

PROTECTION OF VICTIMS, PARTICULARLY WOMEN AND CHILDREN, AGAINST DOMESTIC VIOLENCE, SEXUAL OFFENCES AND HUMAN TRAFFICKING

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I am happy to be here in Bangkok for the 9th General Assembly of the Asean Law Association 2006. I take this as a singular honour to be able to address you on this very important topic “The protection of victims, particularly women and children against Domestic Violence Sexual Offences and Human Trafficking”.

Recent times have seen a sudden increase in the violence against Women, it is today a threat to human security and its eradication must be given greater priority by all of us – whether as political leaders, police officers, judges, religious and community leaders, family, friend or neighbour.

The violence faced by women has taken several forms such as rape, intimate partner violence, sexual abuse, stalking. Women, my friends, are not safe at home, at work and on the streets.

Recent reports reveal that family violence has plagued every part of the World, even in developed countries. In Sweden, for instance, there is a rise in assaults against women, with 22,400 reports being lodged in the year 2003. In Spain, there has been an increase in the number of Women killed by their partner or ex-partner. In France a women is killed by her partner every four days.

The rich and the poor women are trapped in this whirlpool of domestic violence and are unable to escape it, either due to lack of means or for the fears of the consequences of their escape.

A family, my friends, we are taught and raised to believe, is an institution which protects us, yet, this very institution is today crumbling due this increase in the violence at home. Whilst on the one hand there are calls that the family units need to be strengthened, women within the family face gender discrimination and physical and mental abuse. Global declarations aiming to target the rise in domestic violence, continue to nurture this paradox

Governments and societies owe an obligation to protect women's' human rights by providing measures to curtail women from being exposed to forms of such violence. Laws, policies and practices need to be put in place to protect these women and ensure they get redress. Culture, Custom or religion is not an excuse for turning a blind eye to human rights abuses against women or for failing to protect them.

We have observed the survivors of such violence voicing out their predicaments, in their struggle to end such violence. For instance, Rania Al-Baz, a prominent Saudi television presenter shocked the global community in April 2004, when photos of her bruised and swollen face were published in the newspapers. BBC reported how this "ignited an unprecedented public debate within Saudi Arabia itself over the normally taboo issue of domestic violence".

Women like Raina Al-Baz broadened public awareness on the violence they have been subjected to, breaking their cultural and social barriers in anticipation of seeking redress through the government and society itself.

Domestic Violence, Violence against Women, sexual offences and human trafficking are obstacles to this battle for equality. Violence must always be condemned whether it takes place within the family or outside the home.

In Malaysia many efforts are being made to deal with the growing incidents of domestic violence, which though generally regarded as a family matter, laws geared to

curtail such incidents have been and continue to be passed, such as the Domestic Violence Act 1994 which was implemented on 1st June 1996, , which criminalised domestic violence and empowered the police to arrest the offenders and remove them from homes whilst at the same time focuses on extending adequate protection orders to aid the victims of such violence. Whilst Malaysians are either Muslim or Non-Muslims, where the Syariah Law has jurisdiction over family matters, criminal laws such as this Act cover both the Muslims and Non-Muslims.

A national survey conducted by the Women's Aid Organization, Malaysia estimated that in 1989 1.8 million or 39% of Malaysian women estimated to have been abused by their partners, Domestic Violence is a significant, but often hidden social problem. Only 909 women actually reported such violence to the Police. The 'invisibility' of the problem is largely attributed to the sensitivity of the issues surrounding the problem, especially the traditional belief in the sanctity and privacy of the family and the intimacy of marital relationships.

Physical abuse is often extensive and damaging causing severe psychological trauma of repeated assault, the impact of which can be permanent. The stress, tension, fear, guilt, anxiety and depression plaguing battered women in violent relationships continue even when they escape and leave such relationships. These negative emotions promote low self-esteem and shatter their self-confidence thus stifling their progress.

Then, we have the "social stigma" and the lack of financial independence, being primary reasons why women are reluctant to escape the clutches of the perpetrators of such violence, who most often are their husbands or partners themselves. This leads to the vicious cycle of self-sacrifice and continued torment, with no escape.

The implementation of a Domestic Violence Act sent out a strong message of the seriousness with which society regarded domestic violence it raised awareness and encourages women to report violence.

Under the Domestic Violence Act domestic violence includes the following acts:

1. Wilfully or knowingly placing, or attempting to place the survivor in fear of physical injury.

2. Causing physical injury to the survivor by such an act that is known, or ought to have been known would result in physical injury.

3. Compelling the survivor by force or threat to engage in any conduct or act, sexual or otherwise, from which the survivor has a right to abstain.

- To be noted at this point is that the Act does not cover marital rape, as the DVA is attached to the Penal Code, which specifies that a woman does not have the right to abstain from sexual relations unless she is divorced, judicially separated, or has obtained a restraining order on her husband.

4. Confining or detaining the survivor against the survivor's will.

5. Causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the survivor.

Domestic Violence, despite being widespread is to a large extent not widely discussed coupled with the fact that the nature of it in itself is hidden from the public eye, thus making it difficult to combat unless voiced.

The Domestic Violence Act defines domestic violence as an act by a person against:

- His or her spouse
- His or her former spouse
- A child
- An incapacitated adult
- Any other member of the family

The limitations of the Domestic Violence Act also extend to its non-protection of couples who live together but are not married, or violence experienced whilst dating.

Methods to curtail acts of such violence include

(i) lodging a police report;

(ii) lodging a complaint at the nearest District Social Welfare Department.

The provisions of the DVA empower the Court to grant orders such as (i) an Interim Protection Order restraining an aggressor which is valid for 12 months and can

be renewed for a further 12 months; (ii) right of exclusive occupation of the home regardless of whether it is jointly or solely owned or rented; (iii) an order prohibiting entry to the victim's school or place of work; (iv) any other Order that may be required for the safety of the victim

Prosecutions instituted on police reports lodged against the aggressors will result in the aggressor upon conviction being jailed/fined.

More often than not, victims seeking the protection of the DVA either file a Petition for Divorce/Nullity, in which case a Restraining Order can be obtained from the Court, which orders may include powers of arrest where there is a fear of further hurt/injury to the Victim.

Domestic violence is very much a violation of women's rights issue and not a family issue, as is widely thought.

Focus has been drawn to incidents of Domestic Violence by activists and policy makers from the 1970s. Since then substantial efforts have been taken by governments of respective countries, politicians, non-governmental organizations and the likes, to define instances of domestic violence and ways of identifying their underlying causes.

The World Health Organisation in its Report on Violence and Health in 2002 revealed that between 40% and 70% of women die due to homicide are killed by current or their former partners.

The United Nations has continually endorsed the view that domestic violence is predominantly a women's issue that is not merely restricted to the physical abuse of sexual abuse and various forms of assault including being set on fire, but extends also to the psychological or emotional abuse that is part and parcel of it.

The United Nations Commission on Human Rights described domestic violence as "violence perpetrated in the domestic sphere which targets women because of their role within that sphere or as violence which is intended to impact directly and negatively on women with the domestic sphere".

Victims of Domestic Violence need to be educated into being aware of their rights to safety and protection within and outside their home, which rights supersede the sanctity of the family. Society should accept and procure the intervention of the police and other forms of aid to curtail the increase in cases of Domestic Violence. Communities and State Authorities must come forth with their willingness to protect victims of Domestic Violence, who are in constant need of reassurance that they will not be shunned or unaided during such occurrences. Alternative shelter and care for the battered women and their children is another need that demands the attention and focus of governments, to eliminate the fears of these victims from being left homeless.

Professionals in the Medical and Healing sector are an asset in assisting these victims from their physical injuries, emotional trauma and to put them back in society as individuals armed with the confidence to progress.

Children, my friends, are not spared. They have also been targets of physical violence, for instance when they instinctively try to protect a family member during these acts of violence. Several authors have identified the link between domestic violence and child abuse as these children suffer neglect, emotional, mental and physical abuse, when they face such acts of domestic violence. The consequences of this are detrimental to the children, not only does it stifle their ability to perform in school, it also cultivates aggression, temper tantrums, low self esteem and can permanently damage their outlook to life. Children who come from homes where there have been incidents of domestic violence are exposed to depression, anxiety and perhaps even to cultivating criminal habits of stealing.

Children by and large look up to their parents as role models. When the parents themselves are victims or perpetrators of violence, it is perhaps unavoidable for the child to see violence as something ordinary and permissible leading to the child in later life committing these acts of violence. On the other hand, it can impair the child's ability to trust others and hence increases the risk of victimization in later life.

The most recent form of domestic violence seems to be the violence against the elderly people. Such violence stemming usually from the elderly people being dependant on others who themselves are unable to be independent. Financial set backs and the

stresses of life are known to spark such violent attacks on the dependant elder resulting in physical injuries. The psychological experiences of being powerless, the humiliation of being attacked by one's own family, the fear of being put away in homes/ institutions for the aged causes fear to report such incidents thus compounding the suffering of the elderly.

POWER AND CONTROL THE KEY FACTOR

Violence against women is about power and control simply because she is female, the weaker sex, irregardless of culture race, income, religion and class. In the past, women themselves were willing to accept such violence as ordinary. For instance, in India, it is undeniable that in the past, the female children did not receive the attention and education which the male children, instead they were trained to keep house, which in turn made them dependant on their spouses. This exposed them to the risk of violence with no escape for fear of being thrown out homeless and penniless.

However, the recent efforts to empower women enabled the women to voice out these acts of violence, knowing fully well that society and the government would act to aid and protect them.

THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW, the international women's rights treaty sets out the rights of women and promotes respect for these rights. The Convention calls for the banning of discrimination; and has recommended measures to promote equality between men and women.

Violence against women and girls is a global epidemic that even extends to the victims of such violence from seeking proper health care and thwarts their ability to participate in social communities Violence against women is more than a health issue. It is also a violation of women's human rights and their bodily integrity and their sexual reproductive rights.

These principles provide the framework for formulating strategies and give meaning to the articles of the Convention.

BEIJING PLATFORM FOR ACTION

Article 1 of the UN Declaration on the Elimination of Violence against Women and the Platform for Action from the Fourth World Conference on Women (the Beijing Platform for Action) both define violence against women as:

"any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

The Beijing Platform for Action commits governments around the world to **take action** to address violence against women.

The question really is whether the Beijing Platform for Action comprehensively deals with the issue of violence against women and to what extent has the international community acted to deal with this issue.

The UN body monitoring the implementation of this Convention, the Committee on the Elimination of All Forms of Discrimination against Women explained "Gender-based violence, which impairs or nullifies the fundamental freedoms under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include:

- (a) The right to life
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in the international or internal armed conflict;
- (d) The right to liberty and security of persons;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family

(g) The right to the highest standard attainable of physical and mental health

(h) The right to just and favourable conditions of work”.

The most important aspect of the Declaration is its unequivocal recognition that violence against women is an issue of international concern and that all nations have an obligation to work towards its eradication. In Article 1, it defines violence broadly:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

One major obstacle to women's equality worldwide has been the tendency for nations to invoke "traditional values" as a justification for discrimination against women. The Declaration makes a strong stand against arguments of "cultural relativism" in the context of violence against women. Article 4 states that The Declaration indicates a range of measures including becoming a party to the Women's Convention, the development of legal measures to punish, and provide redress for, violence against women, the recognition and support of the women's movement and non-government organizations in tackling gender-based violence, the provision of adequate resources to eliminate violence, the collection of data and the encouragement of research on violence against women, and the education of legal officials to "sensitize them to the needs of women" (Article 4). Many of these responsibilities are cast in terms of recommendations rather than obligations, and some are further weakened by phrases such as "to the maximum extent feasible in the light of their available resources."

THE LEGAL FRAMEWORK

International law regulates some categories of personal violence. Human rights law and the laws of war, for example, provide some restraints on acts of violence. But these laws deal with brutality in very limited contexts. Human rights law is generally confined to actions by or on behalf of governments, and the laws of war apply only in times of armed conflict. The well-documented pattern of violence against women in all countries, ranging from murder and rape to domestic violence and genital mutilation, has

traditionally been regarded as outside the scope of international law and a matter entirely within the domain of domestic national authorities.

SOME TRUISMS

Ideology, cultural prejudices and legal codifications all serve to define violence in the public imagination. As such, the prevailing discourse on violence systematically reinforces a narrative code which places a premium on certain representations of violence while rendering others invisible. Consequently the front page of our newspapers are given over to the riots in Los Angeles (1992) and the bombing in Atlanta (1996) while the massacres of Indians in the Amazon Basin and child labour in the Third World are relegated to a few lines in the inside columns. The ideological and cultural prejudices inherent in our society manifest themselves in the massive publicity given over to the violence inflicted on the four Belgian girls who were victims of a pedophile ring while the thousands of Nepali girls trafficked into brothels in India are ignored. The world's attention is forced onto the genocide which took place in the Former Yugoslavia but the plight of one sixth of the population of Bhutan, comprised of certain ethnic groups systematically forced out of their own country, is forgotten. Our perspective on violence is also revealed by the fact that while multinational corporations continue to inflict environmental harm with impunity, we face imprisonment if we willfully damage just one component on their property. We need to interrogate the representations of violence in our society before we examine the issue of violence against women if we are to move beyond the current restrictions of the debate.

TYPES OF VIOLENCE AGAINST WOMEN

If we accept the fact that violence is an avoidable action which violates human rights in its widest meaning, it is possible to classify violence into four main categories - direct violence, indirect violence, repressive violence and alienating violence.

1. Acts of direct violence are the most commonly emphasized in the discourse on violence. Direct violence refers to acts of deliberate violence resulting in a direct

attack on a person's physical or psychological integrity. This includes homicide (genocide, murders), as well as physical or psychological suffering (kidnapping, torture).

2. Indirect violence is a category which covers harmful, sometimes even deadly situations or actions which, though due to human intervention, do not necessarily involve a direct relationship between the victims and the institution, person or people responsible for their plight. Examples of this include the infliction of "silent violence" on the 10,000 human beings who die of starvation every day and the 500 million who suffer from chronic malnutrition.

3. Other examples of indirect violence can be witnessed in the common practice among US and European multinationals which peddle a wide range of toxic products to Third World countries that are banned in their home countries because they can induce cancer, genetic malformations or miscarriages. Even modifications of the social and economic environment which bring about a substantial deterioration of living and health conditions fall under the category of indirect violence.

4. Repressive violence relates to three groups of fundamental rights: civil rights, political rights and social rights. The most common form of this is the violation of the freedom of the press and of the right to belong to a trade union or to go on strike.

5. Alienating violence is the deprivation of a person's higher rights, such as the right to emotional, cultural or intellectual growth. Examples of this include policies or actions which deny certain ethnic groups their right to express their identity freely, as well as the forced integration of so-called "primitive" tribes into the mainstream of society. The social ostracism of homosexuals is also included in this category.

Needless to say, it is not uncommon to find the various types of violence enacted simultaneously. Although violence is clearly a social phenomenon which goes beyond blood and bruising, the representation of violence in our society has been limited to portrayals of "direct" violence to the exclusion of the other categories of violence. Consequently, it is not surprising to find that the issue of violence against women has primarily centered around sexual assault and domestic violence.

It may be pertinent to pause at this point to examine the different forms of violence against women. While it may be consequential for women living in the North to institute gender sensitive laws and educate the judiciary, there are millions of women for

whom the courts will not matter as their next meal is uncertain. One-fifth of the global population lives in extreme poverty and of these 1.3 billion people, up to 70 per cent are women. There is even a new phrase which has been coined to describe the situation: "the feminization of poverty". Women who live in poverty face malnourishment and injury to their health. They suffer from nutritional anaemia which makes child-bearing more taxing and difficult, as indicated in the statistics that half a million women die each year just from maternity. While it is simple to frame laws to charge husbands who abuse their wives, it is not as simple to deal with the economic violence of capitalism.

Unless the economic disparity between and within nations is addressed, the exploitation of women and the attendant violence against women will continue unabated. Violence against women needs to be increasingly placed as a public health and social issue. It should be understood in a better way so that appropriate intervention can be identified. Women NGOs should be encouraged to publicize this private, criminal act, facilitate the process of investigation and prosecution and help in the process of rehabilitation. There is a need to change the attitude of the system and these women to facilitate the process of surviving the experience and being able to come back into society, as quickly and effectively as possible.

SEXUAL OFFENCES

"Sexual Offences" in its broad sense covers every sexual offence. A narrower interpretation of the term, concentrates on the more serious offences

Reported incidents of rape, a serious sexual offence and sexual abuse are on the rise globally.

Amidst conditions of growing violence against women, women's organisations and non-governmental organisations (NGOs) have raised a series of questions regarding the laws concerning rape. Calls are being made by victims for efforts globally to enact stringent laws to combat the rising incidents of rape including incidents rape by family members (which has also drastically risen)

In a research conducted on the rise of sexual abuse in Malaysia, it was noted that NGOs functioning to combat rape have drawn attention to the non-recognition of rape within a marriage. For example under Malaysian law, there is no marital rape. In fact, the law on rape excludes "sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force" However, organisations such as the Women's Crisis Centre, Penang, stress that in contemporary Malaysian society, they have enough evidence of women going through forced sex within their marriage. Dr. Badriyah Salleh of the Centre says: "One is often reminded of the famous 17th century declaration of Lord Mathew Hales that, 'A husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract she has given up herself to this kind unto her husband, which she cannot retract.'" She added: "The notion that a woman 'belongs' to her husband is one that has been inherited from English criminal law, on which our Penal Code is based. England has since changed its stand on a married woman's rights, through a 1988 amendment to its Sexual Offences Act. Malaysia, however, has not."

WHAT IS 'CONSENT'?

The definition of a sexual offence often revolves around consent. In simple terms, it's all about permission (or agreement). This is something that must be clearly established between two people before any kind of sexual act or behaviour. If an individual is accused of a sex offence, the burden lies on that individual to prove that he/she reasonably believed consent had been given by the other person.

DILEMMA OF REPORTING SEXUAL ABUSE

Reported incidents of sexual abuse are far less than their occurrences. Victims are reluctant to report as they are either ashamed or scared to fearing it could worsen a situation.

For instance in countries of armed conflict like Sri Lanka, the women have been victims of sexual abuse by the police and armed forces. Are we going to sweep it under the carpet and pretend it never happened? Is forgetting the past a condition for future peace? I don't think so. Redressing past human rights violations is a pre-condition for peace. It is no secret that Tamil women have been victims of gruesome violations of

human rights. They have been tortured or subjected to inhumane and degrading treatment whilst in custody. The perpetrators are those in authority.

It is proven that a climate of impunity promotes abuse of authority and in turn sexual violations, especially where high ranking officers of the armed forces and police themselves are aware of sexual offences committed by their subordinates. However most of such acts are neither prevented nor punished. These gruesome acts though blemishing the security forces, are not moved. In such cases, there is call to make their Superiors accountable for acts committed by their subordinates which they either knew were being committed and/or subsequently failing to prevent or punish its commission. Superiors would only then wake up and enforce disciplinary measures.

On occasions, save for rape, a victim even fails to identify that she is a victim of sexual abuse. Any form of sexual activity that's against your will constitutes sexual abuse and includes bodily contact such as sexual kissing, touching, fondling of genitals or penetration - oral, anal, or vaginal) and genital exposure (flashing), verbal pressure for sex and sexual exploitation through pornography or prostitution.

Victims of rape and sexual offences require greater protection for instance when testifying in court on charges involving Sexual Offences. Such protection extends to preventing the offender from personally cross-examining the complainant by requiring them to be legally represented throughout the whole trial.

EDUCATING WOMEN & GIRLS ON RAPE

It is necessary for governments to educate the women and girls of their societies on the steps the Rape victim should be educated to **retain as much evidence as possible** – to refrain from cleaning oneself and get immediate medical examinations done for evidence of seminal and body fluids, mud, debris, fibers, hairs that provide important evidence. **If a police report is lodged first at a police station, assistance from the police to accompany the victim is usually provided.**

HUMAN TRAFFICKING

Human trafficking is another imminent problem faced globally and has attracted much wanted attention from various groups to combat the issue. **Trafficking in human beings** is the commercial trade ("smuggling") of human beings, who are subjected to involuntary acts such as begging, sexual exploitation (eg. prostitution and forced marriage), or unfree labour (eg. involuntary servitude or working in sweatshops). Trafficking involves a process of using physical force, fraud, deception, or other forms of coercion or intimidation to obtain, recruit, harbour, and transport people. To many, the contemporary phenomenon of trafficking in human beings is equivalent to slavery.

Trafficking is a highly gendered phenomenon and gender affects all aspects of the trafficking process. Females are trafficked in many ways to men and for different reasons. Human rights are implicated in the causes and vulnerability factors that contribute to trafficking. Discrimination and violence have been identified as key factors in increasing the vulnerability of women and girls to trafficking.

With the increase in the development of tourism and sex tourism industries, there is an increase demand for prostitutes and consequently a growing need for supply.

The trafficking of human beings, women, girls and boys is an intolerable human rights violation, an evil that cannot be overlooked. The rights of human beings trafficked, have occupied a prominent place in the agenda of the United Nations and other regional organizations. It is therefore our duty not only to popularize these rights but to go further and protect them.

Although men are also victimized, the overwhelming majority of those trafficked are women and children. According to official estimates, between 1 and 2 million children are trafficked each year worldwide for forced labour, domestic servitude or sexual exploitation. An estimated 50,000 persons are trafficked each year into the United States, for instance.

The Trafficking of Humans, is now considered the 3rd largest source of profits for organized crime, behind only drugs and guns, generating billions of dollars annually.

Traffickers recruit victims through fake advertisements, mail-order bride catalogues and casual acquaintances. Upon arrival at their destination, victims are placed in conditions controlled by traffickers while they are exploited to earn illicit revenues. Many are physically confined, their travel or identity documents are taken away and they or their families are threatened if they do not cooperate. Women and girls forced to work as prostitutes are blackmailed by the threat that traffickers will tell their families. Trafficked children are dependent on their traffickers for food, shelter and other basic necessities. Traffickers also play on victims' fears that authorities in a strange country will prosecute or deport them if they ask for help.

Trafficking in human beings is a global issue, but a lack of systematic research means that reliable data on the trafficking of human beings that would allow comparative analyses and the design of countermeasures is scarce. There is a need to strengthen the criminal justice response to trafficking through legislative reform, awareness-raising and training, as well as through national and international cooperation. The support and protection of victims who give evidence is key to prosecuting the ringleaders behind the phenomenon.

Individuals who have been trafficked are victims of crime and victims of human rights violations. Many countries treat trafficked persons as criminals. Victims of trafficking are incarcerated and quickly deported. They are given no material, social, medical or psychological support.

HUMAN TRAFFICKING IN MALAYSIA

The Global March Organisation has compiled statistics concerning prostitution and trafficking, in both women and children. According to a US Dept of State, Human Rights Report (1999), in 1997, 4,200 Malaysian girls were reported missing and a significant fraction of these girls were estimated to have been victims of trafficking. In 1998, 2,250 prostitutes were trafficked into Malaysia from foreign countries. They were arrested by the Malaysian police. Also estimated were 4,000 boy children were trafficked from Thailand to beg and engage in the sexual trade. Many of these children are smuggled in for the purposes of begging and prostitution. Child prostitution in Malaysia has also been an increasing problem. In 1998, the Minister of National Unity and Social

Development confirmed that annually, 150 to 160 young girls are detained for participating in “immoral activities.

Malaysia faces the problem of being a prime location for the trafficking in and the trafficking out of women and children as well as being used in transit for the trafficking of women in children from countries such as Indonesia, Taiwan, Sri Lanka, India, Pakistan Bangladesh, Philippines Cambodia, China and Russia, for the purposes of sexual exploitation and forced labour. Some economic migrants from countries in the region, who work as domestic servants and as labourers in the construction and agricultural sectors face exploitative conditions in Malaysia that meet the definition of involuntary servitude. Some Malaysian women, primarily of Chinese ethnicity, are trafficked abroad for sexual exploitation.

MALAYSIAN LAWS ADDRESSING ISSUES OF TRAFFICKING

The Malaysian Penal Code

The Malaysian Penal Code prohibited the inducement of girls under the age of 18 years to go some place or to be removed from her guardian or to perform any act with intent or knowing that it is likely that the girl will be seduced or forced into sexual intercourse. Such provisions are provided for under the provisions relating to the kidnapping of minors and statutory rape.

CHILD PROTECTION ACT 1991 ACT 468

PART VIII of the Act deals with the unlawful transfer of possession or custody or control of a child and the trafficking in Children.

Pursuant to Section 33(2) of the Act, every person who unlawfully has in his possession, custody or control any child for a valuable consideration shall be guilty of an offence and upon conviction be liable to a fine not exceeding Ringgit Malaysia 10,000.00 or to imprisonment or both.

Pursuant to Section 34 of the Act any person who imports into Malaysia a child by false pretences and deceitful means shall be guilty of an offence and shall on

conviction be liable to a fine not exceeding Ringgit Malaysia 10,000.00 or to imprisonment or both.

CHILD ACT 2001 ACT 611

Similarly under the **CHILD ACT 2001 ACT 611** enumerated in Part VIII Section 48 which states that any person who is involved in the transfer, possession and control of a child for valuable consideration commits an offence and upon conviction shall be liable to a fine of not more than RM 10,000.00 or to a term of imprisonment or both.

GLOBAL ISSUE

International human rights law has long recognized the concept of trafficking. The Convention of the Right of the Child prohibits trafficking and exploitation of Children Article 6 of the CEDAW Convention is more equivocal in obliging States Parties to take all appropriate legislative and other measures to “suppress all forms of traffic in women and exploitation of the prostitution of women”. In addition the International Guidelines on HIV/AIDS and Human Rights produced by UNAIDS and the Office of the High Commissioner for Human Rights provides guidance for governments

The Global Programme against Trafficking in Human Beings was designed by the UN Office on Drugs and Crime (UNODC) in collaboration with the United Nations Interregional Crime and Justice Research Institute (UNICRI) and launched in March 1999. GPAT assists Member States in their efforts to combat trafficking in human beings. It highlights the involvement of organized criminal groups in human trafficking and promotes the development of effective ways of cracking down on perpetrators.

The Global Programme against Trafficking in Human Beings objective is to bring to the foreground the involvement of organized criminal groups in human trafficking and to promote the development of effective criminal justice-related responses. As the only entity focusing on the criminal justice element, the Global Programme against Trafficking in Human Beings, working through UNODC's Crime Programme, brings special advantages to the fight against trafficking.

Countries involved in the Global Programme against Trafficking in Human Beings are selected from Asia, Europe, Africa and Latin America and will be assessed according to smuggling routes and forms of exploitation of trafficked people; cooperation among law enforcement, prosecution and judiciary; and government efforts to respond, including recent legislative reforms.

HUMAN TRAFFICKING IS NOT PEOPLE SMUGGLING

Human trafficking differs from people smuggling in that people smuggling involve people who voluntarily request the smuggler's service for fees and is devoid of any deception on those smuggled. People smuggling is not a new phenomenon. These are people who have left their homes in search of better lives elsewhere, more often than not for gainful employment abroad. Economic instability seems to be the key reason for illegal migration movement throughout the world, and such migrants willingly expose themselves to inhumane travelling conditions such as in overcrowded in trucks or boats, often causing fatalities.

Human Trafficking on the other hand involves the exploitation of the migrant, often for purposes of forced labour and prostitution and where the victim is enslaved, or the terms of their debt bondage are fraudulent or highly exploitative. The trafficker robs the victim of his or her basic human rights. Such trafficked persons are not victims of volition. Victims do not agree to be trafficked they are deceived and lured by false promises or physically forced. Deception, fraud, intimidation, feigned love, isolation, threat and use of physical force, debt bondage, other abuse, or even force-feeding with drugs to control their victims are the methods employed in trafficking.

Research and studies confirm that trafficked persons usually come from the poorer regions or countries of post conflict such as Kosovo and Bosnia, and transcends their social background. Often the victims are tricked into thinking that when they are smuggled elsewhere they will be free, but that is not the case. In countries like Nepal parents even sell their children to traffickers in order to pay off debts or gain income, knowingly or unknowingly, this happens.

Women form the majority of trafficking victims and are particularly at risk from potential kidnappers who exploit lack of opportunities, promise good jobs or opportunities for study, and then force the victims to be prostitutes. Through agents and brokers who arrange

the travel and job placements, women are escorted to their destinations and delivered to the employers. At their destinations, the women then become aware of the deception and lies, by which time, they find themselves in coercive and abusive situations from which escape is both difficult and dangerous.

The women accept offers believing they will obtain financial opportunities instead they end up as prostitutes, in bars, clubs as GROs and the likes. Often promises of marriage is what lures them, but once trafficked, they are subjected to intimidation and threats, to perform.

Women in developing nations are targeted by traffickers as they are desperate to find jobs. Other targets are countries where socio-economic conditions are difficult and opportunities for women are scarce. Typically the jobs offered are as domestic workers, waitresses, models or dancers but there are instances where women and girls have been abducted outright or lured across borders by "friends" for nightlife or tourist excursions. Some women travel overseas for arranged or brokered marriages, only to be forced into prostitution by their "husbands" when they arrive.

In the case of international trafficking, traffickers use various mechanisms to transport women and girls across borders, sometimes with the co-operation of immigration authorities. Many women (particularly from Central and Eastern Europe) are able to enter destination countries legally on student, tourist, or temporary work visas, and then overstay their visas. Others enter as "mail-

order brides." In some countries, such as Canada and Switzerland, women may obtain work visas as dancers, entertainers, or artists, thus enabling legal entry. When tourist visas or work permits are not available, traffickers can easily obtain false or altered travel documents from associates or local authorities. In Russia, for example, traffickers can reportedly obtain an altered passport for an underage girl for about \$800. The

International Organization for Migration (IOM) reports that traffickers may also transport women without documentation, usually by smuggling the women across land borders in cars and trucks. Once in the control of the traffickers, the trafficked women and girls are either forced into prostitution or trapped in exploitative conditions through debt bondage. In many cases, the young women are beaten, raped, threatened, confined and/or deprived of food until they agree to the trafficker's demands. In other situations, the coercion is more subtle. In almost all cases, the trafficker takes the woman's travel documents, controls her movement, and uses debt bondage to coerce and control her. If she escapes, she faces retribution against herself or her family for defaulting on her debt, and arrest and deportation from the local authorities. Unfamiliarity with the language, lack of money and proper documentation, mistrust of police or other authorities, lack of information, irregular or illegal immigration status, fear, shame, and isolation further reinforce the victim's dependence on the traffickers.

The "working conditions" of trafficked women in the sex industry are often brutal. Many are forced to have sex with as many as 15-20 clients per day. They are exposed to the risk of contracting HIV or other sexually-transmitted diseases and suffer from medical problems associated with multiple rape or physical abuse, with little or no possibility of proper healthcare, if so infected.

INCREASING INCIDENCE OF HUMAN TRAFFICKING

Due to the criminalisation and illegal nature of trafficking, the exact figures remain unknown. A United States Government report published in 2003 estimated that between 800,000 and 900,000 people worldwide are trafficked across borders each year, the majority in South East Asia, Japan, Russia and Europe. This figure excludes those trafficked internally. Human Trafficking is on the rise in Africa, South Asia and into North America. More than 80% of the victims trafficked across international borders are female and the majority of those women and girls are trafficked for sexual exploitation through forced prostitution or sexual slavery.

Several countries globally are plagued with the increasing incidence of child prostitution with its strong links to the Tourism industry. In Ukraine, a survey conducted by the NGO "La Strada-Ukraine" in 2001-2003, based on a sample of 106

women being trafficked out of Ukraine found that 3% were under 18, In Thailand, non-governmental organisations (NGO) have estimated that up to a third of prostitutes are children under 18, many trafficked from outside Thailand

Human Trafficking is not a new phenomenon; it ranks as the third most profitable criminal activity in the world after illegal drugs and arms trafficking. The International Labour Organization says in a report on forced labour ("A global alliance against forced labour", ILO, 11 May 2005) that globally, forced labour which includes sexual exploitation generates US\$31 billion, half of it in the industrialised world, a tenth in transition countries,

The 1996 report of the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography estimates that about one million children in Asia alone are victims of the sex trade. According to the International Labour Organization, the problem is especially alarming in Korea, Thailand, the Philippines, Sri Lanka, Cambodia, Vietnam and Nepal.

Human Trafficking has been facilitated by porous borders and advanced communication technologies; it has become increasingly transnational in scope and highly lucrative making it a rapid growing problem. Boosting the expansion of human trafficking are mainly the easy profits, the discrimination against women in employment sectors, the elimination of child labour and most importantly, the lack of education and knowledge about the realities and dangers of being trafficked. As shown earlier, the penalties against traffickers need review as they hardly suffice to curtail this rapid growing crime.

The popularity of the Internet has promoted global trafficking and sexual exploitation as the buying and selling of women and children is dangerously active through use of the internet.

The calls for governments to act speedily to enact laws and impose stricter punishments for offences of human trafficking are urgent.

THE BEIJING DOCUMENT

The Beijing Document does not deal with the fundamental question of the economics of the traffic in women, preferring instead to focus on "comprehensive programmes designed to heal and rehabilitate" the "victims of trafficking". The complete lack of real engagement with the issue is also demonstrated by the fact that no measures are recommended on dealing with trafficked women who may have been "rescued".

It is clear that violence against women is perpetrated in many forms. Although great attention is being paid to the category of sexual abuse and domestic violence, there needs to be a proportionate emphasis on the forms of "silent violence" inflicted on women through the economic system.

The Beijing Document makes one salutary statement concerning the realisation of a society free of violence. It reads: "developing a holistic and multidisciplinary approach to the challenging task of promoting families, communities and States that are free of violence against women is necessary and achievable".

ASEAN REGION

Various government agencies, judicial bodies and non-governmental organisations (NGOs) have and continue to play a vital role in assisting ASEAN Member Countries to wrestle these crimes and to formulate methods to give aid to the victims of such crimes.

The active involvement of organisations such as UNIFEM and UNICEF in the ASEAN region to assist and combat the trafficking in women and children and to make certain that the UN Conventions targeting measures to eradicate trafficking and exploitation of women and children is certainly recognized.

Nonetheless, there is a dire need for an International Criminal Justice System for the surveillance and apprehension of these offenders. Judicial co-operation within the Asean region is vital especially in our world today which is fast shrinking. People

nowadays can transport themselves from one country in a matter of hours and this includes the perpetrators of serious offences such as human trafficking.

We recognize that human trafficking cannot be solved by governments alone. ASEAN member countries need to co-operate and conjoin their efforts to combat this global issue through policy decisions, legislations to introduce stringent processes of prosecution for offenders caught trafficking in humans with stiffer punishments.

Judicial co-operation within the region will ensure that these offenders do not escape criminal liability simply by moving out of the jurisdiction in which the offence is committed.

JUDICIAL COOPERATION

1. The European Council's decision on the European arrest warrant and surrender procedures between member states rested on the principle of mutual recognition of judicial decisions. A similar model adopted among Asean member countries would ensure that when the judicial authority of a member country issues a decision according to the rules of its national law requesting the surrender of a person, that decision is recognizable by the judicial authorities of other member states *ipso facto*.

2. Another method, perhaps, is the internationalization of a code for serious criminal offences outside of War Crimes, such as involving drug trafficking, human trafficking, prostitution, slavery, sale of children, child prostitution, child pornography as well as for internet related crimes involving children, which in recent years has risen globally.

3. Also necessary would be to develop the Asean Judicial Fraternity to uphold the Rule of Law

Trafficking in women for the purpose of sexual exploitation is an increasing type of international organized crime generating high profits with low risk for traffickers. Thousands of women are being trafficked from developing countries to Western Europe and brought into conditions in which their basic human rights are violated. Only a minority of cases is reported and convictions of traffickers are rare.

CROSS-BORDER COOPERATION

Implementing and developing border management systems within the region, is another perceivable method of combating human trafficking as well as other forms of organized crime.

Human trafficking for forced labour and sexual exploitation is very much cross border in nature, thus calling for stricter supervision by the enforcement departments and agencies.

Co-operation within the Asean region to increase and encourage greater vigilance from border security forces as well as training border security patrol through programmes and initiatives especially to identify victims of human trafficking aimed at creating awareness and employing stringent methods of investigation would aid in combating cross-border human trafficking. Governments should ensure consistent and thorough border checks are carried out in the fight against organized crime.

IN JULY 2006, THE CHINA DAILY, REPORTED, AND I QUOTE:-

“The Chinese government announced Wednesday it has submitted for approving a plan to fight human trafficking to meet its obligations to a 2004 agreement among six Asian countries.

At a meeting here of the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT), Wan Yan, a member of the COMMIT China office, said, "We have submitted the action plan and are awaiting approval. If passed, the plan will help to clarify the responsibilities of all the relevant ministries in combating human trafficking."

The governments of China, Cambodia, Laos, Myanmar, Thailand and Vietnam adopted a comprehensive and strategic Sub-regional Plan of Action to jointly combat human trafficking in 2004, under which member states each devise a national plan of action.

"Many thousands of people have been rescued and safely returned in the past five years," said Susu Thatun, the program manager of UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region.

Susu said in late 1990s, many countries opened their borders to encourage economic development, but this also made human trafficking easier.

The six members belong to the Greater Mekong Sub-region, one of the world's most rampant human trafficking areas”

EDUCATING POTENTIAL VICTIMS

We cannot ignore the fact that the women and children targeted are from the poorer regions where the causes of human trafficking are rooted to target those who lack education, gender inequality, violence and poverty. Those who are desperate for a better life are easy targets, especially women.

No doubt efforts are being made to empower the women and educate the children there are urgent calls for assistance in the poorer regions within Asean.

Governmental agencies, Law enforcement officials, the Police, the Immigration department, NGO representatives, Psychologists, Teachers and Journalists, all have a role to play their roles in the prevention and protection efforts as well as the prosecution of traffickers.

The quality education and empowerment of women in poorer regions, where women are more vulnerable due to socio-economic conditions and gender inequality, is in my opinion the first step towards combating human trafficking, Knowledge is power. Educating the women into identifying the potential dangers and methods of trickery and deception practiced by the perpetrators to lure their victims, is a method that can assist in slowing down the speed at which organized crime is increasing.

Innovative methods to create awareness on the dangers of trafficking through informative projects, are necessary. Educating the women and young girls to realize that every new job offer or offer of marriage promising a better life elsewhere, is not something that is “ordinary”, is to me important. Where the motives of the perpetrator can be defeated is when his/her attempts to lure the victim fail. This should be our objective. We should aim to inform them of the dangers they put themselves into when they accept offers for arranged marriages and jobs in foreign countries, unquestioningly based on trust.

We must join hands and combine our efforts to protect our region, it cannot be done alone, by one corporation, or by one government. The ones we educate will in turn

educate others and perhaps sooner than we can imagine, traces of eradication of human trafficking may become visible.

Ultimately, if we want a better world for everyone we must have the resolve to take these issues head on and with steadfast commitment work towards eradicating human domestic violence, sexual offences and human trafficking. Debates are a many, but implementation of reforms and methods combat these violations of human rights, is what is urgently required from governments, legislative bodies, government agencies and departments, NGOs, the public and the private sector. Let us not wait for statistics of such violations to increase, before we act.

Puan Sri Datin Seri N. Saraswathy Devi