



**14 June 2014**

## **MARUAH's Position Paper for Consideration to the Inter-agency Taskforce on Trafficking-in-Persons**

We at MARUAH are pleased that the task of combating trafficking-in-persons in Singapore has gained momentum. A top-down mechanism in the form of an effectively enforced Anti-Trafficking Bill is a crucial step that cannot be foregone. We are also very happy that the Task-Force has held consultation with MP Christopher De Souza who is going to move a Bill in Parliament later this year. We would like to share our views, concerns and suggestions for the drafting of the Bill.

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## **A. MARUAH's Position**

MARUAH would like to stress the importance of an Anti-Trafficking Bill that addresses and tackles both sex and labour trafficking. We understand the need for caution so that the system is not taken advantage of and Singapore instead becomes a cost-bearer on this count. Nevertheless we feel that the more comprehensive the Bill is, the higher the chance that it will not leave gaps for interpretation and for people to fall through or to take advantage of the lacunae in the law to get away with the crime. It is thus imperative that the Bill adheres to UN Trafficking-in-Persons definition of Trafficking (Article 3(a) of the Palermo Protocol<sup>1</sup>) including the use of deception for the purposes of forced labour or services and debt bondage.

We ask, firstly, that we create better terms of reference around debt bondage to reduce exploitation into trafficking conditions and also at the same time, enable the government, for now, to further improve the current process of agency fees over employment of foreign nationals.

Secondly, a protection mandate for trafficked persons is necessary. Trafficked persons should be provided protection—regardless whether they choose to be a witness—and must be granted immunity from prosecution. We understand that immunity is not appropriate for all crimes such as murder and violent assaults. However, in other instances, we stress the importance of immunity for survivors<sup>2</sup> to prevent re-victimisation by the State apparatus. The Anti-Trafficking Bill must not merely be focused on the prosecution of perpetrators but it must take on a survivor-centered approach that emphasises the dignity of survivors. As such, the proposed Anti-Trafficking Bill should place paramount importance on bolstering rehabilitation services and securing immunity. This would aid survivors regain a sense of control and security - a function that the Bill combating trafficking, must not ignore or sidestep.

Thirdly, MARUAH also believes that to strengthen protection mechanisms existing laws must also be amended to ensure that there are no weaknesses in the existing laws that deal with trafficking. By amending, we harmonise across the laws and also take on a comprehensive and holistic approach to combating trafficking.

Hence, Singapore has the opportunity to take a more robust stance on trafficking by enacting an effective Anti-Trafficking Bill, tightening existing laws and working towards introducing a Whistleblower Act to protect people who wish to share information on traffickers, recruitment agencies and officials.

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<sup>1</sup> Palermo Protocol 3(a): "Trafficking in persons" shall mean 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. 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;

Please refer to this footnote for all subsequent mentions of Article 3(a).

<sup>2</sup> MARUAH like many other NGOs working on Trafficking and Domestic Violence refer to victims as survivors to ensure that we retain the value of the person's own empowerment to get out of the situation that they had found themselves to be in.

## **B. The Laws that need Amendments**

### **B.1 Children and Young Person's Act (Chapter 38)**

#### **B.1.1 Section 2(1) - Interpretation**

"child" means a person who is below the age of 14 years;

"young person" means a person who is 14 years of age or above and below the age of 16 years

Comment:

- Recognise that anyone below the age of 18 is a minor in accordance with the Convention on the Rights of the Child and the Palermo Protocol<sup>3</sup>.

Suggestions:

- B1.1.1 Remove definition of "young person" entirely; reflect that "child" refers to any person below the age of 18.
- B1.1.2 Include discussions on Paedophilia as offences under Penal Code.
- B1.1.3 Ensure that there is harmonization with Extra-Territorial Jurisdiction Against Sexual Offences Against Minors etc.

#### **B.1.2 Section 12 (1) and (2) - Unlawful Transfer of Possession, Custody or Control of the Child<sup>4</sup>**

- (1) Every person who takes any part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 4 years.
- (2) Every person who, without lawful authority or excuse harbours or has in his possession, custody or control any child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or outside Singapore shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a

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<sup>3</sup> Article 1 of the CRC states that "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." Making national laws fully compatible with the Convention on the Rights of the Child involves the systematic review of a country's national legislation, followed by enactment and enforcement of new and revised laws. Whereas in the Palermo Protocol it states clearly that a child is anyone under the age of 18 with no reservations.

<sup>4</sup> A reference to trafficking in children

term not exceeding 5 years or to both.

Comments:

- It is important to recognise the acute vulnerability of children to exploitation and their fear of authority. The above clauses do not recognise this fear enough both in punitive measures as well as prosecutorial, when trust is abused.
- Also, there is a need for a more comprehensive account of trafficking as described in the Article 3(a) of the Palermo Protocol wherein “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” is recognised and included in the definition of trafficking.

Suggestions:

B1.2.1            Strengthen punitive measures to reflect gravity of offence.

B1.2.2            Adopt the Palermo Protocol’s definition of Trafficking.

**B.1.3 Section 12(3) - Trafficking in Children**

It shall be a defence in any prosecution under this section to prove that the transfer took place in contemplation of or pursuant to a bona fide marriage or adoption and that at least one of the natural parents of the child or the legal guardian was a consenting party to the marriage or to the adoption by the adopting party, and had expressly consented to the marriage or adoption.

Comment:

- From the Women’s Charter, Section 13(1) Consents and Section 21(2) Special Marriage Licence:

Section 13(1): Subject to this section, a marriage licence under section 17 or a special marriage licence under section 21 for the marriage of a minor shall not be issued or granted without the consent of a person mentioned in the Second Schedule who is authorised to give such consent.

Section 21(2): The Minister may, in his discretion, grant a special marriage licence under this section authorising the solemnization of a marriage although any party to the marriage is below the age of 18 years

Suggestion:

B1.3.1 Include under Section 12(3)

(i) It shall be a defence in any prosecution under this section to prove that the transfer took place in contemplation of or pursuant to a bona fide marriage authorised by a special marriage licence in accordance with section 21 of the Women's Charter (Cap. 353) or bona fide adoption and that a person mentioned in the Second Schedule of the Women's Charter (Cap. 353) who is authorised to give such consent had expressly consented to the marriage or at least one of the natural parents of the child or the legal guardian was a consenting party ~~to the marriage or to the adoption by the adopting party, and had expressly consented to the marriage or adoption; or~~

(ii) It shall not be a defence in any prosecution under this section to prove that the transfer, transport, harbour, receipt, conference of possession, custody or control of a child or the recruitment of a child took place pursuant to the consent of the child where any person has achieved the consent of the child 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 for any valuable consideration or benefits.

**B.1.4 Section 13 - Importation of Child by False Pretences**

Any person who, by or under any false pretence, false representations or fraudulent or deceitful means made or used either within or outside Singapore, brings or assists in bringing any child into Singapore shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both.

Comments:

- It is important to recognise the acute vulnerability of children to exploitation and their fear of authority. The above clauses do not recognise this fear enough both in punitive measures as well as prosecutorial, when trust is abused.
- Also, there is a need for a more comprehensive account of trafficking as described in the Article 3(a) of the Palermo Protocol wherein “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” is recognised and included in the definition of trafficking.
- Please also look at the Law on Extraterritorial Jurisdiction Against Sexual Offences of Minors.

Suggestion:

B1.4.1 Include under Section 13

(i) It shall be a defence in any prosecution under this section to prove that the transfer took place in contemplation of or pursuant to a bona fide marriage authorised by a special marriage licence in accordance with section 21 of the Women's Charter (Cap. 353) or bona fide adoption and that a person mentioned in the Second Schedule of the Women's Charter (Cap. 353) who is authorised to give such consent had expressly consented to the marriage or at least one of the natural parents of the child or the legal guardian was a consenting party ~~to the marriage or to the adoption by the adopting party, and had expressly consented to the marriage or adoption; or~~

(ii) It shall not be a defence in any prosecution under this section to prove that the transfer, transport, harbour, receipt, conference of possession, custody or control of a child or the recruitment of a child took place pursuant to the consent of the child where any person has achieved the consent of the child 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 for any valuable consideration or benefits.

**B.1.5 Section 15 - Consent to Marriage**

No female below the age of 18 years who is or has been detained or in respect of whom a bond or security has been taken under the provisions of this Act shall contract any form of marriage without the previous consent in writing of a protector.

Comment:

- This should apply to males as well. Also a child cannot meaningfully consent to marriage.

Suggestions:

B1.5.1 Substitute "No child shall contract any form of marriage without a special marriage licence in accordance with section 21 of the Women's Charter (Cap. 353) and the previous express consent to the marriage of a person mentioned in the Second Schedule of the Women's Charter (Cap. 353) who is authorised to give such consent ~~writing of a protector.~~

B1.5.2 In alignment with the Palermo Protocol, child refers to anyone under the age of 18. Anyone under the age of 18 requires a special marriage license in accordance with Section 21 of the

Women's Charter which states:

Section 21

(1) The Minister may, if he thinks fit, dispense with the giving of notice and with the issue of a marriage licence, and may grant a special marriage licence in the prescribed form authorising the solemnization of a marriage between the parties named —

(a) upon proof being made to him by statutory declaration

(i) that there is no lawful impediment to the proposed marriage; and

(ii) where any party to the proposed marriage is a person to whom section 17A applies, that both parties to the proposed marriage have attended and completed a marriage preparation programme;

(b) where one party to the proposed marriage has been previously married but is divorced, upon a statutory declaration being furnished by the party as to whether that party owes any arrears in respect of any maintenance which is payable under a maintenance order; and

(c) upon his being satisfied that the necessary consent, if any, to the marriage has been obtained, or that the consent has been dispensed with or given under section 13.

(2) The Minister may, in his discretion, grant a special marriage licence under this section authorising the solemnization of a marriage although any party to the marriage is below the age of 18 years.

(3) If the marriage authorised by a special marriage licence under this section is not solemnized within one month from the date of the licence, the licence shall become void.

(4) The Minister may delegate his powers under this section to any person, subject to such conditions as he may think fit to impose.

### **B.1.6 Section 17(3) - Inspection**

Any person who obstructs or hinders or attempts to obstruct or hinder a protector or any such officer in the exercise of the powers conferred by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both.

Comment:

- The punitive measures in relation to the trafficking offences under the Protocol need to be strengthened to be a deterrent and commensurate to the crime.

### **B.1.7 Section 18 - Powers of Arrest**

A protector may, during or after any inquiry referred to in section 8, 14 or 17, arrest or cause to be arrested any person reasonably believed to have committed an offence under section 5, 6, 7, 11, 12 or 13 and seize and detain any article or document which he may have reason to believe relates to the offence.

Comment:

- Strengthen this measure by tackling the potential loophole of hiring another to aid with the offence and punishing the attempts to commit an offence as well.

Suggestion:

- B1.7.1      A protector may, during or after any inquiry referred to in section 8, 14 or 17, arrest or cause to be arrested any person reasonably believed to have committed or attempted to commit, or employed or aided any other person to commit or abetted the commission of<sup>1</sup> an offence under section 5, 6, 7, 11, 12 or 13 and seize and detain any article or document which he may have reason to believe relates to the offence.



## **B.2 Women's Charter (Chapter 353)**

### **B.2.1 Section 2**

"minor" means a person who is below the age of 21 years and who is not married or a widower or widow

Comments:

- This fails to protect persons whom are acutely vulnerable as a result of their physical or mental condition. Also, marital status should not have a bearing on one's minor status as one may have been coerced into marriage. It is preferable to adhere to the Palermo Protocol's definition of child in Article 3(d): "child" shall mean any person under eighteen years of age.
- The Convention on the Rights of the Child also stipulates that a minor is below 18 years of age.
- The Children and Young Persons Act provides legal protection for children below the age of 14 years, as well as for young persons aged 14 and below 16 years.

Suggestion:

- B2.1.1        Deleting the words "below the age of 21 years and who is not married or a widower or widow", and substituting the words "below the age of 18 years or is above 18 years but has a mental condition or has special needs".

### **B.2.2 Section 2**

"brothel" means any place occupied or used by any 2 or more women or girls whether at the same time or at different times for the purpose of prostitution

Comment:

- It does not provide for cases wherein the husband, father or another person coerces a woman or girl to have carnal connection with any male person(s) within her place of residency.

Suggestion:

- B2.2.1        Deleting the words "any 2 or more women or girls", and substituting the words "at least one woman or girl".

### **B.2.3 Section 5 – Void(able) Marriages**

Comments:

- The law should recognise that not all marriages are entered into willingly or with consent. The Women's Charter (partially) recognises this with the Section 36(a)

Section 36:

Any person who uses any force or threat —

(a) to compel a person to marry against his will –

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 3 years or to both.

- However, a further step must be taken to recognise marriages that were a result of coercion by either a third party or the spouse, as void. This is trafficking and is being recognized as being trafficked into marriage.

Suggestion:

- B2.3.1        Inserting immediately after Section 5(2), a clause that nullifies any marriage in which one person is coerced into marriage.

### **B.2.4 Section 15 - Signature on Notice by Person unable to write or to understand English language**

If the person giving the notice under section 14 is unable to write or is insufficiently acquainted with the English language, or both, then it shall be sufficient if he places his mark or cross thereon in the presence of some literate person who shall attest the same, which attestation shall be in the prescribed form.

Comment:

- In light of coerced unions, it is important to have the marriage notice be made understandable to both parties before consent/agreement in the form of a signature or mark/cross. This is important for those who are marrying Singaporeans but are from other countries.

Suggestion:

- B2.4.1        Insert a provision allowing a person unable to write or to understand English language to have the notice of marriage be explained to them in their native or first language.

### **B.2.5 Section 140 (1) - Offences Relating to Prostitution**

- (b) procures any woman or girl to have either within or without Singapore carnal connection except by way of marriage with any male person or for the purpose of prostitution either within or without Singapore;
- (c) by threats or intimidation procures any woman or girl to have carnal connection except by way of marriage with any male person either within or without Singapore;
- (d) brings into Singapore, receives or harbours any woman or girl knowing or having reason to believe that she has been procured for the purpose of having carnal connection except by way of marriage with any male person or for the purpose of prostitution either within or without Singapore and with intent to aid such purpose;
- (e) knowing or having reason to believe that any woman or girl has been procured by threats or intimidation for the purpose of having carnal connection except by way of marriage with any male person, either within or without Singapore, receives or harbours her with intent to aid such purpose;
- (g) detains any woman or girl against her will on any premises with the intention that she shall have carnal connection except by way of marriage with any male person, or detains any woman or girl against her will in a brothel;

Comment:

- Marriage may be the means through which the individual is trafficked and exploited.

Suggestion:

- B2.5.1            Remove the marriage exception—"by way of marriage" in each of the clauses.

### **B.2.6 Section 140(1) - Offences Relating to Prostitution**

- (i) has carnal connection with any girl below the age of 16 years except by way of marriage;

Comment:

- The minimum age should be changed to 18 in accordance with the Palermo Protocol's definition of child and the Convention on the Rights of the Child.

Suggestion:

B2.6.1           Substitute for “any girl below the age of 16” the following:  
                    “any girl below the age of 18”.

### **B.2.7 Section: 140 (1) and (2) and 141 (1)**

Section 140 - Offences relating to prostitution

(1) Any person who -  
shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

(2) Any male person who is convicted of a second or subsequent offence under subsection 1(a), (b), (c), (d), (e) or (f) shall in addition to any term of imprisonment awarded in respect of such offence, be liable to caning.

Section 141(1) - Traffic in women and girls

(1) Any person who buys, sells, procures, traffics in, or brings into or takes out of Singapore for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girl, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

Comment:

- The punitive measures are not commensurate with other serious crimes such as rape. Firstly, the fine and imprisonment term must be increased. Secondly, this only covers prostitution; other forms of exploitation—such as sexual exploitation, forced labour, slavery, sexual grooming, pornography and trading in organs—are not recognised. Thirdly other parts of a trafficking syndicate are ignored: to effectively tackle trafficking, harbourers, transporters, and recruiters must also be targeted and penalised.

Suggestions:

B2.7.1           Introduce provisions that tackle various players in a trafficking syndicate and various forms and purposes of trafficking in humans.

B2.7.2           The punitive measures should be brought on par with the crime as one of continuous rape if the person has been trafficked.

B2.7.3           The fines have to become dependent on the number of crimes and sentencing should be based on each offence.

### **B.2.8 Section 140 (5) - Offences Relating to Prostitution**

In the case of a man who at the time of the alleged offence was below the age of 21 years, the presence of a reasonable mistaken belief that the girl was of or above the age of 16 years shall be a valid defence to a charge of an offence under subsection (1)(i), provided that at the time of the offence, he has not previously been charged in court for an offence under subsection (1)(i), or section 376A, 376B, 376C or 376E of the Penal Code, or section 7 of the Children and Young Persons Act (Cap. 38).

Comment:

- Any person below the age of 18 should be recognised as a minor and protected thus.

Suggestion:

B2.8.1            Amend the clause to “above the age of 18”.

### **B.2.9 Section 141 (1) - Traffic in Women and Girls**

Any person who buys, sells, procures, traffics in, or brings into or takes out of Singapore for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girl, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

Comment:

- This is not a comprehensive definition or understanding of trafficking in persons.

Suggestion:

B2.9.1            Adopt definition set forth in the Palermo Protocol Article 3(a):

“Trafficking in persons” shall mean 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. 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.

### **B.2.10 Section 142 - Importation of Woman or Girl by False Pretences**

Any person who by or under false pretence, false representation or fraudulent or deceitful means made or used either within or without Singapore brings into, or takes out of, or assists in bringing into, or assists in taking out of, Singapore any woman or girl —

- (a) with intent that she shall be employed or used for the purpose of prostitution either within or without Singapore;
- (b) knowing or having reason to believe that she will be so employed or used; or
- (c) whether or not for the purpose of present or future prostitution, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

Comment:

- Problematic for the same reasons as Section 141(1). Any person below the age of 18 should be recognised as a minor and protected thus.

Suggestion:

B2.10.1 Strengthen punitive measures and include provisions to tackle trafficking comprehensively.

### **B.2.11 Section 143 - Permitting Girl Below the Age of 16 to Use Premises for Sexual Penetration**

Any person who is the owner or occupier of any premises, or who has, or acts or assists in, the management or control of any premises, induces or knowingly permits a girl below the age of 16 years to resort to or be on those premises for the purpose of engaging in sexual penetration except by way of marriage with any male person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 years or to both.

Comments:

- Age of consent should be increased in accordance with the Palermo Protocol's definition of child and the Convention on the Rights of the Child.
- Punitive measures are too weak.

Suggestions:

B2.11.1 Amend clause to “below the age of 18 years”.

B2.11.2 Strengthen the punitive measures.

### **B.3 Penal Code (Chapter 224)**

#### **B.3.1 Section 90 - Consent given under Fear or Misconception, by Person of Unsound Mind, etc., and by Child**

A consent is not such a consent as is intended by any section of this Code —

(a) if the consent is given by a person —

(i) under fear of injury or wrongful restraint to the person or to some other person; or

(ii) under a misconception of fact,

and the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;

(b) if the consent is given by a person who, from unsoundness of mind, mental incapacity, intoxication, or the influence of any drug or other substance, is unable to understand the nature and consequence of that to which he gives his consent; or

(c) unless the contrary appears from the context, if the consent is given by a person who is under 12 years of age.

Comments:

- Anyone under the age of 18 should be recognised as a minor (in accordance with the definition of child as stated in Article 3(a) of the Palermo Protocol). As stated in Article 3(b), consent given under coercion or given by a person being trafficked should be recognised as exploitation not consent.
- Article 3 of the Palermo Protocol
  - (a) “Trafficking in persons” shall mean 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. 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;
  - (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;



Suggestion:

- B3.1.1            Include a provision that nullifies consent given by a person under circumstances set forth in Palermo Protocol Article 3(b).

### **B.3.2 Section 94 - Act to which a Person is Compelled by Threats**

Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person or any other person will otherwise be the consequence:

Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Comments:

- There is a need to elaborate what acting out of one's own accord or voluntarily. Under coercion or threat of harm and abuse—not limited to physical forms, but expanded to include mental and psychological harm/abuse—one may agree to commit an offence.
- Also, this exception cannot be made only for the fear of “instant death”. This fails to recognise the many harms and threat of harm victims of trafficking face. It is important to acknowledge this particular vulnerability, and that under such circumstances one cannot be assumed to be of one's accord.

Suggestion:

- B3.2.1            Include a provision to address non-punishment for victims of trafficking in persons who have been made to commit crimes, except for murder. Expand threats to include “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.” (Palermo Protocol 3(a)) “Instant death” should be substituted with “hurt” and “grievous hurt”.

### **B.3.3 Section 340 - Wrongful Confinement**

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.

Comment:

- We should take into consideration situations where there may be no need for restraint as the person(s) in captive feel they have no other choice or option but to stay due to their unique circumstances such as, but not limited to, having their belongings taken away from them or fear that their leaving may affect family members. Or cases in which person(s) held captive was restrained initially, but has now accepted state of confinement and ‘willingly’ stays.

Suggestion:

B3.3.1 This can be provided for in the illustration accompanying Section 340 which is used in the interpretation of the Section.

### **B.3.4 Section 372, 373, and 373A**

Section 372 - Selling minor for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of any person under the age of 21 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

Section 373 - Buying minor for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any person under the age of 21 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

Section 373A - Importing woman for purposes of prostitution, etc.

Whoever —

- (a) by any false pretence, false representation, or fraudulent or deceitful means, brings, or assists in bringing, into Singapore any woman with intent that such woman may be employed or used for the purpose of

prostitution;

- (b) brings, or assists in bringing, into Singapore any woman with intent that such woman may be sold or bought for the purpose of prostitution; or
- (c) sells or buys any woman for the purpose of prostitution, shall be punished with imprisonment for a term not exceeding 10 years, and shall also be liable to fine.

Comment:

- They only relate to prostitution. Trafficking in persons for the purpose of sexual exploitation is more than prostitution. Need to address a broader range of reasons why people – women, men, girls, boys - are sold, bought, and imported.

Suggestion:

B3.4.1        Expand to include purpose of exploitation as described in Palermo Protocol Article 3(a):

“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, (sexual grooming, pornography) or the removal of organs.”

### **B.3.5 Section 374 - Unlawful Compulsory Labour**

Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Comments:

- This does not take into account situations wherein there may be no need to compel (see Comment at B.3.3) and does not address all players involved in the various stages of the supply chain such as recruiters, harbourers, and transporters.
- Also, this needs to include provisions for forced labour and slavery.

### **B.3.6 Section 366 and 367- Kidnapping**

Section 366 Kidnapping or abducting a woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or to a life of prostitution, or knowing it to be likely that she will be forced or seduced to illicit intercourse, or to a life of prostitution, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine or to caning.

Section 367 Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt or slavery, or to non- consensual penile penetration of the anus, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine or to caning.

Comment:

- It is important that the law recognizes that some incidents of trafficking begin with victims being kidnapped.

Suggestion:

B3.6.1        The punitive measures need to be enhanced on kidnapping offences to longer jail terms of perhaps 20 years.

## **B.4 Employment of Foreign Manpower Act (Chapter 91A)**

### **Section 5 - Prohibition of Employment of Foreign Employee without Work Pass**

(2) No foreign employee shall be in the employment of an employer without a valid work pass.

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

#### **Comments:**

- Trafficked victims should be granted amnesty. They have been coerced, threatened or faced other forms of coercion to accept a job without a work pass.
- The punitive measures are too weak.
- There needs to be recognition that 'debt bondage' when ungoverned leads to exploitation and trafficking condition of the worker even on a valid work pass.
- There is a gap between the legal provisions and the governance for example even on the mandatory day off for domestic workers.
- This Act is onerous, focusing on the potential wrong-doing of the employees with scant mention of treatment by employers or recruitment agencies.

#### **Suggestions:**

- |      |  |
|------|--|
| B4.1 | Trafficked victims should be granted immunity.   |
| B4.2 | Recruiters, Employers need to face stronger punishments for trafficking in labour to become a deterrent.                           |
| B4.3 | Terms delineating 'debt bondage' need to be spelt out more clearly and governed by law through contracts that are governed by law. |

## **B.5 Work Injury Compensation Act (Chapter 354)**

### **Section 3 Employer's Liability for Compensation**

### **Section 6 Persons entitled to Compensation**

Comment/Suggestion:

- B5.1            Trafficked victims should be recognised under this section for the suffering endured under trafficking. This should include provisions for trafficked victims to receive compensation directly or indirectly through the establishment of a fund that goes to victim rehabilitation services.

## **B.6 Workplace Safety and Health Act (Chapter 354A)**

### **Section 12 Duties of employers**

- (1) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of his employees at work.
- (2) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him in the workplace.
- (3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —
  - (a) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;
  - (b) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;
  - (c) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —
    - (i) in their workplace; or
    - (ii) near their workplace and under the control of the employer;
  - (d) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work; and

(e) ensuring that those persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.

(4) Every employer shall, where required by the regulations, give to persons (not being his employees) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while those persons are at his workplace.)

Comment:

- There is no expressed mention of trafficking in this section and thus no duty on the employer to ensure that any person hired is not a victim of trafficking.

Suggestion:

B6.1            Include a clause that places a responsibility on the employer to ensure that to the best of his or her knowledge, employees are not victims of trafficking; as defined in Article 3(a) of the Palermo Protocol.

### **C. Comparative Cases**

Taiwan has made considerable progress with its Human Trafficking and Control Act. This together with its Criminal Code criminalises both sex and labour trafficking. Taiwan is an example of how the existing law supports an Anti-Trafficking law in the efforts to target perpetrators. Another commendable fact is that punishment for trafficking is commensurate with that of other serious crimes. This is an area that Singapore needs to address—the toughening up of punitive measures to ensure its appropriateness to the crime and its level of deterrence.

Malaysia’s experience in the enactment and enforcement of an Anti-Trafficking Bill is one we can stand to learn from. We note the dangers of conflating two separate phenomena—trafficking and smuggling—as one issue. In the context of Singapore, we need to guard against treating sex trafficking as similar to or an offshoot of prostitution. Also, the Malaysian case highlights the problems of treating survivors as criminals or “undocumented migrants”. Again, we stress the importance of victim protection and a need for sensitivity handling each case or trafficked person.

Cambodia’s Law on Suppression of Human Trafficking and Sexual Exploitation clearly defines child as anyone under the age of 18. It also defines comprehensively unlawful removal and recruitment; the clear definition of the various components of trafficking (as defined by Article 3(a) of the Palermo Protocol) will be beneficial to the efficient enforcement of the law. The Act also includes a restitution clause:

“Article 46 Restitution of Unjust Enrichment:

A person who obtains enrichment without a legal cause knowing that the enrichment has been obtained from the act of selling/buying or exchanging of human being or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests.

An aggrieved person (a person being exploited) may claim for damage in addition to the restitution of such unjust enrichment.”

This is an important provision that contributes to the welfare of trafficked persons. This can go directly to survivors of trafficking or a fund that wholly contributes to survivor welfare services can be established. However, Cambodia fails to follow through with witness protection and access to resources for survivors; this is something we must learn and build on if we are to protect trafficked persons and to support their willingness to cooperate in prosecution.

Myanmar’s Anti-Trafficking in Persons Law adheres to Palermo Protocol’s definition of trafficking. It also goes on to explain in detail various components of the definition such as exploitation and debt bondage. The Act is survivor-oriented with many sections addressing the well-being of survivors: Safeguarding the Rights of Trafficked Victims, Special Protection of Trafficked Victims, Women, Children and Youth, and Establishment of the Fund.



## **D. Other Legal Provisions Needed**

### **D.1 Whistleblower Act**

Comments:

- There is no Whistleblower Act in Singapore. Trafficking is a trans-border issue and will need many stakeholders being willing to participate in telling on sources and companies that are involved in trafficking. But they will need protection and immunity to encourage people to come forward.
- Singapore has discussed this matter in 2010 but there has been no movement since.

Suggestion:

- D.1.1            We ask for a discussion on the Whistleblower Act for possible Bill to be passed on this too.

### **D.2 The Mareva Injunction**

Comments:

- There is a need to freeze assets of the accused especially in trans-border crimes.
- Trafficking in Persons is a lucrative business and recruiters and agents are able to move their assets very quickly to frustrate efforts for recover.
- Many Traffickers also have businesses of a similar nature, being under other family members, which makes it easier to re-locate assets, legally.

Suggestions:

- D2.1            That the Mareva Injunction Application become a means to increase the punitive measures under the Protection phase of dealing with trafficking.
- D2.2            That received money be used for the rehabilitation of the trafficked persons.

## **E. Conclusion**

We would like to thank you for the progress made by the taskforce and the opportunity to contribute to this process. The suggestions presented in this paper are made to support your efforts to enforce an effective Anti-Trafficking Bill.

We also hope that the Anti-Trafficking Bill will be refined further for us in Singapore to have a high starting point on this important Bill.