficking victims from Laos being exploited in domestic services, agriculture, fisheries, garment factories, and the entertainment sector in 2009.<sup>27</sup>

Forced labour in the fishing industry has also had an impact on TIP in Southeast Asia as a whole. There have been reports of trafficking of migrant fishermen from Myanmar, Laos, and Cambodia into the Thai fishing industry.<sup>28</sup> There has also been a reported increase in foreign and Indonesian fishermen who undergo forced labour on Indonesian and foreign fishing ships—many associated with Thai fishing companies—in Indonesian waters.<sup>29</sup> It has been increasingly recognized that while such workers may not be subject to forced labour or other similar practices, current “migration policies, provincial regulations, working conditions and payment terms” are comparable to slavery.<sup>30</sup> This is particularly due to the inherent vulnerability of such workers at sea.<sup>31</sup>

Another instance of TIP in Southeast Asia is the recent discovery of mass graves in abandoned camps used by human traffickers close to the Thailand-Malaysia border.<sup>32</sup> It threw light on the plight of Rohingya Muslims who, while fleeing from persecution by the Myanmar government, were abused in such camps, and subsequently trafficked into Thailand.<sup>33</sup> Many Rohingyas were sold to Thai fishing vessels to work as slaves, so as to produce seafood sold worldwide.<sup>34</sup> Currently, the discovery of the mass graves has led to a TIP trial in Thailand, which has implicated a general, policemen, and local officials.<sup>35</sup>

Therefore, TIP remains a significant problem within ASEAN, notwithstanding the existence of multiple regional initiatives aimed at combatting TIP. In the light of ASEAN’s principle of non-interference, much reliance is placed on the ability of individual Member States to internally enforce the initiatives via local legislation and policy.

---

27. *Ibid.*

28. International Labour Office, “Caught at Sea: Forced Labour and Trafficking in Fisheries” (2013), online: International Labour Organisation <[http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-declaration/documents/publication/wcms\\_214472.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/publication/wcms_214472.pdf)> at 8–10.

29. U.S. Department of State, *supra* note 2 at 187.

30. International Labour Office, *supra* note 28 at 9–10.

31. Douglas MACFARLANE, “The Slave Trade and the Right of Visit Under the Law of the Sea Convention: Exploitation in the Fishing Industry in New Zealand and Thailand” (2015) *Asian Journal of International Law* First View.

32. Todd PITMAN and Jocelyn GECKER, “Malaysia Migrant Graves Reveal 139 Human Skeletons at Site Where Rohingya Muslims ‘Kept by Traffickers’” *The Independent* (25 May 2015), online: The Independent <<http://www.independent.co.uk/news/world/asia/malaysia-migrant-graves-reveal-139-human-skeletons-at-site-where-rohingya-muslims-kept-by-10273915.html>>.

33. Human Rights Watch, “Thailand: Mass Graves of Rohingya Found in Trafficking Camp” (1 May 2015), online: Human Rights Watch <<https://www.hrw.org/news/2015/05/01/thailand-mass-graves-rohingya-found-trafficking-camp>>.

34. Emmanuel STOKES, Chris KELLY, and Annie KELLY, “Revealed: How the Thai Fishing Industry Trafficks, Imprisons and Enslaves” (20 July 2015), online: The Guardian <<http://www.theguardian.com/global-development/2015/jul/20/thai-fishing-industry-implicated-enslavement-deaths-rohingya>>.

35. TAN Hui Yee, “Massive Human Trafficking Trial Begins in Bangkok” *The Straits Times* (25 December 2015), online: The Straits Times <<http://www.straitstimes.com/asia/massive-human-trafficking-trial-begins-in-bangkok>>.

## II. HUMAN TRAFFICKING: HISTORY AND DEVELOPMENT

### A. *Origins*

The origins of TIP can be traced to activities which date back thousands of years. In particular, TIP parallels the history of chattel slavery—the outright, legally recognized ownership of persons as akin to property. Such practices were evident in the transcontinental slave trade that occurred in Europe, the Americas, and Africa from the early fourteenth century to the nineteenth century, where approximately thirteen million people were transported from Africa to Europe and the Americas as slaves.<sup>36</sup>

Despite the similarities between slavery and TIP, the former has been abolished and criminalized. Yet the latter remains rampant. The prohibition against slavery is considered to be a *jus cogens*<sup>37</sup> or a peremptory norm at international law, whereas the prohibition against TIP is not.<sup>38</sup>

On a positive note, countries have started to acknowledge the increasingly prevalent problem of TIP. Over the past two decades, ASEAN leaders have attempted to address TIP by implementing various initiatives and agreements to tackle the problem.<sup>39</sup> The term “human trafficking”, particularly in ASEAN, is being used largely used to refer to the trafficking of women and children for sex.<sup>40</sup> This could be attributed to the prevalence of human sex trafficking in Southeast Asia, particularly in the Indo-Chinese region.<sup>41</sup> However, it must be noted that TIP is more than just sex trafficking; the US TIP Report 2015 lists other major forms of TIP such as: forced labour, bonded labour or debt bondage, domestic servitude, forced child labour, and the unlawful recruitment and use of child soldiers.<sup>42</sup> Thus, TIP is gradually being acknowledged as a serious transnational problem with enforcement measures introduced to address the scourge.

TIP has been broadly equated with migrant smuggling, which is understood as the transportation of individuals across national borders without authorization “for the financial or other benefit of the smuggler”.<sup>43</sup> This refers to the illegal movement of

- 
36. Kathryn CULLEN-DUPONT, *Global Issues: Human Trafficking* (New York: Infobase Publishing, 2009) at 6.
  37. *Vienna Convention on the Law of Treaties*, 23 May 1969, UN Doc. A/Conf.39/27 (entered into force 27 January 1980) [*Vienna Convention*]. Art. 53 determines that: “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Further, the case of *Prosecutor v. Furundzija*, [2002] 121 I.L.R. 213, provides authority that *jus cogens* norms cannot be violated “through international treaties or local or special customs or even general customary rules not endowed with the same normative force”.
  38. Alexander ORAKHELASHVILI, *Peremptory Norms in International Law* (Oxford: Oxford University Press, 2006) at 53–60.
  39. Naparat KRANRATTANASUIT, *ASEAN and Human Trafficking: Case Studies of Cambodia, Thailand and Vietnam* (Leiden: Martinus Nijhoff Publishers, 2014) at 52.
  40. Marwaan MACAN-MARKAR, “Human Trafficking Exposes ASEAN’s Underbelly” *Interpress Service News Agency* (17 June 2010), online: Interpress Service News Agency <<http://ipsnews.net/news.asp?idnews=51857>>.
  41. Derks, *supra* note 13 at 6.
  42. U.S. Department of State, *supra* note 2 at 7–8.
  43. Anne T. GALLAGHER and Fiona DAVID, *The International Law of Migrant Smuggling* (Cambridge: Cambridge University Press, 2014) at 1.

individuals from their country of origin for profit. Individuals are often moved to other countries through “transit states” by criminal syndicates.<sup>44</sup>

However, TIP is distinct from migrant smuggling. The latter focuses on the act of transporting individuals, not the exploitative aspect of the process or the impact of the act on the transported individuals.<sup>45</sup>

TIP is defined as the “recruitment, transportation, transfer, harbouring or receipt of persons” for the purposes of exploitation by means of:

threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.<sup>46</sup>

Consent has been deemed irrelevant, following the long-standing principle of international human rights law regarding the inalienability of personal freedom.<sup>47</sup> TIP is therefore broader than migrant smuggling, encapsulating the process, purpose, and impact of transporting individuals across national borders.

### B. *International Developments*

1. *UN Convention Against Transnational Organized Crime and the Palermo Protocols*  
In 2000, the UN adopted the Palermo Protocols in conjunction with the Convention Against Transnational Organized Crime (hereinafter “the Convention”).<sup>48</sup> It was developed by the UN Office on Drugs and Crime [UNODC], which is the agency that oversees efforts to tackle transnational organized crime and TIP. The Convention and the Palermo Protocols indicate the recognition states have accorded to the seriousness of transnational organized crime and the corresponding need to foster close international co-operation to tackle such crimes.<sup>49</sup> States that ratify these instruments commit to implementing several measures, including the creation of domestic criminal offences related to organized crime; adoption of frameworks for extradition and law enforcement co-operation; and the promotion of training for capacity building. The Palermo Protocol on Women and Children represents the first instrument that called for the criminalization of *all* forms of TIP.

The intention of the Palermo Protocols is threefold. First, to facilitate convergence in national approaches towards establishing domestic criminal offences, which would support international co-operation among states in investigating and prosecuting TIP cases. Second, to protect victims of TIP while giving full respect for their human rights.

---

44. *Ibid.*, at 32.

45. *Ibid.*

46. *Ibid.*, at 29.

47. *Ibid.*, at 28.

48. This Convention represents a multilateral treaty that was adopted in 2000. It is commonly read in conjunction with its accompanying two Protocols as mentioned in this paper, and all three instruments contain elements that prohibit TIP.

49. *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, 15 November 2000, GA Res. 55/25 (entered into force 29 September 2003).



While more than a decade has passed since the Palermo Protocols came into force, compliance is still limited. According to a UNODC report, ninety percent of the countries examined have legislation criminalizing TIP.<sup>50</sup> However, these domestic laws do not always comply with the Palermo Protocol on Women and Children as they may not include all types of trafficking and victims.<sup>51</sup> Last, to increase TIP convictions by encouraging the criminalization of TIP and TIP-related activities. The number of TIP convictions globally has remained extremely low. Between 2010 and 2012, over forty percent of countries examined in the report had less than ten convictions per year, while about fifteen percent of countries had no convictions.<sup>52</sup>

## 2. *UNODC Model Law on Trafficking in Persons*

To help governments translate their obligations under the Convention and the Palermo Protocols into national legislation, the UNODC Model Law on Trafficking in Persons (hereinafter “UNODC Model Law”) operates as a tool of technical assistance. The UNODC Model Law serves to assist states in the review or amendment of existing laws, and adoption of new laws.<sup>53</sup> They are designed to be adaptable to suit the needs of each country. The UNODC Model Law is a useful reference point on how the specific provisions of the Palermo Protocol on Women and Children can be applied domestically. However, as acknowledged below,<sup>54</sup> a failure to properly define key terms—or the absence of definitions altogether—is problematic, particularly when it comes to the safeguarding of victim rights.

## C. *Regional Developments*

This section documents the chronological development and key features of various ASEAN instruments and initiatives aimed at combatting TIP. It should be noted that within its law-making regime, ASEAN prefers soft-law over hard-law instruments.<sup>55</sup> Such instruments are mostly non-binding and have served as persuasive tools to promote regional standards in matters relating to TIP. In drafting the PHTA, Singapore drew inspiration from the aims and standards outlined in these instruments. Therefore, a perusal is warranted to understand the context within which the PHTA should be evaluated.<sup>56</sup>

### 1. *Bangkok Declaration on Irregular Migration*

The International Symposium on Migration, “Towards Regional Cooperation on Irregular/Undocumented Migration”, held in Bangkok in April 1999, led to the adoption of the Bangkok Declaration on Irregular Migration (hereinafter “Bangkok

50. UNODC *Global Report*, *supra* note 1 at 12.

51. *Ibid.*

52. *Ibid.*, at 13.

53. UNODC, “Model Law on Trafficking in Persons” (2009), online: UNODC <[http://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)> [UNODC *Model Law on Trafficking in Persons*].

54. *Infra*, Part III, A.

55. Kranrattanasuit, *supra* note 39 at 60.

56. While it is beyond the scope of this paper, it is worth exploring in detail, in a future paper, Singapore’s role in each of these initiatives, and the level of success enjoyed by each of these initiatives in preventing TIP.



Declaration”).<sup>57</sup> This provided a foundational framework for future regional co-operation in tackling trafficking and irregular migration. Significantly, the Bangkok Declaration recognized that TIP is closely linked to irregular migration, which is the “movement [of people] that takes place outside the regulatory norms of the sending, transit and receiving countries”.<sup>58</sup> The Bangkok Declaration also recognizes that problems related to irregular migration need to be tackled within “the context of a broader regional framework” and that international co-operation is crucial.<sup>59</sup>

While the Bangkok Declaration was a starting point for regional anti-TIP measures, it has been criticized for conflating irregular migration with TIP.<sup>60</sup> Another criticism has been the framing of TIP within broader discourses on national security. This led to the improper characterization of TIP as a security threat rather than an outrage on human rights. In doing so, concerns relating to victims’ rights and protection, which remain the cornerstones of combating TIP, became diluted. While national security concerns must be addressed within the TIP discourse, such concerns should not overshadow the discourse on the rights of victims of TIP.<sup>61</sup>

## 2. *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*

Adopted at the 10th ASEAN Summit in Vientiane, Laos, in 2004, the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (hereinafter “ASEAN Declaration”) expressed a commitment by ASEAN Member States to prevent TIP, prosecute offenders, and protect victims.<sup>62</sup> The ASEAN Declaration has been criticized for giving unequal attention to the different victims of TIP by prioritizing women and children ahead of men.<sup>63</sup> The language of its provisions has also been criticized for being “loose and deficient”.<sup>64</sup> It also provides limited recourse to victims, because ASEAN Member States are only encouraged to provide victims of TIP “with such *essential* medical and other forms of assistance *deemed appropriate*”.<sup>65</sup> Such vague language has rendered the ASEAN Declaration ineffective in setting clear standards for Member States to comply with.

In 2007, the Senior Officials Meeting on Transnational Crime designated the Working Group on Trafficking in Persons to monitor the implementation of

57. International Organisation for Migration, “The Bangkok Declaration on Irregular Migration” (21 April 1999), online: IOM <[http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/rcp/APC/BANGKOK\\_DECLARATION.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/APC/BANGKOK_DECLARATION.pdf)> [*Bangkok Declaration*].

58. *Ibid.*, art. 1; International Organisation for Migration, “Key Migration Terms” (2011), online: IOM <<https://www.iom.int/key-migration-terms>>.

59. *Ibid.*, at arts. 8, 10.

60. Susan KNEEBONE and Julie DEBELJAK, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Abingdon: Routledge, 2012) at 99.

61. *Ibid.*, at 94.

62. *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*, 29 November 2004, at arts. 1–8. [*ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*].

63. Kranrattanasuit, *supra* note 39 at 61.

64. *Ibid.*, at 65.

65. *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*, *supra* note 62 at art. 5 (emphasis added).

the ASEAN Declaration.<sup>66</sup> The ASEAN Declaration must now be read together with the ACTIP, which sets clearer standards for anti-TIP efforts.<sup>67</sup> Nonetheless, the ASEAN Declaration, together with other ASEAN working groups and mechanisms, has laid the foundation for subsequent ASEAN human rights and anti-trafficking initiatives including the ACWC and ACTIP.<sup>68</sup>

### 3. *The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*

As its name suggests, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers [ADMW] preserves of the rights of migrant workers in the region. While this instrument is not limited to addressing issues relating to TIP, it is still vital as the rights of migrant workers are intricately tied to the challenge of TIP. Migrant workers, particularly unskilled ones, are especially vulnerable to TIP and forced labour, as they tend to enjoy little social protection.<sup>69</sup>

Thus, the ADMW explicates state obligations which are relevant to the fight against TIP. For instance, Paragraph 9 of the ADMW states that receiving states should “provide migrant workers who may be victims of discrimination, abuse, exploitation, and violence with adequate access to the legal and judicial system”.<sup>70</sup> Paragraph 14 of the ADMW recognizes that sending states have an obligation to eliminate recruitment malpractice while regulating and providing accreditation for recruitment agencies and employers.<sup>71</sup> The imposition of such obligations serves to ensure that migrant workers are not unduly placed at risk of falling victim to TIP.

### 4. *ASEAN Intergovernmental Commission on Human Rights*

The ASEAN Intergovernmental Commission on Human Rights is a regional human rights body with overall responsibility for the promotion and protection of human rights and fundamental freedoms in ASEAN.<sup>72</sup> Ten AICHR representatives with different backgrounds and experience are appointed, one per ASEAN Member State, and serve a three-year term of office.<sup>73</sup>

66. Kranrattanasuit, *supra* note 39 at 61.

67. See below: 6. *ASEAN Convention Against Trafficking in Persons [ACTIP]*.

68. TAN Hsien-Li, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia* (Cambridge: Cambridge University Press, 2011) at 154.

69. International Labour Organisation, “International Labour Standards on Migrant Workers”, online: ILO <<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang-en/index.htm>>.

70. ASEAN, “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers” (13 January 2007), online: ASEAN <<http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf>> [ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers].

71. *Ibid.*

72. *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 20 July 2009 (adopted at the ASEAN Foreign Ministers Meeting on 20 July 2009) at art. 1.1 [AICHR Terms of Reference].

73. ASEAN Intergovernmental Commission on Human Rights, “About AICHR”, online: AICHR <<http://aichr.org/about/>>.

Since its establishment, AICHR has completed a Five-Year Work Plan for 2010–2015. Significantly, one of the planned projects under this Work Plan was a thematic study on TIP, particularly on women and children.<sup>74</sup> In 2013, AICHR also organized a regional workshop in Makati, the Philippines, on the human rights-based approach to combat TIP, focusing on women and children, and which developed recommendations to mainstream human rights in ASEAN's efforts to tackle the problem.<sup>75</sup>

As the main body overseeing human rights protection in ASEAN, AICHR has a crucial role to play in framing the TIP challenge as a human rights problem. This is particularly critical considering that some of the other ASEAN documents, such as the Bangkok Declaration, have framed TIP as a security threat, a perspective which may overlook the rights of victims in its haste to ensure national security. The focus of ASEAN Member States would be improperly focused upon tightening border controls and immigration measures, rather than enforcing adherence to existing local safeguards for human rights.<sup>76</sup>

Part of AICHR's mandate is to engage with stakeholders like civil society organizations.<sup>77</sup> It plays an important bridging role between high-level policy-makers and grassroots lobbying groups. AICHR is therefore the linchpin in connecting the various sectors with a personal stake in combatting TIP.

##### 5. *ASEAN Commission on the Promotion and Protection of the Rights of Women and Children*

In 2010, the ACWC was launched in the lead-up to the 16th ASEAN Summit. It fulfilled one of the ideals spelt out in the ASEAN Charter, which is to strengthen regional co-operation in issues involving women and children.<sup>78</sup> The purpose of the ACWC is to promote and protect the human rights and fundamental freedoms of women and children in ASEAN according to international and regional instruments. The ACWC also seeks to uphold the rights contained in the Convention Against the Elimination of Violence Against Women and the Convention on the Rights of the Child.<sup>79</sup>

The ACWC also undertakes an advocacy role on behalf of women, and promotes public awareness of their rights.<sup>80</sup> It comprises representatives from ASEAN Member States—each Member State appoints one representative on women's rights and another on children's rights.<sup>81</sup> Further, its Terms of Reference state that it seeks to

74. *Ibid.*

75. ASEAN Intergovernmental Commission on Human Rights, "Philippines Promotes Human Rights-Based Approach to Combat Trafficking-in-Persons Especially Women and Children in ASEAN" (6 December 2013), online: AICHR <<http://aichr.org/news/philippines-promotes-human-rights-based-approach-to-combat-trafficking-in-persons-especially-women-and-children-in-asean/#sthash.Z7vsqnYy.dpuf>>.

76. Kneebone and Debeljak, *supra* note 60 at 94.

77. AICHR *Terms of Reference*, *supra* note 72 at art. 4.8.

78. *Terms of Reference of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children*, 24 October 2009 (adopted at the ASEAN Socio-Cultural Community Council on 24 October 2009 in Cha-Am, Thailand) [*ACWC Terms of Reference*] at art. 2.3.

79. *Ibid.*, at arts. 2.1, 5.1.

80. *Ibid.*, at art. 5.4.

81. *Ibid.*, at arts. 6.1, 6.2.

encourage ASEAN members to collect and analyze data pertaining to the rights of women and children,<sup>82</sup> as well as to facilitate the sharing of good practices and other experiences between ASEAN Member States.<sup>83</sup>

TIP is one of the areas identified in ACWC's Work Plan for 2012–2016. This Work Plan focuses on formulating gender-sensitized modules on handling women victims of TIP and developing capacity-building programmes for criminal justice officials and social services providers.<sup>84</sup>

There is much potential to be harnessed in ACWC, being the first dedicated human rights institution on the rights of women and children in ASEAN. One avenue is through effective collaboration with other regional bodies. At present, the ACWC and AICHR exist independently of each other. While the AICHR is tasked with overseeing issues relating to human rights within ASEAN, the ACWC is a sectoral body that promotes and protects the human rights and fundamental freedoms of women and children in ASEAN. This will be further explored below,<sup>85</sup> where recommendations on how the TIP regime in ASEAN can be strengthened are set out.

#### 6. *ASEAN Convention Against Trafficking in Persons*

Since 2007, ASEAN had been working on the development of a regional convention which targets TIP by setting up a regionally agreed framework on collaboration among ASEAN Member States to fight the problem.<sup>86</sup> The drafting of the ACTIP was concluded in November 2015 and was signed by all ASEAN leaders at the 27th ASEAN Summit in Kuala Lumpur, Malaysia.<sup>87</sup>

The ACTIP adopts a definition of TIP which is consistent with that used by the Palermo Protocol on Women and Children. TIP is defined in these instruments as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.<sup>88</sup>

82. *Ibid.*, at art. 5.8.

83. *Ibid.*, at art. 5.11.

84. ASEAN Secretariat, “ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), Work Plan 2012–2016 and Terms of Reference” (2013), online: ASEAN <<http://202.183.149.112/images/users/admin/images/acwcworkplanandtor.pdf>> at 4.

85. *Infra*, Part V, B.

86. Office of the President of the Philippines, Commission on Filipinos Overseas, “Drafting of ASEAN Convention to Combat Human Trafficking Concludes in the Philippines” (22 December 2014), online: Commission on Filipinos Overseas <<http://1343actionline.ph/news/1056-drafting-of-asean-convention-to-combat-human-trafficking-concludes-in-the-philippines.html>>.

87. *ASEAN Convention Against Trafficking in Persons, Especially Women and Children*, 21 November 2015, (adopted at the 27th ASEAN Summit in Kuala Lumpur, Malaysia, 21 November 2015), online: ASEAN <[http://www.miti.gov.my/miti/resources/Chairman\\_Statement\\_of\\_27th\\_ASEAN\\_Summit.pdf?mid=414](http://www.miti.gov.my/miti/resources/Chairman_Statement_of_27th_ASEAN_Summit.pdf?mid=414)>. [ACTIP].

88. Both art. 2 of the ACTIP and art. 3 of The Palermo Protocol on Women and Children adopt this definition of “Trafficking in persons” while “exploitation” is defined as follows: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ.”

The ACTIP is unprecedented insofar as it sets out areas for co-operation between State Parties—these include cross-border co-operation pertaining to the control and validity of documents,<sup>89</sup> mutual legal assistance in criminal matters,<sup>90</sup> extradition,<sup>91</sup> law-enforcement co-operation,<sup>92</sup> and international co-operation for the purposes of confiscating proceeds from TIP activity.<sup>93</sup> Further, it sets standards for the protection and rehabilitation of victims of TIP,<sup>94</sup> including care and support in the form of appropriate housing, counselling, and information, and medical, psychological, and material assistance, as well as employment, educational, and training opportunities. It also requires their safe repatriation and return to their home countries.<sup>95</sup> The ACTIP sets out much clearer regulatory standards on combating TIP than the ASEAN Declaration, and provides a framework for co-ordinating co-operative efforts between State Parties.

### 7. *Problems with existing regional fora*

Despite the numerous legal instruments and initiatives implemented to tackle TIP, it remains a serious problem in ASEAN. Various reasons have been proposed for the seeming ineffectiveness of the initiatives documented above.

- (a) *Conflicting discourses*: First, the various instruments articulate different approaches to combatting TIP, which in turn is reflective of conflicting discourses on TIP in the region. The older instruments, such as the Bangkok Declaration and ADMW, are reflective of a discourse which tended to conflate irregular migration with TIP.<sup>96</sup> Victims of TIP are viewed through the lens of national security or border protection, diverting energies away from securing victim protection through strict enforcement of existing human rights safeguards. Such discourse is problematic because it downplays TIP as a human rights issue. The TIP discussion is prematurely limited in scope, hindering the development of comprehensive anti-TIP frameworks.

Second, existing documents, particularly the ASEAN Declaration and the ACWC Terms of Reference, primarily equate TIP with the prostitution of women, and less so with labour exploitation, which victimizes both men and women, and is a significant aspect of TIP.<sup>97</sup> Such a discourse conflicts with the realities of evolving TIP patterns which indicate that the trafficking of men has become increasingly common.<sup>98</sup>

---

89. ACTIP, *supra* note 87 at art. 13.

90. *Ibid.*, at art. 18.

91. *Ibid.*, at art. 19.

92. *Ibid.*, at art. 20.

93. *Ibid.*, at art. 21.

94. *Ibid.*, at art. 14.

95. *Ibid.*, at art. 15.

96. *Ibid.*

97. *Ibid.*

98. UNODC *Global Report*, *supra* note 1 at 36.

(b) *A lack of enforcement mechanisms and evaluative functions*: A major criticism of the AICHR and ACWC is that they lack compliance and enforcement mechanisms. Both institutions lack mechanisms for the reception of complaints, and the provision of binding judgments and remedies.<sup>99</sup> There is no effective mechanism for enforcing initiatives carried out by these institutions, save for peer pressure on the errant state by other ASEAN Member States.<sup>100</sup> One commentator has suggested that these organizations are merely consultative intergovernmental bodies with weak mandates.<sup>101</sup> They could develop strategies to combat TIP, and provide advisory services to government, as well as conduct seminars and training workshops on the issue. However, without enforcement mechanisms, they can achieve little else.

Both organizations also lack data-collection systems to monitor and evaluate the achievements and challenges faced by regional and national counter-trafficking initiatives.<sup>102</sup> These organizations do not require ASEAN Member States to submit progress reports on the state of human rights in their countries, including TIP issues. The lack of evaluative functions and enforcement mechanisms can be explained by the continued adherence to established ASEAN principles such as non-interference and sovereignty.<sup>103</sup>

(c) *Lack of co-ordination and collaboration across initiatives*: Other criticisms include the duplication of efforts between existing bodies that are meant to combat TIP, and insufficient collaboration across different initiatives. For instance, both the AICHR and ACWC have pursued anti-TIP efforts and programmes within their mandates, with limited collaboration between the two bodies. The AICHR's anti-TIP programmes are situated within its broader goal of promoting human rights in general, while the ACWC's efforts target women and children. Collectively, this has led to separate initiatives for tackling TIP, which results in the ineffectiveness of regional anti-TIP efforts.

Encouragingly, there have been recent steps taken towards collaboration. In April 2014, the AICHR and ACWC had a consultation meeting geared at "greater engagement and functional cooperation", and identified four priority areas of co-operation, one of which was TIP.<sup>104</sup> In November 2015, there was also a first joint workshop on TIP attended by representatives from the AICHR, the Senior

99. Katherine G. SOUTHWICK, "Bumpy Road to the ASEAN Human Rights Declaration" *East-West Center* (22 January 2013), online: East-West Center <<http://www.eastwestcenter.org/publications/bumpy-road-the-asean-human-rights-declaration>>.

100. Errol P. MENDES, *Global Governance, Human Rights and International Law: Combating the Tragic Flaw* (New York: Routledge, 2014).

101. *Ibid.*, at s. 1.8.

102. Kranrattanasuit, *supra* note 39 at 85–7.

103. Mendes, *supra* note 100.

104. AICHR, "The AICHR and ACWC Consultation Meeting" (25 April 2014), online: AICHR <<http://aichr.org/press-release/joint-press-release-the-aichr-and-acwc-consultation-meeting/>>.

Officials Meeting on Transnational Crime, the ACWC, and the Senior Officials Meeting on Social Welfare and Development [SOMSWD].<sup>105</sup>

The AICHR, ACWC, as well as other regional bodies, should continue to work together more closely. The AICHR can assist in framing TIP as a mainstream human rights issue,<sup>106</sup> whereas the ACWC can provide technical advice on the women- and children-related aspects of TIP. This suggestion will be subsequently developed.<sup>107</sup>

### III. HUMAN TRAFFICKING IN SINGAPORE

Unfortunately, despite being significantly more developed than its neighbours in Southeast Asia, TIP remains prevalent in Singapore.<sup>108</sup> Singapore is a major contributor to TIP activity. The 2015 US TIP Report identified Singapore as an attractive destination by TIP syndicates, due to the presence of approximately 1.4 million foreign workers, who work in the construction, domestic service, performing arts, manufacturing, service, or sex industries.<sup>109</sup> Singapore has been placed on Tier 2 watch list of the U.S. Department of State Trafficking in Persons Report since 2011, indicating that it has not fully complied with the US Trafficking Victim's Protection Act's minimum standards, although it is making significant efforts to do so.

One obstacle in combating TIP in Singapore was that its laws had—until the passing of the PHTA—only punished TIP by criminalizing related crimes such as illegal migration, human smuggling, and the sexual exploitation of women.<sup>110</sup> However, TIP itself remained unpunished before the passage of the PHTA. Consequently, the lack of legislation criminalizing TIP specifically hindered the effective prosecution of traffickers, and the protection of victims, by failing to recognize TIP as a distinct crime which specifically targets persons for criminal exploitation.<sup>111</sup>

Most reported cases of TIP-related offences in Singapore concern the sexual exploitation of women. They are enticed by poorly understood and tenuous work opportunities to migrate to Singapore from other ASEAN countries in the hope of escaping economic marginalization and gender discrimination.<sup>112</sup> Many are consequently subjected to forced prostitution and threats of serious harm. Employers may also illegally withhold their pay, restrict their physical movement, and subject

105. Human Rights Resource Centre, “AICHR and SOMTC Host First Joint Workshop on Trafficking in Persons” (9 November 2015), online: HRRRC <<http://hrrca.org/aicmr-and-somtc-host-first-joint-workshop-on-trafficking-in-persons/>>.

106. Kranrattanasuit, *supra* note 39 at 93.

107. *Infra*, Part V, B.

108. LIM Yi Han, “Parliament: Tragic Stories of Human Trafficking in Modern Singapore” *The Straits Times* (6 November 2014), online: Asiaone <<http://news.asiaone.com/news/singapore/parliament-tragic-stories-human-trafficking-modern-singapore>>.

109. U.S. Department of State, *supra* note 2 at 303.

110. Derks, *supra* note 13 at 18.

111. *Ibid.*

112. Sallie YEA, “Social Visits and Special Passes: Migrant Women Exploited in Singapore’s Sex & Nightlife Entertainment Industry” *Humanitarian Organization for Migration Economics* (29 January 2014), online: HOME <<http://home.org.sg/wp-content/uploads/reports/2014-social-visits-special-passes-.pdf>>.



them to other kinds of abuse.<sup>113</sup> On a related note, there is also evidence showing a strong demand among Singaporean men for child sex tourism within the region.<sup>114</sup>

Labour trafficking is also prevalent in Singapore.<sup>115</sup> Workers have been deceived about their working conditions, and had their passports withheld.<sup>116</sup> Specifically, debt bondage has emerged as a critical issue, given that unpaid agency fees are a common problem amongst foreign workers.<sup>117</sup> The imposition of debt obligations on foreign workers can be a form of coercion, as these workers are unable to financially afford the cost of travelling to Singapore for work without taking out these large loans, and they are often led to believe that they cannot leave their employment until their debt is repaid.<sup>118</sup>

There has been an increase in domestic workers arriving in Singapore, particularly those from Cambodia and Myanmar.<sup>119</sup> These domestic workers are especially vulnerable to TIP because they face language barriers and may lack access to mobile devices, therefore becoming socially isolated. Notably, in September 2014, Myanmar's government imposed a temporary ban on legal emigration to Singapore for domestic work, citing concerns of abuse and non-payment of wages.<sup>120</sup>

Lesser known, but equally pertinent, is the victimization of men through labour trafficking. Men from Cambodia and the Philippines have been subjected to forced labour on long-haul fishing vessels that depart from Singapore or dock in Singaporean ports. Agencies have used deceptive tactics to recruit men from Cambodia and the Philippines.<sup>121</sup>

Singapore's approach towards TIP has been to prioritize prevention and deterrence, in contrast to the more victim-centric approaches adopted by other countries.<sup>122</sup> While this is arguably a more proactive approach, it lacks the infrastructure needed to address the pressing human rights and social justice issues arising from the prevalence of TIP. There is undue focus placed on TIP as a policy issue, neglecting TIP as a social and human rights issue. The introduction of foreigners into Singaporean society will not be without difficulty. This is more so when the foreigners in question are TIP victims. Singapore must develop legislation fostering the development of infrastructure that explicitly provides support to TIP victims in the face of the increasing severity of the issue.

---

113. U.S. Department of State, *supra* note 2 at 303.

114. *Ibid.*

115. EmancipAsia, "Labour Trafficking" online: EmancipAsia <[http://emancipasia.org/keymessages/EMANCIPASIA\\_LTrafficking.pdf](http://emancipasia.org/keymessages/EMANCIPASIA_LTrafficking.pdf)>.

116. *Ibid.*

117. *Ibid.*; SMU Lien Centre for Social Innovation, "SMU Study Reveals Challenges and Emotional Distress Faced by Migrant Workers in Singapore" (4 November 2015), online: SMU <[http://www.smu.edu.sg/sites/default/files/smu/news\\_room/Press%20Release%20SMU-LCSI%20Migrant%20Workers%20Research%20Launch%204%20Nov%27%20%28FINAL%29.pdf](http://www.smu.edu.sg/sites/default/files/smu/news_room/Press%20Release%20SMU-LCSI%20Migrant%20Workers%20Research%20Launch%204%20Nov%27%20%28FINAL%29.pdf)>.

118. EmancipAsia, *supra* note 115.

119. U.S. Department of State, *supra* note 2 at 303.

120. *Ibid.*

121. *Ibid.*

122. Walter SIM, "Parliament: Human-Trafficking Law Passed After Debate on Whether it Goes Far Enough" *The Straits Times* (3 November 2014), online: The Straits Times <<http://www.straitstimes.com/news/singapore/courts-crime/story/parliament-human-trafficking-law-passed-after-debate-whether-it-go>>.

In this regard, the PHTA was enacted to address the various facets of TIP in a more comprehensive manner. The enactment of the PHTA recognizes that Singapore remains vulnerable to TIP, because of its attractive economic conditions and status as a regional hub within ASEAN.<sup>123</sup> The following section examines the backdrop to the enactment of the PHTA and its key features.

### A. *Prevention of Human Trafficking Act 2014—Key Provisions and Criticisms*

This section will address key elements of the PHTA and will also highlight some criticisms.

#### 1. *Background to the PHTA and key objectives*

In 2013, a Singaporean Member of Parliament, Christopher de Souza, proposed the Prevention of Human Trafficking Bill. In 2014, the government organized several public consultation sessions with members of the public, the legal fraternity, religious and secular groups, non-governmental organizations [NGOs] and voluntary welfare organizations [VWOs], which helped shape the PHTA.<sup>124</sup> The PHTA was subsequently passed in Parliament on 3 November 2014 and took effect on 1 March 2015.

At the Second Reading of the Bill, Mr de Souza highlighted that the following were the four key objectives:

First, it intends to clarify the legal regime by providing a formal definition of Trafficking in Persons (TIP) and prescribes penalties to deal with human trafficking in a more targeted and deterrent manner. Second, it empowers enforcement agencies with the necessary investigation and enforcement levers to tackle TIP. Third, it provides measures to protect and support trafficked victims, and encourage the reporting of trafficking or suspected trafficking activities. Fourth, the Bill will bring Singapore closer in line with international standards, and uplift efforts to combat TIP in the country and region.<sup>125</sup>

Notwithstanding the above and the innovative spirit of the PHTA, there are specific areas in which it can be improved. Primarily, the PHTA can do more to protect victims of TIP by defining key terms in a clearer manner and legislating for better victim protection measures. Some examples include the right to employment in Singapore during the course of legal proceedings, and the right to safe repatriation. Similar concerns were raised during the parliamentary debates that took place in November 2015. However, Mr de Souza argued against “hardcoding” such victim-centric provisions as he feared that they could be exploited by false claims of TIP victimization (i.e. individuals falsely claiming to be TIP victims).<sup>126</sup> Instead, he was in favour of

123. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, 3 November 2014, Vol. 92 (Christopher DE SOUZA, Member of Parliament of Holland-Bukit Timah GRC).

124. Christopher DE SOUZA, “Dismantling Human Trafficking: The Need for a Dedicated Piece of Legislation” *Law Gazette* (February 2015), online: *Law Gazette* <<http://www.lawgazette.com.sg/2015-02/1241.htm>>.

125. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

126. *Ibid.*

providing protective measures on a case-by-case basis, and at the discretion and flexibility of an administrative authority-in-charge, for example, the Ministry of Manpower.<sup>127</sup>

## 2. *Elements of the offence*

The PHTA has based its definition of TIP on Article 3 of the Palermo Protocol on Women and Children. The PHTA definition adopted in Singapore comprises three distinct elements. Section 3(1) of the PHTA requires that there must be an “act”—this could be the recruitment, transportation, transfer, harbouring, or receipt of an individual. Next, this act must be accompanied by “means”—which could be the use of threat, force, or any other form of coercion or deception.<sup>128</sup> Finally, these must be done for the “purpose of exploitation”.<sup>129</sup> Exploitation in turn is defined as “sexual exploitation, forced labour, slavery or any practice similar to slavery, servitude or the removal of an organ”.<sup>130</sup>

While all three elements must be proven for there to be an offence, Mr de Souza mentioned at the Second Reading of the PHTA that “cases which fall short of the required thresholds may still be taken up by other existing laws, where appropriate”.<sup>131</sup>

Notably, Section 3(3) of the PHTA highlights that the offence of TIP is committed regardless of whether the victim consented to the actual or intended exploitation. This is in line with Article 3(b) of the Palermo Protocol on Women and Children.

The PHTA has modelled its definition of TIP based on the Palermo Protocol on Women and Children.<sup>132</sup> However, key terms are either not defined or defined in a limited manner. In this regard, the UNODC Model Law can provide a useful reference point in defining key terms.

- (a) *Deception*: The term “deception” is undefined in the PHTA, raising various difficulties. For example, should deception refer to the nature of the work promised to the victim, the conditions of the work, or both?<sup>133</sup> This has practical implications. For instance, should a migrant worker who comes to Singapore willingly, but was deprived of basic liberties, made to work long hours, and live in dormitories with squatter-like conditions, be considered a victim of TIP? The PHTA could be amended to define deception as per the UNODC Model Law—“any deception by words or by conduct [as to fact or as to law, regarding]: the nature of work or services to be provided, the conditions of work, the extent

127. *Ibid.*

128. PHTA, *supra* note 11 at s. 3(1)(a)–3(1)(f).

129. *Ibid.*, at s. 3(1).

130. *Ibid.*, at s. 2. It should be noted that this is the minimum definition of exploitation that was suggested by art. 3 of the Palermo Protocol: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

131. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill, supra* note 123.

132. *Supra*, Part III, A.

133. Ronald JJ WONG and JUAY Wei Tian, “The Prevention of Human Trafficking Act 2014: Legislation Comment” (2015) 1 *Singapore Journal of Legal Studies* 261 at 263–4.

to which the person will be free to leave his or her place of residence; or other circumstances involving exploitation of the person”.<sup>134</sup> This would provide a wider scale of protection for victims.

- (b) *Coercion*: The term “coercion” is defined in the PHTA, and includes the “use of force or threat, whether violent or otherwise”.<sup>135</sup> This follows the UNODC Model Law. However, it differs from the UNODC Model Law in one respect, in that it does not explicitly refer to the use of psychological pressure or force.<sup>136</sup> The definition of “coercion” should specify these psychological elements, considering that TIP can take place in various contexts and is not limited to the use of physical force.<sup>137</sup>
- (c) *Abuse of vulnerability*: The term “abuse of vulnerability” also appears to be modelled after the UNODC Model Law. Section 2 specifies the following as positions of vulnerability: (i) the individual entering or remaining in Singapore illegally; (ii) the individual’s pregnancy; (iii) the individual’s physical or mental illness, infirmity, or disability; or (iv) the impairment (permanently or temporarily) of the individual’s decision-making ability by reason of the individual’s physical or mental illness, infirmity, or disability.

However, this definition neglects positions of vulnerability arising out of promises or the giving of sums of money or other advantages to those having authority over a person, or being in a precarious situation from the standpoint of social survival.<sup>138</sup> The PHTA should be amended to consider these positions of vulnerability, considering that social or economic status can affect an individual’s vulnerability to TIP.<sup>139</sup>

- (d) *For the purpose of [actual or intended exploitation]*: The phrase “for the purpose of” in Section 3(1) of the PHTA, which is the *mens rea* requirement of the TIP offence, sets a vague standard as it is unclear whether “wilful blindness” or “reason to believe” would be sufficient to fulfil the *mens rea* requirement of the crime. It is suggested that this should be the case as it would prevent perpetrators from getting away with the offence by claiming that they did not have actual knowledge that TIP was taking place. This is the position adopted by the Section 1(a) of the UK Modern Slavery Act 2015 (hereinafter “UK Modern

134. UNODC *Model Law on Trafficking in Persons*, *supra* note 53 at art. 1(f).

135. S. 2 states that coercion includes: “(a) any threat of harm to or physical restraint of the individual or the other individual; (b) any scheme, plan or pattern intended to cause the individual to believe that the failure to perform an act would result in serious harm to or physical restraint of the individual or the other individual; or (c) any abuse or threat related to the legal status of the individual or the other individual.”

136. UNODC *Model Law on Trafficking in Persons*, *supra* note 53 at art. 1(e). The Model Law defines coercion as the following: “Coercion” shall mean use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to: (i) Threats of harm or physical restraint of any person; (ii) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; (iii) Abuse or any threat linked to the legal status of a person; (iv) Psychological pressure.

137. Jessica ELLIOTT, *The Role of Consent in Human Trafficking* (New York: Routledge, 2014) at 61.

138. UNODC *Model Law on Trafficking in Persons*, *supra* note 53 at art. 1(a).

139. UNODC *Global Report*, *supra* note 1 at 44.

Slavery Act”)<sup>140</sup> which states: “[a] person commits an offence if—(a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude.”

Therefore, the PHTA ought to be amended to specify that an offence is carried out as long as the circumstances are such that a *person ought to have known* that there was TIP. Such amendments would provide greater clarity to the *mens rea* requirement of the Act.

### 3. *Extra-territoriality*

Recognizing the transnational nature of the crime, Section 3(4) provides that a trafficking offender is liable in Singapore even if his act is done “partly in and partly outside of Singapore”. This brings it in line with existing legislation on transnational crimes that also provide for extra-territorial jurisdiction, specifically the Prevention of Corruption Act<sup>141</sup> and the Misuse of Drugs Act.<sup>142</sup>

The extra-territorial reach of the PHTA is significant because it allows for the arrest and prosecution of offenders operating outside Singapore. These offenders may have links to organized crime syndicates, and may intend to traffic persons into or through Singapore. The extended reach of the PHTA empowers Singapore to combat TIP that occurs overseas but affects or involves Singapore. This aspect of the PHTA provides a more comprehensive and aggressive approach to Singapore’s anti-TIP framework.<sup>143</sup>

### 4. *The criminalization of related activities*

Section 5 of the PHTA states that persons who abet an offence as set out in the PHTA are liable. As mentioned in the Second Reading of the PHTA, the intended scope of these provisions is to “cover ringleaders and masterminds who order their subordinates to carry out the trafficking acts, as well as middlemen who knowingly make arrangements to place trafficked victims with their exploiters”.<sup>144</sup>

Section 6 makes it an offence for a person to receive any payment in connection with the exploitation of another person with the knowledge that he or she has been trafficked. These provisions target people not directly involved in the TIP offence itself, or in the abetment of it, but who have received payment from the trafficking activity—for example pimps and labour agents.<sup>145</sup>

While the penalties stipulated in the PHTA have been benchmarked against comparable offences in the Penal Code, there has been criticism that the penalties

140. *UK Modern Slavery Act*, Cap. 30, 2015.

141. Cap. 241, 1993 Rev. Ed.

142. Cap. 185, 2001 Rev. Ed.

143. Ministry of Manpower of Singapore, “MOM Statement on Alleged Human Trafficking by Step Up Marine Enterprise LLP” (20 November 2015), online: MOM <<http://www.mom.gov.sg/newsroom/press-releases/2015/1120-mom-statement-on-alleged-human-trafficking-by-step-up-marine-enterprise-llp>>.

144. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

145. *Ibid.*

imposed on human traffickers are not stiff enough. When the PHTA was debated in Parliament, one parliamentarian called for higher fines for persons found guilty of offences under the PHTA, given that a recently passed law to clamp down on online betting included fines of between \$300,000 and \$500,000.<sup>146</sup>

Parliamentarians<sup>147</sup> have argued for stiffer penalties for PHTA offences by highlighting the imposition of harsh punishments in other jurisdictions like the US<sup>148</sup> and the UK.<sup>149</sup> Considering the benchmarks set by other jurisdictions, the PHTA does have scope for stiffer penalties.

### 5. Penalties

Under Section 4(1) of the PHTA, first-time offenders face up to ten years in jail, a maximum fine of \$100,000, and the possibility of up to six strokes of the cane, which can be imposed at the court's discretion where warranted. Repeat offenders face heavier punishments, which could amount to one and a half times what a first offender might receive.<sup>150</sup> Similar penalties are prescribed for the offence of knowingly receiving payment in connection with the exploitation of a trafficked person.

These penalties were benchmarked against comparable crimes in other statutes criminalizing activities relating to TIP. One example is the offence of importing a woman for purposes of prostitution under Section 373A of the Penal Code, which also provides for a maximum ten-year imprisonment sentence.

Section 4(2) of the PHTA provides a non-exhaustive list of aggravating factors which the court may take into consideration when determining whether harsher punishment is merited. These include situations where the trafficked victim was a child,<sup>151</sup> where the offence exposed the trafficked victim to a life-threatening illness,<sup>152</sup> and where the offender was abusing a position of trust or authority in relation to the victim.<sup>153</sup>

### 6. Victim protection

Section 19(1) provides that the Director of Social Welfare, as appointed under the Children and Young Persons Act, “may” provide victims of TIP with access to a temporary shelter and counselling services as he/she considers “practicable and necessary”. Further, Section 18(1) seeks to protect victims by allowing for trial proceedings to be heard *in camera*, and Section 18(2) prohibits the disclosure of victims' names to the media.

146. *Ibid.* (Janil Puthucheary, Member of Parliament of Pasir Ris-Punggol GRC).

147. *Ibid.* (Non-Constituency Member of Parliament Gerald Giam).

148. *Ibid.* Notably, reference was made to California, where an offence of TIP carries a fine of up to US\$1.5 million (S\$1.93 million) and a jail term of fifteen years to life.

149. The UK, recognizing the seriousness of the offence, has recently increased the maximum jail sentence for TIP from fourteen years to life imprisonment for s. 5(1) of the UK Modern Slavery Act. See Home Office UK Government, “Modern Slavery Bill Published” (10 June 2014), online: UK Government <<https://www.gov.uk/government/news/modern-slavery-bill-published>>.

150. *PHTA*, *supra* note 11 at s. 6(2)(b).

151. *Ibid.*, at s. 4(2)(c).

152. *Ibid.*, at s. 4(2)(d).

153. *Ibid.*, at s. 4(2)(h).

### 7. *Specific provisions protecting child victims*

The PHTA defines a “child” as an individual below the age of eighteen years.<sup>154</sup> To afford a child greater protection under the law, “there is no requirement for the prosecution to prove the methods or means used”.<sup>155</sup> It is sufficient for the prosecution to show that there was an act to recruit, transport, transfer, harbour, or receive a child victim for the purposes of exploitation.<sup>156</sup> Therefore, the burden of proof for TIP is lower for child victims, which in turn is in “recognition of their vulnerability to exploitation”.<sup>157</sup>

### 8. *Special protection of sexually exploited victims*

Section 18 sets out provisions to specifically protect sexually exploited victims who serve as witnesses in court proceedings. Section 18(1) provides that, where the victim of TIP has been sexually exploited, the court has the discretion to hear the matter *in camera*. It is mandatory to hear the matter *in camera* where the sexually exploited victim is a child.

An order prohibiting publication will also be in place for all court proceedings involving sexually exploited TIP victims. Section 18(2) prohibits any person from publishing “the name, address or photograph, or any other thing which is likely to lead to the identification, of the trafficked victim”. The contravention of this Section could result in a fine not exceeding \$5,000 or an imprisonment term not exceeding three years, or both.<sup>158</sup>

It was explained that the legislative intent of this provision was to “protect victims from being identified, and [to] encourage them to testify with confidence”.<sup>159</sup> The inclusion of these provisions are certainly to be welcomed, as it has been suggested that sex trafficking victims experience high degrees of trauma due to the violence, confinement, and sexual assault which they may have suffered.<sup>160</sup> Further, the physical and psychological intimidation of witnesses and trafficking victims by cross-border criminal groups has been noted,<sup>161</sup> making this provision crucial for the protection of victims and effective prosecution.

## IV. LEGAL FRAMEWORK IN SINGAPORE

### A. *Background to Enactment of the PHTA*

The enactment of the PHTA and Singapore’s accession to the Palermo Protocol on Women and Children should be viewed as part of Singapore’s collective efforts to align

154. *Ibid.*, at s. 2.

155. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

156. PHTA, *supra* note 11 at s. 3(2).

157. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

158. PHTA, *supra* note 11 at s. 18(4).

159. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

160. Melissa FARLEY, “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder” in Melissa FARLEY, ed., *Prostitution Trafficking and Traumatic Stress* (New York: The Haworth Press Inc, 2003), at 33–74.

161. John WINTERDYK, Benjamin PERRIN, and Philip REICHEL, *Human Trafficking: Exploring the International Nature, Concerns and Complexities* (Florida, FL: CRC Press, 2011) at 222.



its domestic regime on TIP with global standards, signalling a commitment to combat all forms of TIP.<sup>162</sup> This section contextualizes these developments against Singapore's shifting stance towards TIP in the past three to five years. There has been increasing recognition of the seriousness of TIP at the judicial, parliamentary, and executive levels, with a greater willingness to tackle the challenge through imposing stiffer punishments, legislative amendments, and the creation of a dedicated taskforce.

1. *International criticism of Singapore's stance towards human trafficking*

As part of the Universal Periodic Review [UPR] by the UNHRC in 2011, the question of acceding to the Palermo Protocol on Women and Children was first put to Singapore. The UPR is a process conducted by the UNHRC which involves a review of the human rights records of UN Member States. In the light of the recently enacted PHTA as a dedicated piece of legislation to combat TIP and Singapore's ascension to the Palermo Protocol on Women and Children, it is expected that the international community's comments will be less critical regarding Singapore's anti-TIP efforts during Singapore's second UPR in January 2016.

2. *Singapore Inter-Agency Taskforce on Trafficking-in-Persons (hereinafter "Taskforce")*

In 2010, the Singapore government set up the Taskforce, which established the National Plan of Action (NPA) to combat TIP. The NPA identified four ways in which Singapore would improve its battle against TIP: (1) prevention of TIP; (2) prosecution of offenders; (3) protection of TIP victims; and (4) partnerships with other countries, non-governmental organizations, academics, and the private sector, to combat TIP.<sup>163</sup>

The NPA also identified the gaps that existed in the prior framework of anti-TIP measures. Notably, it highlighted the need to define sex and labour trafficking offences, and adopting a more victim-friendly approach in combating TIP, such as enhancing victim care services or counselling services. Significantly, the NPA called for a "review [of] all legislation related to TIP to ensure that the desired legislative framework facilitate[s] the achievement of key TIP objectives" to ensure that "Singapore's legislation adequately addresses the complexity of TIP crimes and that penalties are commensurate with crimes".<sup>164</sup>

3. *Legislative framework prior to the enactment of the PHTA*

As stated previously,<sup>165</sup> prior to the enactment of the PHTA, Singapore's existing legislation did not acknowledge TIP itself as a crime. At best, Singapore's laws criminalized the acts which victims of TIP are normally subject to, such as the

162. KOH King Hui, "Singapore Accedes to UN Protocol to Prevent and Combat Human Trafficking" *The Straits Times* (3 January 2010), online: *The Straits Times* <<http://www.straitstimes.com/singapore/singapore-accedes-to-un-protocol-to-prevent-and-combat-human-trafficking>>.

163. Singapore Inter-Agency Taskforce on Trafficking in Persons, "National Plan of Action Against Trafficking in Persons 2012 to 2015" (2012), online: Ministry of Foreign Affairs <[http://www.mfa.gov.sg/content/dam/mfa/images/media\\_center/special\\_events/National\\_Plan\\_of\\_Action\\_Against\\_Trafficking\\_in\\_Persons\\_2012\\_-\\_2015/tipbooklet\\_080812.pdf](http://www.mfa.gov.sg/content/dam/mfa/images/media_center/special_events/National_Plan_of_Action_Against_Trafficking_in_Persons_2012_-_2015/tipbooklet_080812.pdf)> [NPA].

164. *Ibid.*, at 11.

165. See Part IV.

prostitution of women and children,<sup>166</sup> working beyond legislated work hours without compensation,<sup>167</sup> the buying and selling of organs,<sup>168</sup> and sexual acts with minors below sixteen and eighteen years.<sup>169</sup> The only piece of legislation that criminalized TIP was Section 141 of the Women's Charter<sup>170</sup> (hereinafter "Women's Charter"), which made it an offence to traffic in women and girls. However, Section 141 does not make it an offence to traffic in men and boys, and "trafficking" was not defined in the Women's Charter.

However, in the past few years, Parliament had amended legislation so as to make it easier for the courts to deal with criminal acts which may potentially have elements of TIP. For example, in 2012, Singapore amended its Immigration Act<sup>171</sup> to criminalize "sham" marriages, i.e. a marriage of convenience between a Singaporean and a foreigner for the purpose of illegally obtaining an immigration advantage.<sup>172</sup> Subsequently, the Singapore courts recognized that "sham" marriages increase the risk of TIP and transnational organized crime.<sup>173</sup> In the same year, amendments were made to the Employment of Foreign Manpower Act<sup>174</sup> [EFMA] to criminalize the provision of false information to the Controller in order to obtain a work pass. These legislative changes reflect Singapore's continued efforts towards a comprehensive anti-TIP framework, recognizing the pervasive nature of TIP.

#### 4. *Judicial support for deterrent sentences in TIP-related cases*

Since 2009, Singapore courts acknowledged that cases involving elements of TIP deserve more stringent punishment. Nevertheless, the full mettle of TIP as a crime could not be dealt with in these cases, which were brought before the courts before the enactment of the PHTA. However, the courts were minded to impose harsher sentences where elements of TIP were involved.

For example, in *Public Prosecutor v. Wang Minjiang*,<sup>175</sup> the accused faced charges under Section 376B(1) of the Penal Code<sup>176</sup> (hereinafter "Penal Code")<sup>177</sup> for the procurement of sexual services of a seventeen-year-old female, who was brought into Singapore from China for prostitution. Justice Choo Han Teck held "a more rigorous sentence might be needed to discourage international prostitution involving persons the law regards as young and vulnerable".<sup>178</sup> Choo J therefore substituted the fine of

166. *Women's Charter*, Cap. 353, Rev. Ed. 2009, at s. 140 [*Women's Charter*].

167. *Employment Act*, Cap. 91, Rev. Ed. 2009, at s. 38.

168. *Human Organ Transplant Act*, Cap. 131A, Rev. Ed. 2012, at s. 14.

169. See s. 376A to 376E of the Penal Code, Cap. 224, Rev. Ed. 2008.

170. Cap 353, Rev Ed. 2009.

171. Cap 133, Rev Ed. 2008.

172. Second Reading of the Immigration (Amendment) Bill, *Singapore Parliamentary Report* (13 August 2012), Vol. 89, (Second Minister for Home Affairs Mr S. ISWARAN).

173. *PP v. Tay Szu Khee*, [2014] SGDC 52 at [22]; *PP v. Mehra Radhika*, [2014] SGDC 206 at [6].

174. Cap. 91A, Rev. Ed. 2009.

175. *Public Prosecutor v. Wang Minjiang*, 1 SLR(R) 867.

176. Cap. 224, Rev. Ed. 2008.

177. S. 376B(1) of the Penal Code reads as follows: "Any person who obtains for consideration the sexual services of a person, who is under 18 years of age, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both."

178. *Public Prosecutor v. Wang Minjiang*, *supra* note 175 at [3].

\$8,000, which had been imposed by the district judge, and imposed a term of imprisonment for twelve months on the accused. This decision reflects the contemporary attitude of Singapore courts regarding the importance of preventing TIP. In earlier decisions, courts were less likely to deem elements of TIP as relevant considerations in their decisions.<sup>179</sup> Other court cases have also made similar pronouncements, in keeping with Singapore's documented approach of deterrence and prevention.<sup>180</sup>

### 5. *A shift in government attitude to TIP*

Singapore has become more amenable to international feedback on its existing anti-TIP framework. In 2011, the Taskforce issued a strongly worded statement in response to the US TIP Report 2011, criticizing the report's findings and the manner in which investigations were conducted.<sup>181</sup> Similarly, the Ministry of Foreign Affairs [MFA] criticized the U.S. Department of State's findings regarding Singapore's human rights practices in 2011 and 2012, stating that the reports misrepresented Singapore's laws and policies.<sup>182</sup>

Conversely, when the US TIP Report 2014 was discussed in Parliament, parliamentarians were less critical of the report's methodology, and Singapore's commitment to fight TIP and its continued efforts in doing so were reiterated. It is apparent that the PHTA is a manifestation of Singapore's increasing commitment to international standards for combating TIP. This is reflected in a statement made by Minister of State Zulkifli in Parliament when the PHTA was debated, i.e. that "[the proposed Bill] would clearly reflect Singapore's commitment to fight TIP to the global community and align us to international standards".<sup>183</sup>

Subsequently, the US TIP Report 2015 highlighted the low number of TIP prosecutions in Singapore. In particular, it stated that the Singapore government did not convict any labour or child traffickers in 2014.<sup>184</sup> Singapore's TIP score in the US

179. See for example, *Credit Corporation v. Public Prosecutor*, [2000] 2 SLR(R) 938, which was a decision by Chief Justice Yong Pung How (as he then was). The offender faced two charges of human smuggling under s. 57(1)(c) of the Immigration Act. The vehicle he used was seized pursuant to s. 49(1) of the Immigration Act. A Malaysian finance company sought the revision of the forfeiture order. In dismissing the petition, Yong CJ stated at [9] that: "[t]he fact that the vehicle was used by the offender ... for human trafficking are irrelevant", although His Honour later noted at [15] that the rationale for mandatory forfeiture of vehicles involving in human smuggling as a "strong deterrent ... If vehicles were returned to innocent owners, human smuggling syndicates would find it easier to obtain vehicles to carry out human smuggling, without the risk of confiscation."

180. *Tan Chye Hin v. Public Prosecutor*, [2009] 3 SLR(R) 873; *Public Prosecutor v. Tan Huisheng*, [2013] SGDC 432; *PP v. Isetty Lakshmi*, [2013] SGDC 279; *Poh Boon Kiat v. PP*, [2014] 4 SLR 892.

181. Ministry of Manpower, "Singapore Inter-Agency Taskforce's Detailed Response to the 2011 US State Department's Trafficking in Persons Report" (1 August 2011), online: Ministry of Manpower <<http://www.mom.gov.sg/newsroom/press-releases/2011/singapore-interagency-taskforces-detailed-response-to-the-2011-us-state-departments-trafficking-in-persons-report>>.

182. Ministry of Foreign Affairs, "Response to the US Department of State's Country Reports on Human Rights Practices for 2011" (16 August 2012), online: Ministry of Foreign Affairs <[http://www.mfa.gov.sg/content/mfa/media\\_centre/press\\_room/pr/2012/201208/press\\_20120816\\_01.html](http://www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2012/201208/press_20120816_01.html)>; Ministry of Foreign Affairs, "Response to the US Department of State's Country Reports on Human Rights Practices for 2012" (20 June 2013), online: Ministry of Foreign Affairs <[http://www.mfa.gov.sg/content/mfa/media\\_centre/press\\_room/pr/2013/201306/press\\_20130620\\_1.html](http://www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2013/201306/press_20130620_1.html)>.

183. Oral Answers to Questions on the Findings of Inter-agency Task Force on Trafficking in Persons, *Singapore Parliamentary Reports* (11 November 2013), Vol. 90.

184. U.S. Department of State, *supra* note 2 at 304.

TIP Report 2015 also remained at Tier 2. In other words, the PHTA did not improve Singapore's TIP score.

The Taskforce responded by defending the PHTA, and emphasized that it would continue with its efforts in tackling TIP. The Taskforce argued that the report “does not provide an accurate representation” of Singapore's efforts to tackle TIP.<sup>185</sup> Instead, it highlighted that the PHTA meets international standards of the Palermo Protocol on Women and Children, and that the penalties are commensurate with the seriousness of the crimes.<sup>186</sup> They then reiterated their commitment to work with partners to solve the problem, indicating a growing awareness that combatting TIP requires international co-operation and dialogue.<sup>187</sup>

### B. Prosecution Under the PHTA—Likely Outcomes

In 2015, Muhammad Khairulanuar Rohmat became the first individual to be charged under Section 4 of the PHTA. In February 2016, he pleaded guilty to three charges under the PHTA, with another fourteen being taken into consideration. He had allegedly recruited two girls aged fifteen and sixteen for the purpose of exploiting them for sex, received payment in connection with the exploitation of the trafficked victims, and also abetted customers to obtain their sexual services.<sup>188</sup> He was sentenced to six years and three months imprisonment and fined \$30,000.<sup>189</sup>

Prior to the enactment of the PHTA, the accused would probably have been prosecuted under the Women's Charter, where he would have faced imprisonment for a term not exceeding five years, and would have been liable to a fine not exceeding \$10,000 for similar offences.<sup>190</sup>

It is this author's opinion that the stiff sentencing decision was justified. First, the court considered that both the trafficked victims were children as defined by the PHTA.<sup>191</sup> This is listed as an aggravating factor in Section 4(2)(d). Also, although it appears that the teenagers may have consented to the exploitation in order to receive payments, this is irrelevant as per Section 3(3)(a) of the PHTA.

Second, the courts have acknowledged that TIP is an aggravating factor in sentencing. Prior to this most recent decision, the stiffest penalty for TIP-related offences was imposed in *Tan Huisheng*. In that case, the accused was sentenced to two years imprisonment for each of the following charges:<sup>192</sup> bringing into Singapore a

185. “US Annual Trafficking Report not an Accurate Representation of Singapore” *The Straits Times* (29 July 2015), online: The Straits Times <<http://www.straitstimes.com/singapore/manpower/us-annual-trafficking-report-not-an-accurate-representation-singapore>>.

186. *Ibid.*

187. *Ibid.*

188. Yvonne LIM, “Suspect Charged Under Prevention of Human Trafficking Act Faces More Charges” *Today* (29 April 2015), online: Channel NewsAsia <<http://www.channelnewsasia.com/news/singapore/suspect-charged-under/1814354.html>>.

189. Vanessa Paige CHELVAN, “Man Gets 75 months' Jail in First Conviction Under New Human Trafficking Law” (19 February 2016), online: Channel NewsAsia <<http://www.channelnewsasia.com/news/singapore/man-gets-75-months-jail/2530006.html>>.

190. *Women's Charter*, *supra* note 166 at s. 140(1).

191. S. 2 of PHTA defines a child as an individual below eighteen years.

192. *Tan Huisheng*, *supra* note 180 at para. 28.

female Chinese national, knowing that she had been procured for the purpose of prostitution within Singapore,<sup>193</sup> and harbouring the same female Chinese national knowing that she had been procured by threats for that purpose.<sup>194,195</sup>

There, the court rightly took into consideration both case-specific circumstances and public policy considerations. The relatively stiff penalty of two years' imprisonment per charge was imposed because the victim was subjected to extreme mental, emotional, physical, and sexual abuse. At the same time, the court considered the need to deter other like-minded individuals from making Singapore a destination for human sex trafficking.

The recent decision and *Tan Huisheng* will both serve as sentencing precedents for any future TIP cases. It should be noted that the intent of the PHTA is to deal with TIP in a "more targeted and deterrent manner".<sup>196</sup> Considering that this is the first prosecution under the PHTA, a strict approach to sentencing is required to send a clear signal both locally and internationally that Singapore is committed to combatting TIP.

## V. RECOMMENDATIONS

### A. *Additional Suggestions for Singapore*

With the enactment of the PHTA, the legal toolbox to combat TIP has been enhanced. However, the PHTA may be rendered ineffective if enforcement measures are not similarly strengthened. For the PHTA to be effective, the requisite political will, resources, and manpower must be allocated to investigate TIP-related offences.

#### 1. *Supply chain transparency obligations*

The Singapore government should introduce supply chain transparency obligations for large companies doing business in, or connected with, Singapore to assess, make public, and address the use of trafficked labour within their supply chains. The Thai fishing industry is one area where transparency obligations would serve to foster supply chain accountability. Such obligations address TIP within corporate structures and supply chains in a direct and tangible way; raising awareness of the harm of TIP, thus protecting potential victims of exploitation and trafficking. Various countries have introduced such obligations, including the UK<sup>197</sup> and the state of California in the US.<sup>198</sup>

The Singapore government should also work with companies to explore licensing and regulating the conduct of migration agents in sending countries. A study by Singapore Management University highlighted that the New Zealand government and Capella Hotels and Resorts both have codes of conduct, licensing, and penalties for

193. Women's Charter, *supra* note 166 at s. 140(1)(d).

194. *Ibid.*, at s. 140(1)(e).

195. The accused also faced charges of living in part on the immoral earnings of the PRC national and also for abetting an individual for having commercial sex with a minor under eighteen.

196. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

197. *UK Modern Slavery Act*, *supra* note 140 at s. 54.

198. *California Transparency in Supply Chains Act of 2010*, *California Civil Code*, at s. 1714.43.

migration agents in sending countries. This can dramatically lower agency fees if implemented correctly and ensure that the migrant workers brought into Singapore are not victims of TIP in debt bondage.<sup>199</sup> Lower agency fees reduce the debt accumulated by migrant workers, which will in turn alleviate the psychological stress that they face.<sup>200</sup>

## 2. *Public awareness*

Local public awareness on TIP should be strengthened. It is imperative that Singaporeans understand the convenience of Singapore's geographical location, which makes it especially attractive to traffickers. Moreover, Singaporeans must be educated on the important role the government has to play in combatting TIP within the ASEAN region. Increased awareness regarding the severity of TIP and Singapore's potential influence in the region will encourage local dialogue on TIP as a human rights issue, effectively shifting discussion away from TIP as a security issue. Based on a recent pilot study done by the International Organization for Migration and Microsoft, most Singaporeans have a "broad understanding" of TIP. In other words, they can identify potential victims of trafficking and the correct definition of the crime, but they underestimate the gravity of the issue.<sup>201</sup> Consequently, it may be prudent for the government to, among other things, launch campaigns to increase public (and regional) awareness to highlight the dangers and criminal nature of TIP. A tri-sector collaboration with business, government, and civil society would help in this regard, and is in keeping with the NPA against TIP.<sup>202</sup>

To complement these measures, roadshows can be organized for potential victims of TIP (for example, migrant workers) to educate them on potential TIP activities and circumstances. Since the majority of victims of TIP fall prey to traffickers as a result of employment in foreign transit and destination countries, these efforts can provide potential victims with valuable information on how to discern and avoid TIP syndicates.

## 3. *Stronger victim protection within the PHTA*

The PHTA should prescribe stronger victim protection. The idea that stronger victim protection will lead to abuse—as alluded to in the parliamentary debates for the PHTA—is an unsubstantiated one. In fact, stronger provisions will enable the effective prosecution of traffickers, since this would increase the likelihood of TIP victims coming forward to assist judicial proceedings and police investigations. This will be illustrated through the recommendations below. References will be made to the ACTIP, to which Singapore is a signatory, and also other legislation, as they are of a higher standard than the current PHTA, and show a possible way in which Singapore

199. Nicholas M. HARRIGAN and KOH Chiu Yee, "Vital Yet Vulnerable: Mental and Emotional Health of South Asian Migrant Workers in Singapore", Lien Centre for Social Innovation Social Insight Research Series (2014), online: Lien Centre for Social Innovation Social Insight Research <[http://www.smu.edu.sg/sites/default/files/smu/news\\_room/Research\\_Report\\_Vital\\_Yet\\_Vulnerable\\_%28FINAL%29.pdf](http://www.smu.edu.sg/sites/default/files/smu/news_room/Research_Report_Vital_Yet_Vulnerable_%28FINAL%29.pdf)>.

200. *Ibid.*, at 40.

201. AW Cheng Wei, "Human Trafficking: 'More Awareness Needed'" *The Straits Times* (1 December 2015), online: *The Straits Times* <<http://www.straitstimes.com/singapore/human-trafficking-more-awareness-needed>>.

202. NPA, *supra* note 163 at 15.

legislation could be improved. The intentions and shortfalls of the international and regional developments were pertinent considerations in the assessment of Singapore's attempts to address TIP via the PHTA.

- (a) *Assistance to victims should be framed as a guaranteed right*: Section 19 of the PHTA empowers the Director of Social Welfare to provide victims with assistance, including temporary shelter and counselling services, as he or she considers “practicable and necessary” in the circumstances of the case. Thus, the provision of assistance is framed as a discretionary measure rather than a guaranteed right.

Significantly, while the ACTIP identifies comprehensive areas for the protection of victims, not all these areas of protection are framed as guaranteed rights. Instead, the ACTIP's language frequently indicates that states should aspire towards victim protection on a “best effort basis”. For instance, Article 14(11) states that “[e]ach Party shall make its *best effort* to assist in the reintegration of victims of trafficking in persons into the society of the sending Party”.<sup>203</sup> Likewise, Article 14(10) states that “each Party *shall, where applicable*, provide care and support for victims of trafficking in persons”.<sup>204</sup>

This is unsurprising, considering that the ACTIP was a result of negotiations between ASEAN Member States, including Singapore. The ACTIP's language could have been further strengthened to afford greater protection to victims. Framing victim protection as a guaranteed right would ensure that victim care-services will not merely depend on the victim's ability and willingness to assist the authorities in criminal enforcement. Thus, the PHTA should go further than the standard set by the ACTIP in this particular regard.<sup>205</sup>

The language of the PHTA may be amended such that assistance to victims under Section 19 of the PHTA is provided as a guaranteed right instead of a discretionary measure, following the examples set by other ASEAN jurisdictions. For instance, Section 12 of the Myanmar Anti-Trafficking in Persons Law (hereinafter “Myanmar Act”)<sup>206</sup> requires the government to “arrange and carry out for the security of life of trafficked victims and to arrange according to their wishes for repatriation and resettlement as much as possible”. Another example would be that of the Philippines Anti-Trafficking in Persons Act of 2003 (hereinafter “Philippines Act”),<sup>207</sup> which reads:

The State *values the dignity of every human person and guarantees the respect of individual rights*. In pursuit of this policy, the State *shall give the highest priority* to the enactment of measures and development of programmes that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons,

203. Emphasis added.

204. Emphasis added.

205. While the ACTIP is not without its weaknesses, it still serves as an important role to play within ASEAN as it sets *minimum standards* for collaboration. This is further elaborated on below in Part V, B.

206. The State Peace and Development Council Law No. 5/ 2005 [Myanmar Act].

207. Republic Act No. 9208, 2003 [Philippines Act].



*not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.*<sup>208</sup>

- (b) *Scope of aftercare assistance:* The scope of assistance to victims of TIP can also be widened. For example, in addition to the provision of shelter and counselling, the Taiwan Human Trafficking and Prevention Act 2009 (hereinafter “Taiwan Act”)<sup>209</sup> provides for necessary medical, interpretation, financial, and legal assistance, being accompanied when questioned (interrogated) throughout the investigation or trial, and other necessary assistance.<sup>210</sup> The ACTIP also acknowledges the multidimensional needs of a victim of TIP. It states that where appropriate, State Parties should provide care and support in the form of appropriate housing, counselling, and information, and medical, psychological, and material assistance, as well as employment, educational, and training opportunities.<sup>211</sup> However, the PHTA is disappointingly silent in this regard.
- (c) *Support during legal or police proceedings:* Section 18 protects the rights of sexually exploited victims of TIP, as it allows proceedings to be heard *in camera* and also prohibits any act which leads to the identification of the trafficked victims. However, more can be done in terms of victim support during legal proceedings. The Taiwan Act allows a legal or medical professional, as well as a person who is closely related to the victim, to “accompany him/her and ... [to] make observations when he/she is questioned or cross-examined during an investigation or trial”.<sup>212</sup> This is also allowed when the victim is under investigation by the judicial police.

Concerns have also been raised regarding the potential for the identification of TIP victims by the accused trafficker despite Section 18 allowing victims to give evidence *in camera*. Further, the victim may be unable to give evidence due to psychological or physical trauma. To address these concerns, Singapore should consider following the Taiwanese example. It provides that a “statement made by any human trafficking victim during an investigation by the prosecutors, judicial police officers, or judicial police may be accepted as evidence during a trial” if it is proven to be credible and if other special circumstances are carried out.<sup>213</sup>

Further, the provision that proceedings relating to victims of sexual exploitation may be held *in camera* should be expanded to all victims of TIP. Article 14(6) of the ACTIP requires State Parties, to the extent possible under its domestic laws, to make legal proceedings relating to such acts confidential, regardless of the form of TIP the victim was subject to.<sup>214</sup>

208. *Ibid.*, at s. 2 (emphasis added).

209. Ministry of the Interior, 23 January 2009 [*Taiwan Act*]. Taiwan was ranked Tier 1 in the 2015 US TIP Report.

210. *Ibid.*, at art.17.

211. ACTIP, *supra* note 87 at art. 14.

212. *Taiwan Act*, *supra* note 209 at art. 24.

213. *Ibid.*, at art. 27.

214. It should be noted that with any case before the Singapore courts, a court can order such proceedings to be conducted *in camera* if the court is satisfied it is “expedient in the interests of justice, public safety, public

- (d) *Victims should be able to work while investigations are ongoing*: The PHTA is silent on the employment rights of victims of TIP. It should be amended to provide for the temporary right to work in Singapore, especially because investigations and legal proceedings may take several months and even up to two years before they are resolved, during which time victims of TIP are obliged to remain in Singapore and are unable to return to their home country.<sup>215</sup>

Fear of loss of income may prevent victims of TIP from coming forward. The Taiwan Act allows a victim of TIP to apply for a work permit.<sup>216</sup> Likewise, victims of TIP are given assistance for employment and training in Australia under the Human Trafficking visa framework.<sup>217</sup> In addition, the ACTIP has stated that employment, educational, and training opportunities should be provided to victims of TIP, where appropriate.<sup>218</sup>

In response to suggestions that the right to employment should be legislated, Mr de Souza suggested that this could lead to the opening up of a “Pandora’s box with many coming forward to make false TIP claims in the hope of finding alternative employment”.<sup>219</sup> Instead, he recommended that each case should be assessed on its merits, and that the right to employment should be left to the discretion of the Ministry of Manpower, which administers a witness job scheme for prosecution witnesses.<sup>220</sup>

Concerns relating to the fact that such legislative provisions would be taken advantage of by non-TIP victims appear to be speculative and are not supported by empirical data. Further, false TIP claims can be dealt with through effective identification procedures, and should not be an obstacle to enacting legislation that would protect genuine TIP victims. Considering that the right to gainful employment may in fact enable the effective prosecution of traffickers, and therefore the administration of justice, the PHTA can be amended to ensure that victims of TIP are able to work pending the outcome of the investigations.

- (e) *Protection against TIP victims against being charged for offences*: The PHTA is silent on the position of victims of TIP who may have committed migration-related offences or other offences, as a result of the trafficking. In response to this concern, Mr de Souza suggested that this is a non-issue, as the victim would not have met the required *mens rea* for the crime, if this was committed as a result of

---

security or propriety, or for other sufficient reason to do so”. This is provided for under s. 7 of the State Courts Act, Cap. 321, Rev. Ed. 2007, and s. 8 of the Supreme Court of Judicature Act, Cap. 322, Rev. Ed. 2007. However, the power of the court under these provisions to order that the proceedings are conducted *in camera*, remains discretionary.

215. Jolovan WHAM, “Petition for the Comprehensive Protection of the Rights of Trafficked Persons in Singapore” *StopTraffickingSg* (2014), online: StopTraffickingSg <[https://stoptraffickingsg.files.wordpress.com/2014/08/stoptraffickingsg\\_petition.pdf](https://stoptraffickingsg.files.wordpress.com/2014/08/stoptraffickingsg_petition.pdf)>.
216. *Taiwan Act*, *supra* note 209 at art. 28.
217. Australian Government Department of Social Services, “Anti Human-Trafficking Strategy” (November 2014), online: Australian Government <<https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/anti-human-trafficking-strategy>>.
218. ACTIP, *supra* note 87 at art. 13.
219. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.
220. *Ibid.*

being exploited, and hence would not be prosecuted.<sup>221</sup> This is highly problematic for several reasons: first, the crime in question may be a strict liability offence. And second, TIP victims often hold the common misconception that they risk being prosecuted for crimes. This deters them from seeking help or from offering assistance to the authorities to identify traffickers, which in turn, ultimately hinders efforts at combating TIP.

It would instead be more effective to adopt a victim-centric approach to protect the rights of victims of TIP by providing legal immunity for offences that they may have committed as a result of their exploitation. For instance, Section 45 of the UK Modern Slavery Act provides a defence for slavery or trafficking victims who commit an offence. Taiwan,<sup>222</sup> the Philippines,<sup>223</sup> and Myanmar<sup>224</sup> also have similar provisions in their respective TIP legislations. The ACTIP also requires State Parties to consider not holding victims of TIP liable for unlawful acts committed by them, if such acts are related to the acts of TIP,<sup>225</sup> and to not unreasonably hold victims of TIP in detention or in prison before, during, or after legal proceedings.<sup>226</sup>

It is also worrying that victims of TIP have previously been arrested rather than given assistance. For instance, eighty-nine minors were arrested by the Singapore police for prostitution offences in 2009, when, in such situations, all should have been considered victims and given adequate protection and rehabilitation assistance.<sup>227</sup> The PHTA does not currently provide a defence to victims of TIP who may have committed an offence. But even it had such a provision, clear guidelines need to be established as to how police and enforcement officers should identify and treat trafficked victims on the ground.

- (f) *Right to repatriation/legal residence*: The PHTA also does not legislate the safe return of the victims after the legal proceedings have concluded. This is one of the initiatives proposed in the NPA.<sup>228</sup> This should be legislated to prevent a scenario where a victim could be detained in Singapore for an unreasonable amount of time after the trial. This is of particular concern as it is standard procedure for the government to retain the victims' passports and to refuse repatriation during the course of investigations.<sup>229</sup>

The right to repatriation is provided for in the ACTIP,<sup>230</sup> the Taiwan Act,<sup>231</sup> and the Myanmar Act.<sup>232</sup> The ACTIP also requires State Parties to assist in the reintegration of TIP

---

221. *Ibid.*

222. *Taiwan Act*, *supra* note 209 at art. 29

223. *Philippines Act*, *supra* note 207 at s. 17

224. *Myanmar Act*, *supra* note 206 at s. 13.

225. *ACTIP*, *supra* note 87 at art. 14(7).

226. *ACTIP*, *supra* note 87 at art. 14(8).

227. U.S. Department of State, "US TIP Report 2010" (2010), online: U.S. Department of State <<http://www.state.gov/g/tip/rls/tiprpt/2010/>>.

228. *NPA*, *supra* note 163 at 13.

229. U.S. Department of State, *supra* note 2.

230. *ACTIP*, *supra* note 87 at art. 15.

231. *Taiwan Act*, *supra* note 209 at art. 30.

232. *Myanmar Act*, *supra* note 206 at arts. 14, 15.

victims into the sending state's society.<sup>233</sup> The Taiwan Act goes one step further. It recognizes that the safety of victims of TIP may be threatened after their repatriation because of their assistance in the investigation or trial. It thus allows for victims of TIP to be granted a stay or residence on a special case-by-case basis.<sup>234</sup> While such measures may be deemed to be "hardcoding" of residency rights as they could "be abused as a backdoor to gain legal residence",<sup>235</sup> false claims can be mitigated through effective victim identification procedures. It is also not apparent whether such claims will be a real problem, given that there is no empirical data to support this. Parliament should consider legislating these provisions as this would be the only means to effectively guarantee a trafficked victim's right to gainful employment.

(g) *Provision of compensation and restitution to trafficked victims*: The PHTA does not specifically provide for compensatory measures for victims of TIP. This should be contrasted with countries such as the UK,<sup>236</sup> Myanmar,<sup>237</sup> and Cambodia,<sup>238</sup> which allow confiscations of property/assets so as to compensate victims, or for them to be channelled into a trafficking fund. Furthermore, Cambodia allows a victim of trafficking to claim restitution of unjust enrichment arising from trafficking, in addition to damages.<sup>239</sup>

In response to suggestions that the PHTA provide for compensatory and restitutive measures, Mr de Souza suggested that such provisions were unnecessary.<sup>240</sup> He cited Section 359 of the Criminal Procedure Code,<sup>241</sup> where a court is bound to consider whether or not to award compensation to a victim of an offence. Mr de Souza likewise argued that restitutive measures are subsumed under Section 359, and that ill-gotten gains may additionally be subject to confiscation under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act,<sup>242</sup> once the offence of trafficking is scheduled in the same.

Despite this, compensatory and restitutive measures should still be legislated for within the PHTA itself. The careful regulation of such matters would ensure that there is minimal abuse, while ensuring that TIP victims are able to obtain redress. Parliament would be able to spell out how to calculate the victims' losses, particularly when it may be difficult to measure the value of labour.<sup>243</sup> Drawing inspiration from other ASEAN

233. ACTIP, *supra* note 87 at art. 14(11).

234. *Taiwan Act*, *supra* note 209 at art. 28.

235. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

236. UK Modern Slavery Act, *supra* note 149 at ss. 7, 8.

237. *Myanmar Act*, *supra* note 206 at s. 33.

238. *Cambodia Law on Suppression of Human Trafficking and Sexual Exploitation* (2008), NS/RKM/0208/005, at arts. 46, 47, 48 [*Cambodia Act*].

239. *Ibid.*, at art 46.

240. *Singapore Parliamentary Debates, Prevention of Human Trafficking Bill*, *supra* note 123.

241. Cap. 68, Rev. Ed. 2012.

242. Cap. 65A, Rev. Ed. 2000.

243. One example of calculating the victims' economic losses can be seen in the US Trafficking Victims Protection Act of 2000 (15 U.S.C. § 1593). It suggests that the "the term 'full amount of the victim's losses' ... shall ... include the greater of the gross income or value to the defendant of the victim's services

countries like Cambodia, the PHTA could also provide for the creation of trafficking funds for victim compensation.

### B. *Recommendations on a Regional Level*

#### 1. *ACTIP as setting minimum standards for collaboration*

Conflicting discourses exist regarding TIP, and there was a lack of a proper system to facilitate smooth co-ordination amongst the various ASEAN bodies, despite recent collaborative initiatives. This has led to a duplication of resources and efforts. Considering that ASEAN is the main regional vehicle through which Southeast Asian countries deal with TIP, ASEAN needs to provide a consistent and uniform front towards addressing this issue. ASEAN Member States can look towards the ACTIP for a definition of TIP, which has aligned itself with the standards of the Palermo Protocol on Women and Children.

Nonetheless, this author notes that the ACTIP could have been drafted to afford greater victim protection, particularly by framing all areas of victim protection as guaranteed rights rather than as discretionary measures. However, given the diversity of political will and interest amongst ASEAN Member States, an unwillingness to relinquish political sovereignty may be an obstacle to better collaboration in TIP-related issues.<sup>244</sup>

Despite its weaknesses, the ACTIP still has an important role to play as it sets minimum standards for State Parties to follow in their fight against TIP. While ASEAN Member States should aspire for higher standards in their own individual legal frameworks, the parameters, terms, and minimum standards established by the ACTIP can serve a common baseline.

#### 2. *Harnessing the potential of the human rights institutions in ASEAN: the AICHR and ACWC*

Both the AICHR and ACWC should function in a symbiotic manner to maximize the benefits of these institutions in tackling TIP. Significantly, the AICHR can “function cross-sectorally, having the mandate to influence and engage with all three ASEAN communities”.<sup>245</sup> The ACWC’s purposes, as laid out in the Terms of Reference, stated that it would “enhance regional and international cooperation with a view to complementing national and international efforts on the promotion and protection of the rights of women and children”. This implies that the AICHR can help the ACWC in mainstreaming important women’s and children’s issues under both the political-security and economic pillars of ASEAN,<sup>246</sup> while the ACWC can provide specialized technical expertise on issues pertaining to TIP, particularly those issues which affect

---

or labour or the value of the victim’s labour as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act”.

244. Natashya GUTIERREZ, “In ASEAN, Women Empowerment Low on Priority List” Rappler (9 March 2015), online: Rappler <<http://www.rappler.com/world/specials/southeast-asia/85777-acwc-asean-women>>.

245. *Ibid.*

246. *Ibid.*

women and children. These two ASEAN bodies can work together to provide a combined, integrated ASEAN course of action in its bid to reduce TIP activities.

### 3. *The need for monitoring, compliance, and enforcement mechanisms*

Currently, there is a lack of compliance and monitoring mechanisms to ensure progress in the fight against TIP. Previously, ASEAN Member States had created the “Regional Haze Action Plan” to monitor, assess, and enforce the relevant guidelines to tackle the transboundary haze problem.<sup>247</sup> ASEAN has established monitoring bodies in other areas too—for example, a monitoring mechanism to establish the progress of the ASEAN Economic Community,<sup>248</sup> as well as mechanisms to monitor the effectiveness of disaster responses post Cyclone Nargis.<sup>249</sup>

The AICHR and ACWC should set up mechanisms to monitor, evaluate, and compile information on the progress of ASEAN countries in meeting the challenge of TIP. One possible way that this could be done is to create a regional database for trafficking data. Such a system would entail training in “social science research methodologies, data collection techniques, related security considerations and privacy laws”.<sup>250</sup> Research is also needed to ascertain how corruption assists TIP in Southeast Asia, and how it impedes anti-TIP efforts.<sup>251</sup>

### 4. *ASEAN should leverage on Information and Communications Technology [ICT] in anti-trafficking efforts*

Increasingly, human traffickers use technology to prey on potential victims online. For instance, according to MTV Exit, an anti-TIP campaign that is based in Bangkok, approximately a quarter of children reported missing in Indonesia are likely to have met their traffickers on Facebook.<sup>252</sup> In the light of these trends, ASEAN should leverage on online tools such as data-mapping, data-mining/analytics, and victim identification databases to counter these threats.<sup>253</sup> Additionally, ASEAN should follow the examples of campaigns in the UK and the US where anti-trafficking mobile phone applications have been launched.<sup>254</sup> For instance, an NGO in the US called the “Polaris Project” created an online application that provides users with potential

247. ASEAN, “Regional Haze Action Plan” (2015), online: Centre for International Law, NUS <<https://cil.nus.edu.sg/tp/pdf/1997%20Regional%20Haze%20Action%20Plan-pdf.pdf>>.

248. Stefano INAMA and Edmund W. SIM, *The Foundation of the ASEAN Economic Community* (Cambridge: Cambridge University Press, 2015) at 239.

249. Kranrattanasuit, *supra* note 39 at 88.

250. Jessie BRUNNER, “Inaccurate Numbers, Inadequate Policies: Enhancing Data to Evaluate the Prevalence of Human Trafficking in ASEAN”, East-West Center (2015), online: East-West Centre <[http://www.eastwestcenter.org/system/tdf/private/brunner-trafficking2015\\_3.pdf?file=1&type=node&id=35344](http://www.eastwestcenter.org/system/tdf/private/brunner-trafficking2015_3.pdf?file=1&type=node&id=35344)>.

251. *Ibid.*

252. MTV Exit, *supra* note 22.

253. Alistair D.B. COOK and Cairtriona H. HEINL, “New Avenues for Regional Cooperation: Tackling Human Trafficking in Asia”, Rajaratnam School of International Studies, 3 April 2014, online: Rajaratnam School of International Studies <<https://www.rsis.edu.sg/wp-content/uploads/2014/07/CO14062.pdf>>.

254. *Ibid.*; the author mentions that the Taken Campaign in London and the Redlight Traffic in the US have launched anti-trafficking mobile applications.

trafficking indicators, pointers on how to identify victims, a training exercise to recognize trafficking, and a means of reporting suspected cases to local authorities, amongst other functions.<sup>255</sup> Singapore, as an ICT hub, could play a lead role within ASEAN in using technology to combat TIP.

## VI. CONCLUSION

Singapore has put in place action plans and safeguards, but, quite understandably, the problem of TIP extends far beyond Singapore. Existing frameworks within ASEAN must be utilized to their full potential in order to effectively combat TIP in the region. This paper has sought to outline the various international, regional, and domestic initiatives and options for legal recourse that are available to policy-makers and victims of TIP. As I have noted elsewhere with others, a regional action plan that is context-sensitive should be devised and implemented.<sup>256</sup> TIP can only be contained through a combination of multidimensional, and multistakeholder approaches which include deterrent and rehabilitative policy solutions. Singapore must take feasible steps in properly tackling the problem, both on the ground and as part of a greater ASEAN agenda, including strengthening its existing laws and being a champion for properly framing the TIP discussion in the region.

---

255. *Ibid.*

256. Thomas THOMAS, Mahdev MOHAN, and Jaya ANIL KUMAR, "An ASEAN Plan for Corporate Citizenship?" *Business Times* (24 December 2015), online: Business Times <<http://www.businesstimes.com.sg/opinion/an-asean-plan-for-corporate-citizenship>> at 22.