A report on National Human Rights Institution’s (NHRIs) work to evaluate and monitor state anti-trafficking responses in the Association of South-East Asian Nations (ASEAN) area
RIGHTS in Practice
A report on National Human Rights Institution’s (NHRIs) work to evaluate and monitor state anti-trafficking responses in the Association of South-East Asian Nations (ASEAN) area

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Since the development of the Protocol to Protect, Suppress and Punish Traffic in Persons (Human Trafficking Protocol) ten years ago, there has been a global effort to combat trafficking in persons: 132 States are now Parties to the Protocol and many have implemented specific anti-trafficking legislation. However as highlighted by the Office of the High Commissioner for Human Rights (OHCHR), it has become increasingly clear that present efforts to prevent trafficking are not succeeding. Moreover, as the OHCHR notes, some anti-trafficking responses: ‘have even been harmful to the very people they aimed to protect, as victims of trafficking at times become “collateral damage” in law enforcement operations’\(^1\). Instead of facing up to their human rights obligations many States remain complicit in the exploitation of those migrating for work.

The Global Alliance against Traffic in Women (GAATW)\(^2\) believes that National Human Rights Institutions (NHRIs) along with other key national actors are in a position to reduce the negative impact of anti-trafficking responses and, furthermore to promote and protect migrant rights. In 2007 the four Association of Southeast Asian Nations (ASEAN) NHRIs of Thailand, Indonesia, Malaysia and the Philippines entered into a Declaration of Cooperation on five areas of shared concern, including ‘people trafficking’ and the ‘protection of the human rights of migrants and migrant workers’. This Declaration signified a commendable and progressive step forward.

GAATW focuses this report on the work of these NHRIs\(^3\): we consider their research and analysis of anti-trafficking responses and examine the role they play in upholding the rights of trafficked persons and migrants. Throughout this report we note the huge benefit derived from their continued commitment in this area, yet also the areas for improvement if migrant rights are to be protected, respected and fulfilled, as they must in the region. We have identified common trends in these NHRIs’ approaches to human trafficking and migration and on the basis of these and the guiding Principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles) we make the following recommendations to the NHRIs of Thailand, Indonesia and Malaysia,

\(\text{Khana Khammakarn Sithi Manusayachon Hang Chat; Komisis Nasional Hak Asasi Manusia (Komnas HAM) and Komisi Nasional Anti Kekerasan Terhadap Perempuan (Komnas Perempuan); and Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM):}\)

\(^{2}\) The Global Alliance against Traffic in Women (GAATW) is a network of over 100 member organisations working on migrant rights, anti-trafficking and women’s rights issues around the world.
\(^{3}\) Research in the Philippines is ongoing. Once this is completed and collated the section on the CHRP will be published as an addendum to the full report.

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Institutional competencies

As States increasingly adopt narrow interpretations of human trafficking, the burden falls to NHRIs, NGOs and others to highlight the complexity of this issue and its inter-linkages with migration and labour exploitation.

1. Ensure that at least one Commissioner per NHRI possesses a high level of competence and expertise in the areas of migration and labour exploitation and that they have adequate human and financial resources to conduct their work to the highest standards;
2. Mainstream these competencies throughout the NHRI in order to ensure institutional clarity on the linkages between the human rights of migrant workers and anti-trafficking initiatives.

Formalisation of procedures and relationships

In each country studied national anti-trafficking policies and practice are in progress and NHRIs have been involved in such developments to varying degrees of success:

3. Enter into partnerships with key actors working in the fields of human trafficking, migration and labour to jointly address State anti-trafficking responses and ensure adequate human rights protections are offered to migrants.
4. Establish, in collaboration with CSOs, mechanisms to: research and analyse States’ anti-trafficking responses both in policy and practice; draft legislation and legislative amendments; monitor and make recommendations on existing legislation; advocate for international legal ratifications and monitor compliance with existing international obligations; and to promote pluralism, facilitating dialogue and channelling feedback on anti-trafficking responses.

Direct engagement in human rights promotion

NHRIs work to promote migrant rights includes: trainings for law enforcement and other public officials; education about opportunities for safe migration; their presence at law enforcement raids or at government detention facilities; and direct advocacy in specific cases:

5. Request a formal role in law enforcement operations and official training programmes in order to ensure that migrant rights are mainstreamed throughout all anti-trafficking responses.
6. Ensure that protection measures offered by the State to trafficked persons and migrants are monitored for their adherence to human rights standards, particularly by conducting regular visits to shelters or detention establishments and through training programmes for staff.
7. Continue to engage directly in cases regarding the exploitation of migrants ensuring that due process is followed in judicial procedures and access to justice for trafficked persons is guaranteed.
Advisory role

The backbone of NHRIs’ work is their statements of opinion, recommendations and reports published which draw on their expertise in human rights and migrant rights:

8. On the basis of sound evidence and expertise, continue and enhance advisory work, highlighting the State’s obligations and duties to uphold the human rights of migrants and trafficked persons. Conduct associated advocacy in order to ensure uptake of recommendations.
INTRODUCTORY REMARKS

Introduction to GAATW

The Global Alliance Against Traffic in Women (GAATW) is an Alliance of more than 100 non-governmental organisations from across the world. GAATW member organisations include migrant rights organisations; anti-trafficking organisations; self-organised groups of migrant workers, domestic workers, survivors of trafficking and sex workers; human rights and women's rights organisations; and direct service providers.

Introduction to NHRI research

This report continues GAATW’s policy and advocacy setting process which began with the production of our 2007 report - Collateral Damage: the impact of anti-trafficking measures on human rights around the world - an anthology of eight country-focused reports. Collateral Damage asks whether people are freer to exercise their human rights as a result of anti-trafficking policy and practice or if, in fact, measures taken have had a negative impact on the human rights of those they were designed to assist. On the basis of the eight country reports ten common steps forward were identified and recommendations made to national governments, anti-trafficking NGOs and National Human Rights Institutions (NHRIs), which have subsequently informed the focus of GAATW’s advocacy programme.

This research was designed to help GAATW to establish policy and advocacy priorities in relation to Recommendation 3 to NHRIs in Collateral Damage: National Human Rights Institutions should collect information in a proactive way about the impact of anti-trafficking measures and assess whether they conform to the principle of proportionality. This recommendation is particularly important to GAATW members, who often collaborate with NHRIs in efforts to prevent negative human rights fallout from anti-trafficking measures. At all times we wish to emphasise the importance of NHRIs in this work. It is our aim and intention to strengthen the impact of NHRIs in this field rather than to weaken their position or criticise them unnecessarily.

Introduction to Trafficking in the ASEAN Region

The Association of Southeast Asian Nations (ASEAN), an organization that counts Indonesia, the Philippines, Malaysia, and Thailand as four of its ten members, works to promote concerted action between member countries. The ASEAN region has, relatively recently, taken steps to visibly and explicitly denounce trafficking, with the 2004 ‘ASEAN

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5 ASEAN. Member Countries. [Online] Available at: http://www.aseansec.org/74.htm [Accessed on: 06.28.09].
6 ASEAN. Overview. [Online] Available at: http://www.aseansec.org/64.htm [Accessed on: 06.28.09].
Declaration against Trafficking in Persons, Particularly Women and Children’ serving as an international example.7

Trafficking within the ASEAN region, as in all regions, is a hugely complex issue and one which requires a diverse set of responses. Although countries in the region are often classified as either origin, transit, or destination, in reality the situation is more complex. For example, Thailand is often considered a destination country due to its relative wealth in the region. However, it also must deal with trafficking source issues, with individuals trafficked to destinations including Taiwan, Malaysia, Europe, the United States, and various Middle Eastern States, and transit issues, as people are trafficked from Burma, Cambodia, and Vietnam through Thailand to Malaysia.8 Trafficking, therefore requires a multifaceted approach, with regional, national, and international efforts necessarily taking a myriad of forms.

The complexity of this issue takes on special importance in South East Asia conservative estimates put the number of women and children trafficked at between 200,000 to 225,000 annually, a number that, in a global context, represents roughly one third of trafficked persons. Whilst this issue is not new to the region9 the level and extent of the response to the problem has developed dramatically in recent years.

The four ASEAN NHRI’s whose work is the focus of this report, all address human trafficking at national, regional and international levels. This report aims to assess how far these NHRI’s research and analyse national anti-trafficking responses and examine the role they play in upholding the rights of trafficked persons and migrants.

Reason for this focus on the Association of South East Asian Nations (ASEAN) NHRI’s

The geographical focus of our research is based on Sub-regional Cooperation Agreement between the four ASEAN NHRI’s which has led to their 2007 Declaration of Cooperation in which ‘people trafficking’ was established as one of five areas of shared concern.10 Given this focus and our time and resource constraints we decided to limit our research to the ASEAN NHRI’s:

- Indonesia - Komisi Nasional Hak Asasi Manusia (Komnas HAM) and Komisi Nasional Perempuan (Komnas Perempuan);
- Malaysia - Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM);

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7 ASEAN (Association of Southeast Asian Nations): 2006: ASEAN Responses to Trafficking in Persons: ending impunity for traffickers and securing justice for victims: Jakarta: ASEAN. p.3.
• Thailand - The National Human Rights Commission of Thailand (NHRCT) or Khana Khammakarn Sithi Manusayachon Hang Chart (Khamakarn Sit); and
• The Philippines - Komisyon ng Karapatang Pantao ng Pilipinas (the Commission on Human Rights of the Philippines or CHRP).

It is our intention that this be the first of many such reports looking at the work of NHRIs in the countries in which our member organisations operate.

Methodology

Taking into account the Collateral Damage recommendation outlined above, for each NHRI we have considered the degree to which they evaluate, monitor and respond to states’ actions in response to trafficking and the human rights impact of such actions. In doing so we have considered: a.) Mechanisms for NHRI engagement on this issue; b.) Capacity and resources available to NHRI s for the uptake of this issue; and c.) Successes of NHRI s in this area and also gaps which still need to be filled.

We have compiled these four country reports either in collaboration with or with assistance from GAATW Member Organisations. In the case of the Philippines we attribute and acknowledge full authorship to Nelia Sancho of the Buhay Foundation for Women and the Girl Child. The remainder of the research has been conducted by GAATW-IS staff with much appreciated assistance from allies and member organisations in Malaysia, Thailand and Indonesia. For each report researchers have conducted primary data collection supported by desk based secondary data analysis. Primary data was collected using a semi-structured interview guideline instrument based on the overall research question above, standardised across all four studies. An average of ten interviews were conducted in each country. Interview participants were evenly split between NHRI commissioners and officers, civil society organisations (CSOs) and government officials and in Thailand some trafficked people were also interviewed.

In addition NHRI reports and documentation and relevant statistical data were also analysed. Secondary data sources included NGO reports, legislation and legal documents, academic literature, media reports and the annual Asian NGOs Network of National Human Rights Institutions (ANNI) report. The research was conducted and compiled over a four-month period between March and July 2009 with the aim of bringing our findings and recommendations to the Asia Pacific Forum of National Human Rights Institutions (APF) in August 2009.

Additional note regarding the Philippines

Research in the Philippines, conducted by the Buhay Foundation for Women and the Girl Child, is ongoing. This has involved interviews with CHRP Commissioners and officers, government agencies, NGOs and recent victims of trafficking and migrant workers organizations. Whilst the researcher has endeavoured to make the necessary contacts with government agencies for the purpose of this research such appointments have not yet been possible. It is therefore with regret that we note the absence of the Filipino section in this report. Once the research is completed and collated the section on the CHRP will be published as an addendum to this report.
Acknowledgements

We would like to extend our sincere gratitude to the Commissioners and officers at Komnas HAM, Komnas Perempuan, SUHAKAM, Khamakarn Sit and CHRP for their cooperation, assistance and participation in this research. As noted above we are also extremely grateful to all those organisations and officials who participated in or assisted our research and gave their time so freely to do so.
Introduction to the Malaysian Context

Malaysia is primarily a country of destination for trafficking in persons yet to a lesser extent is also a country of transit and origin. In recent years there have been increasing reports of sanctioned labour exploitation, draconian responses to undocumented migration and refugees and cases of extreme failure of the state to uphold internationally recognised human rights often putting international trade or power above human dignity. This attitude has led to national and international condemnation of Malaysia and the observation that both in policy and practice it is contributing to the worsening trafficking problem in this country.

In July of 2007, the Malaysian government formally recognized the existence of human trafficking as an issue of country concern by passing the Anti-Trafficking in Persons Act (ATIP Act). This act for the first time gives legal basis for protection, prosecution, and prevention measures. Although it has yet to be fully implemented in regards to both legislative and territorial scope, positive steps have been taken - including the creation of a national Council for Anti-Trafficking in Persons (ATIP Council) to oversee implementation of the ATIP act, newly created offences and victim immunities, and an increase in victim protections. Although the ATIP Act can be cited as a progressive step in this area, additional efforts - particularly those relating to political will, ground level law enforcement, international cooperation, and protection measures - are needed if Malaysia is to uphold and protect the human rights of migrants and trafficked persons.

Civil Society Organisations (CSOs) working on Trafficking and Migration Issues

Tenaganita

Tenaganita, the leading organization in this field, researches, advocates for, and takes action to, “prevent, solve, and address” migrant rights issues with the overall aim of combating human trafficking in this context. Its influential publications: The Revolving Door and Stop Trafficking in Persons examine and assert initiatives to combat trafficking, and address gaps in trafficking regulation.

The Kuala Lumpur (KL) Bar Council

The KL Bar Council offers legal advice, representation and intervention in both migrant rights and general human rights cases. The Bar Council also works to create awareness and to educate the public in regards to their rights.

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Amnesty International Malaysia

Amnesty International Malaysia works to promote human rights through research, educational outreach, and coordinated campaigning. Promoting and protecting migrant rights is one of the organisation’s prioritised issues within which context trafficking is addressed.

Women’s Aid Organisation

Women’s Aid Organization provides migrant workers with shelter, files complaints with the police, welfare and labour departments, assists women in obtaining legal representation, and lobbies for media coverage of these issues.

Suara Rakyat Malaysia (SUARAM)

SUARAM works to promote human rights in Malaysia through advocacy, campaigns and service provision. It offers direct assistance to refuges and asylum seekers who have had their human rights abused and documents violations of migrants’ rights in Malaysia regularly raising matters for concern with SUHAKAM. In addition SUARAM has published numerous reports concerning SUHAKAM and contributes to the Annual Asian NGOs Network on National Human Rights Institutions (ANNI) report.

The National Council of Women’s Organisations (NCWO)

NCWO, made up of over 200 member organisations, provides, “substantive policy work and grass roots activism to address issues of concern to women.” The organisation supports programs that strengthen the rights and welfare of trafficked victims. The NCWO holds a seat on the national ATIP Council.

The Malaysian Anti-Trafficking Framework

The Anti-Trafficking in Persons (ATIP) Act

The 2007 ATIP Act created, for the first time in Malaysia, explicit offences for human trafficking. The most general of these offences, ‘Offence of Trafficking in Persons’, applies to any individual that engages in human trafficking, and carries a punishment of not more than 15 years imprisonment. Several other offences, with varying punishments, are also created in the ATIP Act, such as the ‘offence of trafficking in persons by means of threat,'
force, etc.’, ‘offence of trafficking in children’, and ‘offence of providing facilities in support of trafficking in persons’. Moreover, the ATIP Act creates criminal immunity for trafficked individuals.

The ATIP Act creates a set of enforcement protocols - most important among which is the powers of investigation. It asserts that enforcement officers can arrest without warrant those suspected of offending or those considered to have aided or abetted an offence under the provisions of the Act. Furthermore it provides for the care and protection of trafficked persons. The Minister responsible for carrying out the Act, can create refuges for this purpose and appoint social welfare officers to staff them and engage in judicial enquiries relating to trafficking in persons.

The ATIP Act also asserts that enforcement officers can take any person reasonably suspected to be trafficked into temporary custody. If a person is deemed likely to have been trafficked under due judicial process, an interim protection order is issued which grants enforcement officers 14 days to investigate the case. If a person is Malaysian, they are placed in a place of refuge for up to 2 years, however, if they are a foreign national, the victim may stay for up to three months, at which time they are released to an immigration officer. The Act also provides for early release to a parent or guardian, however input from the trafficked person in not explicitly required for a decision in this regard.

In theory, the ATIP Act is considered the superseding document in regards to trafficking within the Malaysian legal framework. However, in practice this is often not the case, with preference given to the Immigration Act in cases of trafficking into sectors other than sex work.

The Immigration Act

The Immigration Act governs Malaysia’s offences for unauthorized entry. Punishment for general unauthorized entry can be a combination of no more than five years in prison, a fine of not more than ten thousand ringgit, and whipping. The immigration act also creates offences for those who work to either illegally convey or transport a person into Malaysia. Individuals must come into Malaysia via immigration control posts - any other type of entry is unauthorized. Prostitution is also covered in the act, with offences created for both sex workers and individuals who attempt to bring sex workers into the country. In each case, the burden of proof rests with the defendant, and judicial review does not exist.

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22 Ibid: Article 29 (1)
23 Ibid: Cited as the Secretary General of the Ministry responsible for internal security in Article 6 (2) a
24 Ibid: Article 43 (2) a-d
25 Ibid: Article 44
26 Ibid: Article 51
27 Ibid: Article 53
The Immigration act grants immigration officers authorities and powers similar to those of police officers. Immigration officers can arrest, detain, and remove individuals. They also have inquiry and interrogation power - with the power to enter and search premises without a warrant.

**The Malaysian Penal Code and the Children’s Act**

Malaysia has several other acts and codes that are sometimes applied to human trafficking. The Malaysian Penal Code provides an offence for ‘habitually dealing in slaves’, and laws against child labour, as well as trafficking and abducting children also exist. Laws dealing with child prostitution also exist\(^{29}\).

**The National Council for Anti-Trafficking In Persons (ATIP Council)**

The ATIP Council was created in Article 6 of the ATIP Act. Its functions include policy making, prevention and suppression of trafficking in persons and to offer protection to trafficked persons. The council moreover has responsibility to, “oversee the implementation of a national action plan” \(^{30}\) on trafficking in persons. It may also make recommendations to ministers; monitor responses to trafficking; coordinate policy formulation; conduct public education campaigns; engage in international and regional coordination and cooperation; act in an advisory capacity to the government; and conduct and facilitate research and data collection. The Secretariat to the Council of Anti-trafficking in Persons (MAPO) within the Ministry of Home Affairs and Internal Security oversees the functioning of the body and an office has been established within the Ministry for this purpose. The 16 members of the council are specified in the ATIP Act - 13 government representatives and 3 representatives from NGOs or other organisations. The NGO places are currently filled by the NCWO, Professor Azizah Kassim of the University of Malaya and SUHAKAM. The council does not have fixed meeting times but is convened at the suggestion of the Minister of Home Affairs and Internal Security. The Council currently has 3 working groups over which it presides:

- The Legal Working Committee, chaired by the Attorney General’s Office;
- The Law Enforcement Working Group, chaired by the Royal Malaysian Police; and
- The Protection and Rehabilitation Working Group, chaired by the Ministry of Women, Children and Family Development.

**Special law enforcement and judicial processes**

Unit D7 within the Royal Malaysian Police specialises in addressing trafficking cases, yet work related to trafficking is also split between the broader police force, immigration, maritime and customs officials. The Ministry of Home Affairs and Internal Security oversees the police and immigration, while the maritime department falls under the office of the Prime Minister and Customs under the Ministry of Finance.

\(^{29}\) ASEAN (Association of Southeast Asian Nations): 2006: ASEAN Responses to Trafficking in Persons: ending impunity for traffickers and securing justice for victims: Jakarta: ASEAN.

The voluntary citizens’ corps *Ikatan Relawan Rakyat Malaysia* (RELA) acts as an auxiliary force without any formal power under the ATIP or Immigration Acts. The Immigration department enlists their services in operations to find and arrest undocumented migrants and to operate detention establishments. To this end, RELA can, as per the 2005 amendment to Malaysia’s Essential Regulations, “arrest an individual or enter and search any premises, public or private, without a search or arrest warrant” \(^{31}\). RELA has been accused of abusing this broad power, with the KL Bar Council, Amnesty International, and others calling for the end of RELA in its current form. In May 2007 SUHAKAM was reported as stating that, “RELA is a big help to us...up to now, there is no way other than to depend on RELA” \(^{32}\).

Special Immigration Courts have been established within Malaysian Immigration Detention Centres with the intention of fast tracking cases of undocumented migrants.

**Shelters**

The Ministry of Home Affairs and Internal Security holds overall responsibility for trafficked persons shelters. Implementation of shelter services is carried out by the Department for Women’s Development within the Ministry for Women, Children and Family Development which oversees the operation of two shelters for women who have been trafficked into sex work from abroad.

**Introduction to Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM)**

The Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) act was passed in 1999 and the office established in 2000. SUHAKAM began to address trafficking in persons in late 2001 when it initiated research into the issue.

SUHAKAM sees its main duty to make recommendations to the government on issues of concern and takes its mandate from section 4 of the SUHAKAM Act, to:

- Promote awareness;
- Advise and assist the government;
- Make recommendations to the government;
- Enquire into complaints\(^ {33}\).

Since the publication of its research on trafficking in 2004 SUHAKAM established a Trafficking Working Group to address some of the recommendations and findings therein. This Working Group includes:

- CSOs - Tenaganita, Save the Children and the KL Bar Council;

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\(^{33}\) Interview with Ms Rafidah Yahyah, Principal assistant secretary in the ESC Division of SUHAKAM, 13.05.09
• Government ministries – for Women, Family and Community Development and for Internal Security and Foreign Affairs; and
• Government agencies including the Royal Malaysian Police and Immigration Department.

The main issues addressed are prevention, border security, regional and bi-lateral cooperation and the Trafficking Working Group is also currently looking at international treaty ratifications. It prepared a ‘Proposed Anti-Human Trafficking Plan of Action for Malaysia’ in 2007.

**Institutional framework on trafficking in persons**

Trafficking in persons is described as a “main issue”\(^3^4\) for SUHAKAM and around 14,000 - 23,000 USD\(^3^5\) is dedicated to specific activities relating to trafficking in persons annually. SUHAKAM’s seat on the ATIP Council provides a formal arena for interaction with government agencies and a means of accessing further state funds for use in addressing trafficking. Moreover, SUHAKAM, the government, CSOs, embassies, and other actors engage in periodic round-table dialogue. SUHAKAM also operates a trafficking working group, which is comprised of NGOs as well as the Ministries of Home Affairs and Internal Security; Women, the Family and Community Development; Health; Information and Immigration; and more recently the Ministries of Labour and Tourism. Aside from these national fora for engagement, regionally SUHAKAM is a member of the ASEAN NHRI forum.

Trafficking in persons falls under the responsibility of the Principal Assistant Secretary in the Economic, Social and Cultural (ESC) Division of SUHAKAM, yet SUHAKAM believes that this issue crosses all areas of the ESC Division’s work\(^3^6\). Furthermore, the Legislation Renewal and International Treaty Division is involved in national legislative processes relating to trafficking, and addresses ratifications of relevant international treaties. Staff in this Division work closely with SUHAKAM’s Law Reform and International Treaties Working Group which addresses relevant treaty ratification matters.

Formal responsibility for human trafficking work at SUHAKAM is assumed to lie with those Commissioners nominated by the government to serve on the ATIP Council.

1. Datuk Dr Raj Abdul Karim, Permanent Representative for SUHAKAM on the ATIP Council and subsequently member of the Working Group on Protection and Rehabilitation under the ATIP Council; and
2. Dr Tunku Datuk Nazihah Tunku Mohamed Rus, substitute representative on the ATIP Council

In practice work on this issue is mainly shared between Dr Raj Karim and Dato Siva Subraminiam A/L Nagaratnam who works closely with migrants and trafficked persons rights organisations such as Tenaganita.

\(^{3^4}\) Interview with Ms Rafidah Yahyah, Principal assistant secretary in the ESC Division of SUHAKAM, 13.05.09
\(^{3^5}\) Ibid, the figure of 60,000 – 80,000 MYR was given in interview with Ms Rafidah Yahyah
\(^{3^6}\) Ibid
Dr Raj Karim comes from a women and children’s rights background and currently serves as Regional Director of the International Planned Parenthood Federation. As there is no formal assignment of responsibilities in relation to trafficking amongst the Commissioners, Dr Karim believes she was given the role on the ATIP Council based upon her work on trafficking in persons with SUHAKAM dating back to their 2004 report. She is seen as a “champion of trafficking issues in SUHAKAM”. This specifically relates to research she carried out in relation to the effectiveness of identification measures during visits to immigration detention centres prior to the ATIP Act entry into force.

Dato Siva Subraminiam has no formal role in relation to trafficking at SUHAKAM, yet has been heavily involved in taking up individual cases on behalf of NGOs, general liaison with NGOs, and conducting detention centre visits. He comes from a trade union and labour rights background, and currently advises the Congress of Unions of Employees in the Public and Civil Services (CUEPACS) as well as the Executive Secretary of the National Union of the Teaching Profession (NUTP).

Scrutiny of Government Anti-Trafficking Responses

Legislation

The ATIP Act was drafted by the Attorney General’s office. The Ministry of Home Affairs was initially given responsibility for its implementation, then this was passed to the Internal Security Ministry. Now that these two ministries have merged again the newly merged Ministry of Home Affairs and Internal Security holds responsibility for implementation. The main problems cited with the legislation are in its implementation rather than content, which is generally considered broad enough to address all forms of trafficking although it is considered weak in areas of international cooperation - particularly relating to repatriations. It is also problematic in its relationship with other legislation such as the Immigration Act. While in theory the ATIP Act was designed to supersede the Immigration Act when the two laws stand in conflict, the latter act, considered by some to be “draconian” is often given preference over the ATIP Act in practice.

Legal drafting processes

There seems to have been no external involvement in drafting the ATIP legislation. During the legislative drafting process SUHAKAM prepared an analysis of the existing legislative framework to address trafficking which made the case for dedicated anti-trafficking legislation. Dr Raj Karim then met with the Attorney General to make the case for the enactment of such legislation. Furthermore, SUHAKAM and others see its 2004 roundtable discussion on trafficking as a key impetus for the legislation. Dr Raj Karim believes that SUHAKAM’s subsequent advocacy for an ATIP Council, trafficked person shelters and a national action plan helped shape the Act.

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37 Interview with Dr Raj Karim, Commissioner, SUHAKAM, 14.05.09
38 Interview with Ms Rafidah Yahyah, Principal assistant secretary in the ESC Division of SUHAKAM, 13.05.09
39 Interview with Ms Latheefa Koya, Member of the KL Bar Council, 12.05.09.
40 Interview with Dr Raj Karim, Commissioner SUHAKAM, 14.06.09
Legal implementation: monitoring and review

The ATIP Council has now established a Legal Working Committee which, is chaired by the Attorney General’s office. This body is the formal avenue for reviewing implementation of the ATIP legislation. SUHAKAM is not currently represented on the committee but has requested representation. The secretariat of the ATIP Council noted, however, that it has not begun any formal review of the ATIP Act. Prior to the formation of the ATIP Council SUHAKAM gave recommendations for changes to the ATIP Act to the Prime Minister’s Office and now refers such recommendations to the ATIP Council. Also within the Council, SUHAKAM is involved in developing Standard Operating Procedures for Law Enforcement units. Furthermore SUHAKAM has begun its own review of the Act within their Law Reform and International Treaties Division.

International legal obligations

The SUHAKAM Trafficking Working Group is currently preparing a plan of action relating to the government’s ratification of the optional-protocol on the Convention on the Rights of the Child. In a similar way it previously pushed for government ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

Law enforcement responses

Much of SUHAKAM’s work in this area is conducted through the ATIP Council at which law enforcement units are represented. However, other reported areas of activity include detention centre visits, border visits and meetings with immigration control units. SUHAKAM does not accompany law enforcement officials on operations. It believes that its continued engagement with law enforcement agencies has led to an attitudinal shift on trafficking amongst law enforcement officers from one of non-acceptance of trafficking as a concern to more understanding of the subject which has facilitated more accurate identification of trafficked persons. This is demonstrated through police commitment to SUHAKAM fora for engagement, such as the Trafficking Working Group which is currently looking at the optional-protocol to the Convention on the Rights of the Child and to which the police now send four representatives. However it should be noted that in practice the extremely narrow interpretation of trafficking by law enforcement officers limits their progress in this area, as described below.

Law enforcement approaches to trafficking in persons

Whilst law enforcement Standard Operating Procedures (SOP) have been developed for handling women who have been trafficked into sex work since the implementation of the ATIP Act, no such SOPs have been developed as guidance for responses to trafficking into other sectors. This is one reason why the identification of trafficked persons is cited as a major problem in Malaysia which pre-dates the ATIP Act and which led to SUHAKAM’s report on Trafficking in Women and Children in 2004. Gaps in the SOPs are one reason for the reported tendency to consider all sex workers as trafficked and for the failure to identify

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41 Interview with Dr Raj Karim, Commissioner, SUHAKAM, 14.05.09
trafficking into any other sectors. Furthermore it seems that the bias towards addressing trafficking into sex work over other forms of trafficking leads to sex workers facing regular harassment and interrogation by law enforcement officers. SUHAKAM notes that whilst on paper the ATIP Act prevails over the Immigration Act, in practice law enforcement officers rarely alter their legal reference if they have initially suspected someone of being an undocumented migrant and then find that they have been trafficked.

SUHAKAM makes recommendations to the government through the ATIP Council on the basis of information received about law enforcement measures relating to handling trafficked persons. In addition roundtable discussions, such as one on trafficking at the border with Thailand, are organised by SUHAKAM with government agencies with responsibility for law enforcement and the KL Bar Council. Complaints concerning law enforcement practices are usually taken up by SUHAKAM at the ATIP Council level rather than at an individual implementing agency level. SUHAKAM monitors the SOPs and holds discussions with law enforcement officers on their approaches to trafficking. Also it acknowledges that further dialogue with law enforcement officers on the implementation of the ATIP Act must take place.

**SUHAKAM’s direct work with law enforcement**

SUHAKAM currently operates human rights training sessions as part of official training programmes for the police, prison and immigration authorities, which also includes RELA. However members of RELA are described by Commissioner Dato Siva as “hard to educate” and others participating in human rights trainings for law enforcement officials note a total disrespect for such training amongst RELA officials. Consequently RELA is described by MAPO as having a lack of “awareness” of the issues relating to trafficking and smuggling.

SUHAKAM has developed a trafficked person screening questionnaire used by prison authorities. It is engaged in capacity building activities to assist law enforcement in screening for trafficked persons being conducted by foreign government agencies. Furthermore SUHAKAM would like to work with officials in border areas and (through their plan of action) develop improved law enforcement procedures.

Whilst the SUHAKAM Act does not expressly permit SUHAKAM to accompany law enforcement officers on operations, this power could be found in the penumbras of the inquiry powers granted to the commission. Moreover, SUHAKAM has indicated a desire to join officers on raids in the future, and the intention is to request such powers from the government. NGOs such as Tenaganita have accompanied law enforcement officers on raids in the past and continue to do so. SUHAKAM conducts ongoing visits to detention centres and investigates cases raised by CSOs and others. There is some criticism of the lack of pro-active

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42 Interview with Ms Rafidah Yahyah, Principal assistant secretary in the ESC Division of SUHAKAM, 13.05.09
43 Interview with Commissioner Dato Siva Subraminiam A/L Nagaratnam, SUHAKAM, 19.05.09
44 Interview with Mr Azrul Izham Hamzah, Assistant Secretary, Ministry of Home Affairs Secretariat to the Council of Anti-trafficking in Persons (MAPO) 20.05.09
45 Interview with Ms Rafidah Yahyah, Principal assistant secretary in the ESC Division of SUHAKAM, 13.05.09
investigation in this area by SUHAKAM and its failure to do more to assist those trafficked persons wrongly accused of being undocumented migrants.

**Access to justice**

Since the implementation of the ATIP legislation in January 2008 there have been 23 trafficking investigations, 8 prosecutions and 1 conviction in Malaysia. The low conviction rate since the entry into force of the legislation is attributed to the unfamiliarity of the legal terrain and lack of awareness on trafficking issues amongst the judiciary, as well as weaknesses in identification and evidence gathering. The government is widely criticised for lack of urgency in pursuing traffickers and the poor conviction rate is given as evidence of this. Commissioner Dato Siva likened the situation to a “big coffee shop with no customers”.

**Special immigration Courts**

Special Immigration Courts operate in makeshift structures within detention camps with little provision for legal representation of defendants during hearings. Furthermore, defendants are advised to say that they understand Bahasa Malay in order to expedite the process by which they are sentenced. They are tried in groups of around 30 at a time and interrogated in linguistic blocks, being told to raise their hands if they are not-guilty of the offence of being in Malaysia without official papers. The lack of recourse to due process, shown by the absence of legal representation, linguistic barriers and often lack of access to mitigating evidence for the defendants, leaves detainees almost powerless to mount a defence. There is no process for screening of trafficked persons during this judicial process, ideally under immigration law this would take place at the point of detention by a police or immigration officer and subsequently any suspected trafficked person would be brought before a separate magistrate. SUHAKAM visits the Special Immigration Courts as observers and makes recommendations based on its observations which are considered but rarely taken up.

**Legal assistance**

The government Legal Aid Bureau does not provide legal assistance to migrants or trafficked persons and nor is SUHAKAM directly involved in legal representation. The KL Bar Council offers the only available *pro bono* legal council to trafficked persons and migrants in Malaysia. It operates a migrant’s clinic and conducts training on assisting migrants for young lawyers. However it is difficult for trafficked persons to gain legal assistance during police interrogation processes as there is no formal relationship between the police and the KL Bar Council which would permit information exchange. The KL Bar Council has no formal relationship with SUHAKAM either yet it participated in its roundtable discussion on trafficking in 2004 and discusses individual cases relating to refugees and migrants with Commissioner

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46 Information provided by MAPO, 20.05.09  
47 Interview with Mr Azrul Izham Hamzah, Assistant Secretary, Ministry of Home Affairs Secretariat to the Council of Anti-trafficking in Persons, 20.05.09  
48 Interview with Commissioner Dato Siva Subraminiam A/L Nagaratnam, SUHAKAM, 19.05.09  
49 Observation of Lenggeng Immigration Court, Malaysia, 19.05.09 and from interview with Ms Latheefa Koya, Member of the Kuala Lumpur Bar Council and Project head of the Refugee and Migrant Clinic, 12.05.09  
50 Interview with Ms Rafidah Yahyah, Principal assistant secretary in the ESC Division of SUHAKAM 13.05.09
Dato Siva Subraminiam who the KL Bar Council believes to be proactive in these matters. However, in general it is disappointed in the steps taken by SUHAKAM to ensure access to justice for trafficked persons, migrants and refugees\(^{51}\) believing that SUHAKAM should communicate more effectively with CSOs and that the organisation should adopt a more critical approach to the Government.

Aside from interactions with the KL Bar Council, SUHAKAM takes up cases on issues relating to trafficking, labour exploitation and representation of refugees on behalf of CSOs. Steps taken include recommendations and referral of cases to relevant government agencies, law enforcement units and embassies. SUHAKAM will also observe general judicial procedures but has not made recommendations on the handling of individual cases by lawyers.

**Prevention measures**

Prevention has largely been addressed through communication campaigns targeted at potential trafficked persons in Malaysia conducted by the Ministry of Information. Little attention has been paid to addressing issues such as the exploitation of cheap labour, poor employment practices or reported cases of corruption amongst officials as a means of preventing trafficking from taking place. The inability to convey procedural aspects of the country’s legal doctrine has led to corruption and instances of trafficking at the Malaysian border - cases in which individuals, even those with proper identification, are turned over to traffickers if they are unable to pay unauthorized ‘fees’ have been reported. RELA is often named as a primary offender in this area, and with the force protected with almost total legal immunity, there is little remedy available\(^{52}\). The Government of Malaysia continues to deny these allegations.

The ATIP Council has instigated seminars in trafficking-prone areas of Malaysia (Penang, Sabah and Sarawak) and provided funds to its members to conduct prevention programmes. The Department for Women’s Development has produced information leaflets for distribution to embassies and at border areas, and the NCWO has conducted a training of trainers with the aim of expanding education on prevention to all Malaysian constituencies. Both projects have a focus on female vulnerability to trafficking.

SUHAKAM appears to view prevention as awareness raising and information dissemination amongst the public. It does not address this issue alone but through the ATIP Council, in discussions on the Trafficking Working Group or in partnership with the government. In various formal arenas for interaction with government agencies facilitated by SUHAKAM, discussions around prevention measures also take place. SUHAKAM believes that as a consequence of these interactions the Government has started to realise the importance of acknowledging the existence of human trafficking in Malaysia. It believes that such a shift in attitude has provoked more interest at all levels in prevention through the identification of traffickers and agents, by working multilaterally in the region and by raising awareness on

\(^{51}\) Interview with Ms Latheefa Koya, Member of the Kuala Lumpur Bar Council and Project head of the Refugee and Migrant Clinic, 12.05.09

trafficking. However the lack of government and agency action in identifying the perpetrators of trafficking is still widely reported to be an issue. Furthermore government agencies and officials have been so closely linked to trafficking through activities such as corruption in immigration procedures and licensing of employment agents, without due scrutiny of their compliance with labour standards, that effective prevention must address this endemic corruption.

Protection for trafficked persons

As noted above, legal protections and assistance are minimal in Malaysia. The law often protects officials from suit, and with the Immigration Act given de facto precedence over the ATIP Act in the majority of trafficking cases, trafficked individuals have little say in their own proceedings. Although the ATIP Act provides provisions for shelter, the period of leave to remain is very short. Moreover, Malaysia only provides criminal remedy to trafficking offences, with no civil remedy available to trafficked persons.

Other protection measures are operated either by CSOs, in the main Tenaganita and other faith based organisations, or through government run shelters. Tenaganita operates one shelter in Kuala Lumpur for trafficked women although law enforcement officers do not permit those trafficked into sex work to stay in shelters other than those run by the government. Faith based organisations work with Tenaganita and the government to provide additional shelters based on need. There is little attention paid to assistance with or protection during repatriation processes and trafficked persons and detained migrants are often prevented from leaving Malaysia by their inability to pay the overstay fee charged for each day remained in country beyond that stipulated on their work permit. Moreover, protection measures for trafficked nationals are weak - Malaysia lacks memoranda of understanding (MOU) with many countries on the issue. One such MOU, a 2005 contract between Malaysia and Indonesia permits employers to take migrant worker’s passports.

Government Shelters

The government currently operates two shelters, one in Kuala Lumpur and one in Sabah, with capacity to hold 40 women who have been trafficked into sex work in each at any time. The shelters are operated by the Department for Women’s Development which reports to the Ministry of Home Affairs and Internal Security. Each of the shelters has 27 staff members who are described as “security guards” yet they take on responsibility for social work as well as security and they have undergone some training in this area. Social work includes attention to trafficked persons basic medical needs with any additional requirements provided by external medical services. The shelter offers sewing, baking and sports activities to residents. Annual operating costs of the shelters are 172,000 USD. There are no government shelters for men or those who have been trafficked into non-sex work related industries, although the Ministry of Home Affairs and Internal Security is considering establishing a shelter for men.

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54 Interview with Dato Dr Noorul Ainur Mohd. Nur, Director General of the Department of Women’s Development, 13.05.09.
Under the ATIP Act, suspected foreign trafficked women are first taken to the shelters for a 14 day reflection period at the end of which a court decision is made to determine whether or not they have been trafficked. Women who are identified as trafficked remain in the shelter for 3 months while evidence on their case is collected. There are plans to extend the shelter network to each of the 14 Malaysian states in order that trafficked persons are close to law enforcement and judicial facilities for the purpose of prosecutions. The one conviction for trafficking in Malaysia took place following evidence gathering with a trafficked woman in the Government shelter, who was repatriated thereafter.

**Formal scrutiny of protection measures**

The formal mechanism for scrutiny of government protection measures is operated by the Working Group on Protection and Rehabilitation established under the ATIP Council and chaired by the Ministry of Women, Children and Family Development. SUHAKAM has a seat on the working group, as does the NCWO and Immigration Ministry in reference to discussions on repatriations. It is not clear how regularly this Working Group meets nor the level of scrutiny which is possible through this mechanism. On the ATIP Council SUHAKAM gives input on the welfare of trafficked persons including handling procedures and in relation to shelter provision. Both the Ministry of Home Affairs and Department of Women’s Development noted the importance of SUHAKAM’s recommendations to them on protection measures to ensure appropriate treatment of trafficked persons. SUHAKAM intends to focus more on repatriation and reintegration in the future.

**Shelter external monitoring and evaluation**

To date there has been one external visit to the government - run shelters carried out by the US Ambassador to Malaysia. The Department for Women’s Development state security concerns as the reason for their restricting access to the facilities and aims to coordinate all requests for visits to make sure they occur simultaneously. Subsequently SUHAKAM has not visited the shelters and CSOs have been refused access. There is concern about the operating practices in the shelters due to the secrecy around them and the practice of siphoning off just those who have been trafficked into prostitution to them. SUHAKAM has not yet visited the Tenaganita shelter, yet has endeavoured to do so in the past.

**Research, policy and advocacy**

**Research on trafficking in Malaysia**

Most of those interviewed who work on trafficking and migration interviewed noted the difficulty of carrying out research in Malaysia and therefore the priority of reporting on the basis of case analysis or round table discussion with stakeholders rather than conducting broader research into institutions, processes and policy implementation. Tenaganita has produced two reports of note, the first relating to its national conference on trafficking in persons and the second looking at the status of refugees in Malaysia, focussing on case

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55 Position shared by Tenaganita, Amnesty International, the Bar Council, and SUHAKAM amongst others.
Amnesty International and the KL Bar Council are currently collaborating on an analysis of the Immigration Act.

SUHAKAM has published two reports relating to trafficking in Malaysia: *Trafficking in Women and Children* (SUHAKAM: 2004) and *Reducing Violence, Harm and Exploitation of Children* (SUHAKAM: 2006). The first combines research on trafficking in Malaysia, including information gathered at detention establishments and a summary of a Forum on Trafficking in Women and Children SUHAKAM held in 2004. It was felt at that time that the government was not taking up the issue of trafficking, seeing Malaysia as a transit country rather than one of destination, and that there was a need for SUHAKAM to visit detention centres in order to highlight the failures to identify trafficked women taking place. Dr Raj Karim met women in detention and documented their stories, finding that they had been trafficked to Malaysia for sexual exploitation and she also raised their cases with relevant embassies. The Forum on Trafficking in Women and Children aimed to raise awareness of this problem and covered questions of “legislation, screening, identification, protection, prevention, detention centres and shelters”57. The forum also focused on, “root causes as well as law enforcement and judicial responses at point of origin, transit and destination.” In determining recommendations, it asserted that a need existed for an Anti-Trafficking Act58. The second publication is the result of a forum SUHAKAM held on the issue in 2005, and whilst focussed on violence against children it covers trafficking at length. The report asserted that, in addition to other areas, protective legislation and policies, increased public awareness, governmental commitment, community participation, appropriate services for victims, participatory approaches that enable victim contribution, and effective monitoring and reporting were crucial steps towards a more effective anti-trafficking policy59.

SUHAKAM often bases research on the results of roundtable discussions with stakeholders. In all such discussions it aims to involve CSOs, embassies and government agencies. Tenaganita, which has produced its own research in this area, noted the importance of SUHAKAM’s research in offering support to its own arguments on trafficking and migration, noting how “it adds urgency to the issue”60. This view is shared by other CSOs working in this field in Malaysia.

**SUHAKAM’s policy and advocacy work**

SUHAKAM’s publication on *Trafficking in Women and Children* included many recommendations to the government, including for international cooperation, a national anti-trafficking task force, ratification of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, a specialised anti-trafficking unit within the police, and a specific trafficking repatriation and reintegration policy61. As stated above, SUHAKAM believes that many of the

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57 Interview with Dr Raj Karim, Commissioner, SUHAKAM, 13.05.09
60 Interview with Ms Aegile Fernandez, Tenaganita, 11.06.09
61 SUHAKAM, 2004 *Trafficking in Women and Children*: Kuala Lumpur: Malaysia

26 | Rights in Practice
Government’s policy responses to trafficking have been taken as a result of its research recommendations.

Through the Trafficking Working Group SUHAKAM facilitated the preparation of the Anti-Human Trafficking Plan of Action for Malaysia, which was given to the Malaysian government in 2007. At the last meeting of the ATIP Council on 29 May 2009 it was decided that a national plan of action should be drafted and the Trafficking Working Group plan of action will be considered during the drafting process\(^62\).

In addition SUHAKAM makes \textit{regular} (about 1-2 a month\(^63\)) statements to the Malaysian press on migration issues, the most recent of which related to inadequate medical care in detention centres. In the press release SUHAKAM identified abuses, several officials carrying out these abuses, and made a recommendation to the government\(^64\). SUHAKAM has taken steps to increase Internet accessibility to press releases and relevant news. This work has taken several forms, including online polls and a (rarely used) forum, as well as archived news and general media reports\(^65\).

\textbf{Advocacy outcomes}

Whilst SUHAKAM sees its main function as making recommendations to the government, it is important to note the widespread disappointment in the lack of advocacy outcomes. The general feeling is that the procedures by which advocacy takes place do not provide adequate possibilities for dissent from government policy and practice. In the main, SUHAKAM makes recommendations to specific government ministries or through the ATIP Council, and on its own admission the Government can then choose whether or not to implement such recommendations. At least two CSOs noted their disappointment that there was no scrutiny or discussion of SUHAKAM reports in Parliament. Furthermore whilst all government officials spoken to during the course of this research are aware of research carried out by the US government for the purposes of the annual Trafficking in Persons (TIP) Report and had some awareness of Tenaganita’s work no official spoken to was aware of SUHAKAM’s research in this area.

\textbf{Conclusions}

\textbf{Positive aspects of SUHAKAM’s work}

There are many aspects of SUHAKAM’s work on trafficking which are crucial to ensuring that the human rights of trafficked persons are upheld in Malaysia. The Commissioners working on trafficking in persons show ongoing commitment to a human rights approach which is shared institutionally. The work in particular of Commissioner Dato Siva


\(^{64}\) SUHAKAM, Assault of Detainees by Prison Wardens and Provide Further Medical Treatment, (E-Mail communication accessed on June 22, 2009).

Subraminiam contributes to heightening public and governmental awareness of the linkages between trafficking, migration and labour exploitation. SUHAKAM’s initial research into identification procedures for trafficked persons, subsequent roundtable discussion and report highlighting the issue to the government raised the profile of trafficking in persons in Malaysia and contributed to the recognition of the need to address the problem by the Government of Malaysia. The SUHAKAM Trafficking Working Group is also a crucial part of this work, providing an invaluable means of policy formulation in consultation with those working with trafficked persons.

Furthermore SUHAKAM’s training and continued contact with law enforcement officials is important for its, as yet unrealised, potential to develop their awareness of identification processes and proper handling procedures for trafficked women. In this regard it is important that SUHAKAM, through its place on the ATIP Council continues to contribute to and further discussions on the development of SOPs for all forms of trafficking. By taking up individual cases on behalf of migrants and trafficked persons SUHAKAM adds weight to such cases and enhances the possibility of a positive outcome for the defendant. SUHAKAM’s ongoing visits to detention establishments and monitoring of proceedings at the Special Immigration Courts offer some recourse to justice for detainees.

SUHAKAM’s work on international treaty ratification is important in light of Malaysia’s poor record on treaty ratifications. The recent ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons by Malaysia now provides an opportunity for SUHAKAM to draw on its provisions in its monitoring and advocacy processes. The presence of SUHAKAM on the Legal Working Committee on the ATIP Council will also provide an opportunity to ensure human rights are upheld in legislative drafting and implementation.

The collaborative approach to research adopted by SUHAKAM provides for CSOs to have a voice in the formal anti-trafficking processes from which they have been excluded in such bodies as the ATIP Council. Furthermore the plan of action developed through the Trafficking Working Group will now be a useful advocacy tool which can be used by SUHAKAM in recently opened discussions on the elaboration of a national action plan on trafficking.

Areas in need of Improvement

One key limitation of the work of SUHAKAM on trafficking is presented by the lack of conceptual clarity and institutional knowledge on trafficking. Whilst the organisation has focussed on the plight of women trafficked into prostitution for over 5 years, it has not published research relating to trafficking into other labour sectors. SUHAKAM is operating in an extremely difficult situation in this regard as Malaysian anti-trafficking infrastructure seems almost without exception only to address trafficking of women into prostitution. However this seems to be all the more reason for SUHAKAM to be pushing for the observation of the broad definition in the ATIP Act to be adopted at every level of implementation.

Scrutiny of direct services is not fully addressed in SUHAKAM’s work, as it is cautious about overstepping its mandate. However failure to visit the government and CSO shelters, detention centres and the site of raids whilst they are conducted permits huge violations of
human rights to go unnoticed as has been evidenced by the recent deaths at the Juru detention centre\textsuperscript{66}. Similarly at a policy level it is important that SUHAKAM recognises the centrality of human rights to all anti-trafficking responses and ensures its representation on all three working groups established under the ATIP Council rather than focussing solely on protection measures. SUHAKAM does have a mandate to make inquiries into cases it has identified as cause for concern and it should take such pro-active measures more regularly as well as continued reactive responses to violations of trafficked person’s rights.

Finally SUHAKAM’s collaborative and open approach to research, consultation and policy is important; and national institutions working on trafficking are crucial to SUHAKAM’s accountability, accuracy and success. It is important that SUHAKAM ensures the primacy of national opinion, involvement and collaboration in its work over the influence of external parties such as the US embassy or INGOs.

**Recommendations to SUHAKAM**

1. Ensure trafficking into all sectors is addressed through SUHAKAM’s work, paying particular attention to the huge gaps in implementation of the ATIP Act in relation to trafficking in men and for all forms of labour exploitation, not just sexual exploitation. In doing so SUHAKAM should question all elements of government anti-trafficking infrastructure and the approach taken to trafficking: why only CSOs with a women’s rights focus have been appointed to the ATIP Council; why law enforcement officials do not have SOPs to follow in situations of trafficking for the purpose of labour other than sex-work; why a disproportionately high amount of anti-trafficking raids are carried out at entertainment establishments; why there are no shelters for trafficked persons who have not been trafficked into sex work; and why prevention campaigns are primarily conducted by women focussed organisations and agencies?

2. Increase scrutiny of all aspects of anti-trafficking infrastructure, law enforcement, judicial processes, detention establishments, repatriation processes and trafficking shelters recognising the importance of such scrutiny not only in SUHAKAM’s ability to take an informed position in this area but crucially in preventing severe abuses of human rights from taking place.

3. Push for formalisation of processes to address trafficking at a policy level. This includes recognising that the ATIP Council and its constituent working groups must meet regularly to review and monitor anti-trafficking responses. Failing such regular meetings SUHAKAM must ensure that it continues to engage with the government through other channels.

4. Push for human rights as a mandatory part of all law enforcement officers training programmes and where possible including national CSOs to highlight the particular needs and handling requirements of trafficked persons.

\textsuperscript{66} SUARAM, Memorandum to SUHAKAM on Poor Conditions of Immigration Detention Centres Contributing to the Outbreak of Leptospirosis: available at http://www.suaram.net/node/162: (Accessed on June 22, 2009).
5. Ensure that prevention campaigns not only comprise awareness raising and education programmes but also address crucial destination factors such as the demand for cheap labour; exploitative employment conditions and an absence of labour protections for migrants; and widespread discrimination faced by migrants and other marginalised groups such as sex workers.

6. Critically analyse and bring forward amendments to aspects of the ATIP Act which could have a detrimental impact on the human rights of trafficked persons and other affected groups, such as: Article 31, granting law enforcement officers the right to conduct searches without warrants which provides a great deal of power with a very low threshold; Article 51 which makes full protection conditional upon cooperation with law enforcement officials - moreover the same article provides insufficient shelter provisions to trafficked persons; and Article 53 which allows victims to be released into the care of a guardian without giving due attention to the trafficked persons’ wishes in this situation. Furthermore SUHAKAM should ensure it conducts general critical analysis of the anti-trafficking legal framework for the protections it accords trafficked persons, measures outlined to prevent exploitation and legal anomalies such as the de facto powers granted to RELA in relation to conducting raids and their operation of detention establishments.
Introduction to the Thailand Context

Thailand is a source, transit, and destination country for human trafficking. Individuals, often from the North and Northeast of Thailand, are trafficked both abroad and within the country. Furthermore, Thailand acts as a transit and destination country, with trafficked individuals coming most often from Burma, Cambodia, Vietnam, and Laos and going to Malaysia.

Thailand has human trafficking laws and procedures in place to prevent and prosecute human trafficking and protect trafficked persons. Perhaps most notably, the Anti-Trafficking in Persons Act, passed in 2008, serves as the country’s comprehensive legal attempt to codify the issue. The act codifies trafficking offenses, council powers, and protection measures to deal with the issue.

Thailand’s National Human Rights Institution (NHRI), the National Human Rights Commission of Thailand (NHRCT) or the Khana Khammakarn Sithi Manusayachon Haeng Chat was established in the 1999 National Human Rights Commission Act. The commission’s legal scope, powers, appointments, and duties are created and enumerated in this Act.

In 2004, Thailand placed trafficking in persons on the national agenda. At that time, the former Prime Minister, Thaksin Shinawatra, stated in his speech during the National Conference on Human Trafficking that:

Victims must be regarded as victims, not criminals, and they must not be subject to prosecution. Instead, rehabilitation and services must be provided to reintegrate them into society. On the contrary, traffickers must be treated as criminals and heavy penalties must be imposed on them.

At the time this research was conducted, the National Human Rights Commission was transitioning to a new set of commissioners. Therefore, the information gathered for this report applies only to the old set of commissioners.


Ibid.

Anti-Trafficking in Persons Act B.E 2551 (2008) [Thailand], 30.01.08, available at: http://www.unhcr.org/refworld/docid/4a546ab42.html [accessed 28.06.09]


regardless of any forms of trafficking they are involved... Human trafficking is now a national agenda, all stakeholders should cooperate in combating all aspects of the problem in a sincere and serious manner with sympathy for trafficking victims.73

Six policies to combat human trafficking were subsequently announced, including the establishment of the following four mechanisms: 1) a National Committee on Prevention and Suppression of Human Trafficking; 2) a Trafficked Persons Reintegration Fund; 3) National Operation Centres on the Prevention and Suppression of Human Trafficking at the provincial, national and international levels; and 4) the Children, Juveniles and Women’s Division within the Central Investigations Bureau of the Royal Thai Police.

Civil Society Organisations Working on Trafficking and Migration Issues

Foundation for Women (FFW)

The Foundation for Women (FFW) is a Thai non-governmental organisation (NGO) established in 1984 to protect and promote women’s rights. FFW has been working on violence against women, domestic violence, gender equality, human trafficking, migration and other social and development issues as they relate to women in Thailand and other countries such as Myanmar, the Lao People’s Democratic Republic, and Cambodia. FFW provides information, support, referral, reintegration assistance and services to women who have experienced exploitation, violence and trafficking. FFW also works with other NGOs, government agencies and media to build networks and partnerships in order to conduct advocacy on women-related policies. Furthermore, FFW conducts research on issues such as the impact of law and public policy implementation, domestic violence, and the reintegration of Thai trafficked persons.

Self-Empowerment Program of Migrant Women (SEPOM)

The Self Empowerment Program of Migrant Women (SEPOM) was founded in 2001 by Thai migrant women from Japan and a Japanese volunteer. SEPOM is a Thai grassroots organisation or self-organized group that directly works with Thai migrant women from abroad and their children. SEPOM first started working with Thai women migrants from Japan before expanding its work to reach a broader group of women migrants who have returned from other countries. SEPOM reaches out to community members to identify women migrant workers and trafficked women. SEPOM provides some reintegration assistance and services to trafficked persons and women migrant workers including physical and mental health care, counselling, legal assistance, a revolving fund, vocational training through self-help groups, and home visits. Furthermore, SEPOM assists women migrants in seeking citizenship for their Thai-Japanese children and in supporting the well-being and development of Thai-Japanese children through scholarships and educational and recreational activities.

73 Thailand’s Country Paper on “Policy Mainstreaming: The Labour and Employment Perspective in Taking Action against Human Trafficking
Ying Soo Cheewit

“Ying Soo Cheewit” (“Women Living Their Lives”) is a group of Thai trafficked women who have suffered from trafficking experiences in Asia, Europe, and Africa. The group was established in order to help women move forward in their lives together. Trafficked women come together in solidarity and work to prevent other women from being trafficked. The group currently has approximately 50 members from different regions of Thailand and collaborates with FFW in its activities. Its activities include the provision of remedies, spiritual empowerment, life resettlement, reintegration, and assisting trafficked persons to gain access to justice and compensation.

Fight Against Child Exploitation (FACE)

The Fight Against Child Exploitation (FACE) works to combat child abuse and child trafficking by monitoring the legal and justice mechanism in Thailand. FACE also lobbies for better child protection laws, runs public campaigns to raise awareness of child abuse and trafficking issues, and networks with the government and NGOs in Thailand and other countries to coordinate the arrest, prosecution and conviction of child sex offenders and traffickers. Furthermore, FACE provides legal advice and assistance to trafficked women to help them access justice.

Friends of Women Foundation (FOW)

The Friends of Women Foundation (FOW) is a Thai NGO working to protect women’s rights. FOW helps women who have been victims of sexual violence and harassment, domestic violence, trafficking, unfair dismissal and discrimination in the workplace. FOW tries to promote gender equality based on a human rights framework and educates women about their rights. FOW raises awareness and conducts campaigns on issues such as violence against women, as well as advocating for policies that relate to women’s protection and quality of life. With regard to trafficking, FOW works with different government agencies and NGOs in Thailand and elsewhere.

United Nations Inter-Agency Project on Human Trafficking in the Mekong Sub-region (UNIAP)

The United Nations Inter-Agency Project on Human Trafficking (UNIAP) was established in 2000 to work within the Greater Mekong Sub-region (GMS), which comprises Cambodia, China, the Laos Peoples’ Democratic Republic, Burma, Vietnam and Thailand. Within the GMS UNIAP plays a coordinating and facilitating role with government agencies, international organisations and NGOs.

The Thailand Anti-Trafficking Framework

The Thailand Anti-Trafficking in Persons Act B.E. 2551 (2008)

In June 2008, the first comprehensive Thailand Anti-Trafficking in Persons Act B.E 2551 (2008) formally came into force after the government passed the law in November 2007. The
act first and foremost creates the general offense of “procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person.”\textsuperscript{74} This law, the first of its kind in Thailand, allows legal recourse against all those involved in trafficking women, men, and children. The general penalty for committing a trafficking offense is imprisonment from between four and ten years, as well as a fine of up to 5800 USD (200,000 THB). More specific penalties are also provided – for example, if the trafficked person is a child under 15, the imprisonment period rises to a maximum 15 years.\textsuperscript{75}

Moreover, the Anti-Trafficking in Persons Act creates an Anti-Trafficking in Persons Committee (ATIP Committee) to oversee the execution and codification of this act. The committee is charged, along with other duties, to make policy recommendations, legal recommendations, strategic recommendations, regulatory statements, and codify regulations.\textsuperscript{76} To enable the committee to obtain these objectives, the act provides several broad committee powers. For example, the committee can issue summons and conduct warrantless searches.\textsuperscript{77}

The Anti-Trafficking in Persons Act also provides a protective legal doctrine to trafficked persons. The act asserts that trafficked persons should be given adequate and proper care, including “food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the return to the country of origin or domicile, [and] the legal proceedings to claim compensation.”\textsuperscript{78} To this same end, the act establishes the Trafficked Persons Reintegration Fund, with the money in the Fund set aside for the purpose of providing assistance and protection to trafficked individuals. The Fund is also used to support prevention and suppression measures.\textsuperscript{79}

**The Criminal Procedure Amendment Act (No. 20) B.E. 2542 (1999)**

This act aims to protect child (under 18) crime ‘victims’ during the prosecution process and can therefore be applied to cases of child trafficking. This law requires that attorneys, psychologists, social workers, as well as anyone requested by the child, be involved in the investigation process. During the investigation, questions should not be passed from police officers directly to the child or witnesses but through psychologists or social workers. The law also requires child victims or witnesses not to be seen by the suspected offenders at all. Furthermore, the investigation videotape of the child should be used as the child’s statement in the court so the child does not have to repeat her or his statement in the court, thereby avoiding a more painful investigation process.\textsuperscript{80}

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\textsuperscript{75} Ibid, Chapter 6, Section 52.

\textsuperscript{76} Ibid, Chapter 2, Section 15, 16.

\textsuperscript{77} Ibid, Chapter 3, Section 27.

\textsuperscript{78} Ibid, Chapter 4, Section 33.

\textsuperscript{79} Ibid, Chapter 5, Section 44.


This act is the amendment of the Suppression of Prostitution Act B.E. 2503 (1960). The act, which has been enforced since December 21, 1996, mainly aims to prevent and suppress prostitution. It reduces the penalty for a prostitute while maintaining heavy penalties such as lengthy imprisonment and a large fine for people involved in the prostitution process, including managers, producers, supervisors, brothel owners, customers, and parents of prostitutes under 18 years of age. The law also suggests the establishment of a National Committee for Protection and Vocational Development and a Provincial Committee for Protection and Development for each province as well as specifies that prostitutes under 18 years of age shall receive protection of the government and given vocational development for no longer than 2 years. It should also be noted that the Prevention and Suppression of Prostitution Act B.E. 2539 (1996) can only be applied to trafficking cases related to prostitution.81

Introduction to the National Human Rights Commission of Thailand, NHRCT (Khana Khammakarn Sithi Manusayachon Haeng Chat)

On 25 June 2009, the National Human Rights Commission of Thailand transitioned from its first set of Commissioners to its second set. Since this transition, the new Commissioners have made various structural changes to the work of the Commission. As the research for this report was conducted at the time of the Commission transition period, the scope of the research covers only the work of the first NHRCT, including information related to the Commissioners, structure, and sub-committees. Interviews were conducted only with Commissioners from the first NHRCT.

Background of the NHRCT

The National Human Rights Commission of Thailand (NHRCT) is an independent organisation that was established in July 2001 in accordance with the 1997 and subsequent 2007 constitution82 in order to serve as a national mechanism to promote and protect human rights. In 1999, the National Human Rights Commission Act was approved to act as “the organic law to establish the National Commission of Human Rights.”83

81 Ibid
83 AMC, the Sohmen Visiting Scholar Programme, the University of Hong Kong. (2007). NHRIs in the AEAN Countries: Comparative Analysis and Contributions Towards an ASEAN Human Rights Mechanism.
The NHRCT has several official powers and duties, including:\(^{84}\)

- To examine and report on human rights violations and propose corrective measures to the actor(s) committing the violations;
- To submit cases, together with opinions of the NHRCT, to the Constitutional and administrative courts when applicable;
- To bring cases to the Courts of Justice when applicable;
- To propose new policies, recommendations, and revisions to the National Assembly and the Council of Ministers for the protection of human rights;
- To promote the respect and practice of human rights principles at domestic and international levels;
- To promote education, research and the dissemination of knowledge on human rights;
- To promote cooperation and coordination among government agencies, private organisations and human rights organisations;
- To prepare an annual report for the appraisal of human rights situations in the country and submit it to the National Assembly;
- To evaluate and prepare a performance report and submit it to the National Assembly; and
- To propose opinions to the Council of Ministers and the National Assembly in the case where Thailand is to be a party to a treaty concerning the promotion and protection of human rights.

The NHRCT is also responsible for gathering complaints and petitions from individuals whose human rights have been violated, and, depending upon the nature of the issue, the NHRCT will investigate, mediate, or examine the violation.\(^{85}\) The NHRCT helps people access and exercise their human rights, particularly when the state mechanism is not effective.\(^{86}\)

Changes between the first and second NHRCT

The first NHRCT served from 2001 to 2009, while the second will serve from 2009 to 2015. Among the main organisational changes between the first and the second NHRCT is a reduction in the number of commissioners and structural reorganisation.

The 1997 Constitution stipulated that the National Human Rights Commission should consist of one president and ten members for a total of eleven commissioners, appointed by the King on advice from the Senate. However, the 2007 constitution, enacted under the military government after the coup, reduced the number of commissioners to one president and six members for a total of seven Commissioners. As noted above, the change in the


\(^{86}\) Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09
number of Commissioners came into effect when the Commission transitioned to its second set of Commissioners on 25 June 2009.

The work of the first NHRCT was structured around the headings of 1) Special issues of human rights protection; 2) Legal and judicial process; 3) Social; and 4) Natural resources. Initial reports indicate that structural changes made by the new NHRCT will see a reduction of the number of issue clusters from four to three: 1) Law and rights to the judicial process; 2) Economic, Social, and Cultural; and 3) Political rights.

Structural Framework on Trafficking in Persons of the First NHRCT

As mentioned above, the first NHRCT was structured based on different issue clusters, including Special issues of human rights protection, Legal and judicial process, Social, and Natural resources. The NHRCT considered human trafficking as a serious issue of human rights violation that needs to be addressed. Therefore, the Sub-committee on Anti-Human Trafficking was set up under the social cluster in order to more directly deal with the problem. Additionally, the Sub-committee on the Promotion of Opportunities and Equality and the Sub-committee on International Human Rights Affairs were also involved in combating human trafficking.

Figure 1: Structural Framework on Trafficking in Persons of the First NHRCT

89 Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09, and Interview with Surasee Kosolnawin, National Human Rights Commission of Thailand, 03.07.09
Although these three sub-committees all worked on human trafficking, each sub-committee had specific roles and responsibilities regarding anti-trafficking work, as follows:

**Sub-committee on Anti-Human Trafficking**

- Provided training and create a better understanding on human trafficking, anti-human trafficking law and gender to government officials, particularly those at the implementation level;
- Cooperated with government agencies and NGOs both at the countries of origin and destination to assist trafficked persons;
- Responded to trafficking complaints;
- Prepared campaigns to raise awareness on human trafficking through different activities such as events and meetings.

**Sub-committee on the Promotion of Opportunities and Equality**

- Assured women’s opportunities to access state mechanisms and assistance, including those related to trafficking such as legal assistance and financial assistance;
- Coordinated vocational training for trafficked persons;
- Raised awareness on social attitudes towards trafficked persons;
- Recommended policies and regulations to the government and trafficking-related agencies.

Although trafficking complaints were mainly dealt with by the Sub-committee on Anti-Human Trafficking, sometimes they were dealt with by the Sub-committee on Promotion of Opportunities and Equality if it was more appropriate for that case.

In addition to these two sub-committees, the sub-committee on International Human Rights Affairs compiled information on best practices and challenges as well as trafficking situations in Thailand and shared this information in international fora.

**Sub-committee Members**

Each sub-committee consisted of a chairperson and 8-12 sub-committee members. For the three sub-committees working on human trafficking, the following Human Rights Commissioners were identified to be the chairs based on their background and experience:

1. Surasee Kosolnawin, chairperson of the Sub-committee on Anti Human Trafficking

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91 Interview with Surasee Kosolnawin, National Human Rights Commission of Thailand, 03.07.09, and Interview with Ekachai Pinkaw, National Human Rights Commission of Thailand, 03.07.09
92 Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09
93 Ibid
94 Interview with Ekachai Pinkaw and Rottaya Korbsirikarn, National Human Rights Commission of Thailand, 03.07.09
Surasee has a background in law and has held various positions in the legal profession, most notably prosecuting attorney for the Thai government and advisor to a former deputy minister of the Ministry of Interior.

2. Naiyana Supapeung, chairperson of the Sub-committee on the Promotion of Opportunities and Equality

Naiyana comes from a legal background and for over 20 years has been working with NGOs on human rights and women’s issues such as violence against women and gender equality. Previously, she worked as a lawyer for the Friends of Women Foundation before she helped set up a network named “Women and the Constitution”. She has also received the Ashoka “Innovator for the Public” award for her human rights work.

3. Khun Ying Ambhorn Meesook, chairperson of the Sub-committee on International Human Rights Affairs

Khun Ying Ambhorn is a former senator and former member of the National Assembly. Furthermore she has been a committee member of various United Nations agencies and the National Women’s Development Committee.

The remaining sub-committee members came from civil society, academia and among NHRCT officials, and were chosen based on their expertise.

**Scrutiny of Government Anti-Trafficking Responses**

**Legislation**

The Anti-Trafficking in Persons Act B.E 2551 (2008) set up the Anti-Trafficking in Persons Committee (ATIP Committee) to oversee the implementation of its law and policy. Although this Thai anti-trafficking law just came into force, Thailand has been using other legislation to combat human trafficking such as the Money Laundering Control Act, B.E. 2542 (1999) and Measures in Prevention and Suppression of Trafficking in Women and Children Act, B.E. 2540 (1997).

According to Thai peace and conflict researcher Son Ninsri, in 2007 the National Legislative Assembly drafted the first Thai anti-trafficking law to “allow prosecution of all forms of trafficking in persons and provide greater protection and compensation to the trafficked persons in Thailand.”\(^{95}\) This new trafficking law, the Anti-Trafficking in Persons Act B.E 2551 (2008), is different from previous Thai laws\(^{96}\) used to combat trafficking, as it includes men in the definition of trafficked persons. It also expands access of trafficked persons to reintegration assistance, legal assistance, and compensation in order to facilitate

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their repatriation and reintegration in society. In addition trafficked returnees now have access to a reintegration fund to assist them with income-generating activities upon their return. Trafficked returnees receive financial reimbursement for travel expenses incurred in order to travel to court, as well as having access to a lawyer to prosecute traffickers.

Since the law came into force one year and a half ago, there have been some problems, such as government practitioners’ lack of understanding of human trafficking and the trafficking law, as well as lack of readiness of implementing agencies, however it is too soon to evaluate the effectiveness of the law. Despite the new legal infrastructure to address trafficking and improved awareness of government officials, there is still a long way to go in terms of good practice in addressing trafficking in Thailand.

Nee, a Thai trafficked woman from Japan who independently prosecuted her traffickers and is now the volunteer coordinator of the “Ying Soo Cheewit” (or “Women Living Their Lives”) gave an account of a problematic practice related to the Reintegration Fund. In order to qualify for the Fund, trafficked persons must submit a proposal for use of funds. The process of approving disbursement of funds requires a home visit by government officials, however trafficked persons ask that they be informed in advance of the visit as they do not wish their trafficking experiences to be revealed to their families and communities. Unfortunately, government officials have not always given advance notice of a home visit, and some have even threatened to deny disbursement of funds if trafficked persons do not allow a home visit. Government officials should instead discuss a more appropriate way to evaluate proposals for the Fund.

The NHRCT notes that the effectiveness of the law depends on many factors, including the comprehension of government officials (particularly those at the provincial level) of the law and concept of trafficking in persons. Government officials’ failure to understand the new Anti-Trafficking Law poses challenges for its implementation.

The NHRCT’s external involvement in legal drafting, implementation, monitoring, and review

Although the NHRCT was not directly involved in legislative and policy drafting processes, it played a significant monitoring role by ensuring that the policy and state mechanism is accessible and meets the needs of the people. Whilst the NHRCT was not part

98 Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09.06.09
99 Interview with Surasee Kosolnawin, National Human Rights Commission of Thailand, 03.07.09, Interview with Mattana Chetamee, Foundation for Women, 09.06.09, and Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09.06.09
100 Interview with Mattana Chetamee, Foundation for Women, 09.06.09, and Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09.06.09
101 Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09.06.09
102 Interview with Surasee Kosolnawin, National Human Rights Commission of Thailand, 03.07.09
of the government legislative drafting committee it did make some recommendations to the committee and relevant government agencies.\textsuperscript{103}

As of 2008, sixty-four such recommendations had been made, with four addressed to the prime minister and sixty to various government organizations.\textsuperscript{104} Some of the recommendations included developing a clear policy on the employment of migrants in order to prevent labour exploitation of migrants as well as a policy on collaboration with local authorities such as the District Administration Office to prevent and protect the rights of migrants from labour exploitation and trafficking.\textsuperscript{105}

This said, the NHRCT sees itself as playing a far greater role as a monitoring body. NHRCT officer Ekachai Pinkaew stated that the:

\begin{quote}
NHRCT is not an implementing body but we are instead a monitoring body. So we monitor legal implementation and state mechanisms in order to identify obstacles to fulfilling people’s human rights under the law.\textsuperscript{106}
\end{quote}

Furthermore the NHRCT helped to shape reintegration facilitation mechanisms, including a 500 million baht (15 million USD) Reintegration Fund for Trafficked Persons.\textsuperscript{107} The NHRCT worked closely with the office on Combating Trafficking in Children and Women within the Ministry of Social Development and Human Security to improve access to this fund.\textsuperscript{108}

\section*{Law Enforcement Responses}

\textbf{Law enforcement approaches to trafficking in persons}

The Anti-Human Trafficking Sub-committee of the NHRCT worked on strengthening the cooperation between Thailand and neighbouring countries at the governmental level - this cooperation was particularly strong with the Malaysian government. To improve cooperation with the Malaysian government, the NHRCT organized meetings with the Provincial Police, the Malaysian Immigration Department, the specialist Malaysian police unit to combat trafficking (Unit D-7) and some Thai NGOs such as the Friends of Women Foundation. The NHRCT also organized field visits to the Thai-Malaysian border to work with Thai immigration officials and observe the flow of migration. The NHRCT cooperated with the Malaysian Immigration Department and the Malaysian Police D7 unit to assist Thai trafficked persons detained in Malaysian detention centres. Furthermore, the NHRCT contributed to the Thai-Malaysian

\textsuperscript{103} Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09, and Interview with Ekachai Pinkaw, National Human Rights Commission of Thailand, 03.07.09
\textsuperscript{105} \textit{Ibid}
\textsuperscript{106} Interview with Ekachai Pinkaw, National Human Rights Commission of Thailand, 03.07.09
\textsuperscript{107} Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09, and Interview with Ekachai Pinkaw, National Human Rights Commission of Thailand, 03.07.09
\textsuperscript{108} \textit{Ibid}
‘Joint Project to Return Thai People Home in Honor of the King’ which aims to repatriate Thai trafficked persons in commemoration of the Birthday of His Majesty the King of Thailand. \(^{109}\)

**NHRCT’s direct work with law enforcement**

The Anti-Human Trafficking Sub-committee worked directly with law enforcement officers who often misunderstand trafficking and are involved in corruption. Some law enforcement officers tend to believe that trafficking for the purpose of sexual exploitation is the same as prostitution. Therefore they neglect to distinguish between prostitutes and trafficked persons, and treat trafficked persons with disrespect\(^{110}\) such as sending them to prison or fining them. The NHRCT provided training to Thai police and immigration officials in order to improve understanding of trafficking and the new anti-trafficking law, as well as to improve treatment of trafficked persons. Trainings were conducted in all regions of Thailand on gender, human trafficking, and the new Anti-Trafficking Act 2551 (2008).\(^{111}\) As a result of these NHRCT trainings some law enforcement officials have joined the NHRCT’s anti-trafficking network.\(^{112}\)

There is however some criticism of the efficacy of these trainings, as some law enforcement officials still treat trafficked persons with disrespect. Trainings could be improved by using a more interactive rather than passive teaching methodology, as well as by inviting more officials who have never attended the trainings before.\(^{113}\)

**Access to Justice**

The new anti-trafficking law has increased access to justice for Thai trafficked persons because it covers a wider group of trafficked persons and provides a clearer definition of trafficking. Although it contains a clear definition of trafficking, trafficked persons are generally reluctant to file a lawsuit against their traffickers because of the stigmatization, complex court procedures and fear of reprisal.\(^{114}\)

Nee, introduced above, shared her own experience of filing a lawsuit against her traffickers outlining how she had to fight both for restitution for the crime she suffered and at the same time fight against disrespectful attitudes and lack of comprehension of some law enforcement officials and the judiciary. The case took around 4 years to process, and in the meantime, she had to avoid reprisal from her traffickers. Nee stated:

> Many of us [trafficked women] want to file a lawsuit against our traffickers but when we think of the Thai legal process, we think we better stay home [and not take any action]. In case that we decide to [file a lawsuit], we need a lot of

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\(^{109}\) Interview with Surasee Kosolnawin, Human Rights Commissioner, 3 July 2009

\(^{110}\) Interview with Mattana Chetamee, Foundation for Women, 09.06.09

\(^{111}\) Interview with Surasee Kosolnawin, National Human Rights Commission of Thailand, 03.07.09

\(^{112}\) Ibid.

\(^{113}\) Interview with Mattana Chetamee, Foundation for Women, 09.06.09

\(^{114}\) Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09. 06.09
emotional support because we have to deal with many things such as our inside pain and stigmatization in society. Furthermore, the witness protection does not seem to be very effective.\textsuperscript{115}

Based on Nee’s experiences of a complex and lengthy court procedure, this process along with witness protection measures needs to be made more effective in order to assure trafficked persons’ physical and mental security.

The new Anti-Trafficking Law helps to address the problem of costly court procedures, since the court process takes a long time. It provides for reimbursement of travel expenses for trafficked persons who present their complaints to the court. However, trafficked persons still encounter problems when claiming this reimbursement. For example, Nee mentioned:

When we went to court and asked for reimbursement of travel expenses, after a few times, the government officials said that there were no more funds left for us and the funds have been distributed many times already.\textsuperscript{116}

Bearing these points in mind, the Anti-Trafficking Law may need to be amended to be more specific as to how many times trafficked persons are eligible to receive reimbursement for their travel expenses; or, alternatively, government officials need to become more aware of the long court processes involved in prosecuting traffickers.

**Legal assistance**

Under the Anti-Trafficking Act B.E.2551 (2008), reintegration assistance and services provided to trafficked persons include physical, psychological and social provisions. The NHRCT did not provide any direct legal assistance to trafficked persons but helped link trafficked persons with other organisations based on their needs. The NHRCT worked with NGOs and government agencies that provide reintegration assistance and services to trafficked persons.

The most significant trafficking case that the NHRCT was involved with was the case of a trafficked woman named ‘Boowa’. According to the Act of Compensation for Victims of Criminal Commission, trafficked persons have one year from the date of conviction of the trafficker in order to demand criminal compensation from the government. As Boowa was imprisoned in Japan for five years, she was unable to demand criminal compensation within the one-year timeframe. Upon her return to Thailand, she sought assistance from the NHRCT to demand compensation. The NHRCT assisted Boowa to access justice by linking her with the Fight Against Child Exploitation Foundation (FACE), which provides legal assistance and information to trafficked persons. Boowa finally received compensation due to the collaboration between NHRCT and FACE. As a result of Boowa’s case, the NHRCT made a recommendation to the government to change the submission period of the Act of

\textsuperscript{115} A story shared by Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09. 06.09
\textsuperscript{116} Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09. 06.09
Compensation for Victims of Criminal Commission from one year to two years. The NHRCT and FACE also assisted Boowa in demanding compensation from her traffickers in civil court.\textsuperscript{117}

The NHRCT provided capacity building training on legal knowledge to SEPOM, including how to negotiate with government officials, and information on the legal process and fighting for their legal rights.\textsuperscript{118} Nee, a trafficked woman introduced above, stated:

Without the NHRCT, I wouldn’t have been able to go through the civil court process as well as share my experiences with others.\textsuperscript{119}

The NHRCT also provided indirect legal assistance to SEPOM members regarding the citizenship of their Thai-Japanese children.\textsuperscript{120}

**Prevention measures**

In 2004, the Thai government placed human trafficking on the National Agenda. The government has now set up the Operation Centres on the Prevention and Suppression of Human Trafficking at the provincial, national and international levels. In 2008 a national operation centre was set up in Bangkok and seventy-five Provincial Centres have been established in all provinces of Thailand. One of the main tasks of the Centres is to eliminate human trafficking through prevention measures and strategies.

The government’s trafficking prevention campaigns are carried out through various forms of communication such as television, print publicity material and a hotline. The government works closely with NGOs and international organisations, and sometimes works with the private sector.\textsuperscript{121} In 2008, the government and UNIAP co-organized a campaign involving exhibitions and activities in Bangkok.

Mattana Chetamee who works for Foundation for Women mentioned that based on her experience working at the Yor Ying Centre\textsuperscript{122}, government agencies have created some good prevention strategies. However, it would be more effective for the state to increase their outreach on prevention measures and activities to a broader group of people and work more

\textsuperscript{117} Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09
\textsuperscript{118} Interviews with Warunee Chaiwongkham and Waranya Wongfukham, Thai trafficked women and staff members of the Self Empowerment Program of Migrant Women, 01.06.09
\textsuperscript{119} Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”, 10. 06.09
\textsuperscript{120} Interview with Warunee Chaiwongkham, a Thai trafficked woman and staff of the Self Empowerment Program of Migrant Women, 01.06.09
\textsuperscript{121} Interview with staff members of United Nations Inter-Agency Project on Human Trafficking, United Nations Inter-Agency Project on Human Trafficking, 26.06.09
\textsuperscript{122} Yor Ying Centre provides safe migration information, reintegration assistance and services, a hotline and a space as a centre for both women who want to migrate abroad and those who have returned.
with local organizations. Furthermore, media tools should be accessible to people at all levels of society and education, including migrants who do not understand Thai.

According to UNIAP Thailand, the strength of the Thai government is in working together with other stakeholders including NGOs, international organisations and the private sector. However, they state that some areas still need to be addressed by the Thai government, including:

- The continuity of the campaigns;
- Raising awareness of civil society on the campaigns; and
- Launching twenty-four hour hotline numbers.

Following the Boowa case, the NHRCT launched an anti-trafficking campaign aimed at raising public awareness of trafficking. This campaign involved the distribution of posters and CDs containing stories of trafficking cases and songs of encouragement for trafficked persons. The NHRCT collaborated with other organisations including Amnesty International, the Labour Rights Promotion Network, the Ruk Chiang Khong Group, a network of life artists and the Yod Nam Group to work on this campaign, which, in the words of the NHRCT, helped “catalyze public awareness”. The NHRCT also worked with the Ministry of Social Development and Human Security to organize workshops to educate various target groups on the risk of being trafficked. Beyond this campaign, as mentioned above, the NHRCT provides a website with some news, information, and activities related to both anti-trafficking and human rights in general.

Protection for trafficked persons

The Operation Centres on the Suppression of Human Trafficking mentioned above are responsible for providing and coordinating reintegration assistance and services to trafficked persons including financial, physical, mental, and legal.

At the national level, although government officials appear to be more aware of rights-based approaches than they are at the provincial level, sometimes officials still speak to trafficked persons insensitivity. At the provincial level, government officials are also less sensitive to the confidentiality of trafficked persons. For example, government officials have

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123 Interview with Mattana Chetamee, Foundation for Women, 09.06.09
124 Interview with Warunee Chaiwongkham, a Thai trafficked woman and staff member of the Self Empowerment Program of Migrant Women, 01.06.09, and Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09.06.09
125 Interview with Ratchada Jayagupta, United Nations Inter-Agency Project on Human Trafficking, 26.06.09
126 Interview with staff members of United Nations Inter-Agency Project on Human Trafficking, United Nations Inter-Agency Project on Human Trafficking, 26.06.09
127 Interview with Ratchada Jayagupta, United Nations Inter-Agency Project on Human Trafficking, 26.06.09
128 National Human Rights Commission of Thailand et al., Anti-trafficking campaign material
129 Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09
131 Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09.06.09
been known to conduct home visits to trafficked persons while riding in vehicles emblazoned with government logos.\textsuperscript{132} This practice threatens the anonymity of trafficked persons.

Another problem related to protection measures was noted by Mattana Chetamee who has raised the issue of the Thai government requiring Thai trafficked persons to pay back the cost of their airplane tickets from their destination country back to Thailand and argued that since these persons have been trafficked, they should not be required to pay for their tickets.\textsuperscript{133}

As noted above, the government has now established a 500 million baht (15 million USD) Reintegration Fund for Trafficked Persons to support the reintegration of trafficked persons. In order to apply for a grant, trafficked persons are required to submit a proposal for income-generating activities to the Bureau of Anti-trafficking in Women and Children. Many trafficked persons have received grants from this Fund, and single allocations range from 20,000-60,000 THB (600-1800 USD).

The NHRCT helped trafficked persons to access this special Fund, which while in existence for some time, has been difficult to access due to complex administrative procedures. Accordingly, the NHRCT recommended that in order to increase access of trafficked persons to the fund, the application process for the fund should be simplified.\textsuperscript{134}

Government Shelters

The Thai government has established seven permanent shelters and ninety-nine temporary shelters in different provinces in every region of Thailand in order to provide assistance and services to both Thai and foreign trafficked persons.\textsuperscript{135} These shelters are under the supervision of the Bureau of Anti-Trafficking in Women and Children (BATWC), Ministry of Social Development and Human Security. Most of the trafficked persons, both Thai and foreign, are sent to Ban Kredtrakarn Shelter, which is the biggest in Thailand. The reintegration assistance and services provided to trafficked persons, particularly at Ban Kredtrakarn, include residential, mental and physical care, non-formal education, vocational training, legal assistance and repatriation.\textsuperscript{136} However, Ban Kredtrakarn has been criticized for restricting the freedom of movement of trafficked persons, especially foreigners or those under 18 years.\textsuperscript{137}

Many of trafficked persons who stayed in Ban Kredtrakarn were foreigners from neighbouring countries. According to FFW, in 2006, 574 foreign women and children mostly

\textsuperscript{132} Interview with Mattana Chetamee, Foundation for Women, 09.06.09
\textsuperscript{133} Ibid
\textsuperscript{134} Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09
\textsuperscript{136} Ibid
from Laos, Burma, and Cambodia were officially assisted at Ban Kredtrakarn.\textsuperscript{138} Foreign trafficked persons are forced to go to the shelter because they do not have legal status in Thailand or they are waiting to be repatriated. According to Gallagher et al.:\textsuperscript{139}

The lack of valid immigration status and the resulting potential for victims to be apprehended is commonly cited as a reason to keep victims within the government-run or government-approved shelters.

Thai trafficked women do not go to Ban Kredtrakarn either because they do not have enough information about the shelter\textsuperscript{140} or they prefer to go home to their families instead.\textsuperscript{141}

Research, policy and advocacy

Research

From September 2008 - February 2009, the NHRCT commissioned Dr. Pattaya Ruenkaew, a specialist in issues of transnational migration of Thai women, to conduct research entitled \textit{The rights of Thai women: a case of Thai women migrant workers}.\textsuperscript{142} The research aimed to study the migration process of Thai women migrant workers from their own perspectives. The research found that there are around 80,000 Thai women migrant workers abroad, including in Japan and Germany. The number of migrants to these countries continues to increase every year and many of them fall into trafficking situations. A large amount of money in the form of remittances is sent back to Thailand each year. However, the children of some of these migrant women have not been able to acquire foreign citizenship which often forces their children to work in low-paid, labour-intensive jobs. Dr Pattaya Ruenkaew’s research recommends that the Thai government provide opportunities for potential Thai migrants to access foreign labour markets that do not discriminate against Thai women. It also recommends the provision of welfare services and a social safety net for women migrants who have returned to Thailand after reaching retirement age. Finally it calls on the government to seriously tackle these problems by setting up a working group comprised of members from the Ministry of Foreign of Affairs, the Ministry of Labour, the Ministry of Social Development and Human Security, and civil society.\textsuperscript{143}

Policy and Advocacy

The former NHRCT acted as a mediator between trafficked persons and government agencies by advocating for policy change on behalf of trafficked persons. It also made policy

\begin{itemize}
\item \textsuperscript{139} ARTIP interview cited in Gallagher, A & E. Pearson. (2008). \textit{Detention of trafficked persons in Shelters}.
\item \textsuperscript{140} Interview with Warunee Chaiwongkham, a Thai trafficked woman and staff member of the Self Empowerment Program of Migrant Women, 01.06.09
\item \textsuperscript{141} Interview with Nee, a Thai trafficked woman and volunteer coordinator of the “Ying Soo Cheewit”. 09. 06.09
\item \textsuperscript{142} Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09
\item \textsuperscript{143} Ruenkaew, P. (2009). \textit{The rights of Thai women: a case of Thai women migrant workers}.
\end{itemize}
recommendations directly to the Prime Minister and relevant government agencies. However, the afore-mentioned Trafficked Persons Reintegration Fund seems to be the only concrete example of this interplay between the first NHRCT and the Prime Minister. The first NHRCT, through investigations related to direct complaints on this issue, identified a disconnect between theory and practice in this area. It then recommended a remedy to the Prime Minister: a more simplified application process for trafficked persons wishing to access the fund. The government in turn acted upon this recommendation, and the Fund is now a far more successful tool in helping trafficked persons.

Occasionally, the NHRCT uses media outlets to further anti-trafficking work, for example, as noted in the example of the Boowa case.\[^{144}\]

### Conclusion

This report analyses the work of the first NHRCT which served from 2001 to 2009. Based on this analysis, recommendations can be made for the work of the new NHRCT which will serve until 2015. This new NHRCT is currently in transition and establishing systems and procedures to address trafficking.

The first NHRCT prioritized human trafficking through the creation of a Sub-committee on Anti-Human Trafficking and Sub-committee on the Promotion of Opportunities and Equality, and the work of the commissioners who chaired the commissions who worked to ensure that the rights of trafficked persons were protected by creating a better understanding of anti-trafficking among government officials at all levels through different activities and building cooperation with the government of destination countries. Meanwhile, the Sub-committee on International Human Rights Affairs collected best practices and lessons learned on anti-trafficking work in Thailand and shared it in international forums.

The NHRCT’s contribution to government-to-government cooperation, particularly between the Thai and Malaysian governments, should be highlighted as an example of best practice. To make this cooperation process more inclusive, the NHRCT involved different government agencies and NGOs of both the countries of origin and destination, from the policy level to the implementation level. Through this cooperation the NHRCT was able to assist in bringing Thai trafficked persons detained in Malaysia back to Thailand.

The NHRCT was successful in working and collaborating with different stakeholders of trafficking in all aspects including legal policy and advocacy, and should continue to work with a variety of stakeholders whilst also including trafficked persons.

The NHRCT conducted many training sessions for government and law enforcement officials - a commendable and important step towards more effective anti-trafficking practices. Although some government and law enforcement officials have applied the knowledge they learned in their work, the NHRCT should focus on improving the practices and attitude of these officials particularly at the provincial level. It is crucial that the NHRCT find

\[^{144}\] Interview with Naiyana Supapeung, National Human Rights Commission of Thailand, 11.06.09
effective training tools and methodology based on these target groups in order to promote a rights-based approach amongst officials.

One of the NHRCT’s most significant and successful recommendations was increasing access of trafficked persons to the government’s 500 million baht Reintegration Fund for Trafficked Persons. However, apart from the NHRCT’s successes in this area, most of its recommendations have yet to bring about concrete change.

In regards to advocacy, whilst the Boowa case has been referred to at length it should be noted that there are very few other examples of successful advocacy on the part of the former NHRCT. The new NHRCT could draw on lessons learnt in the past to assist more trafficked persons through advocacy in the future.

**Recommendations to the new NHRCT**

1. The NHRCT should ensure that any new structures and processes addressing trafficking do so in the context of migration and wider exploitation of women and labourers in the region. They should also ensure that at least one sub-committee has the requisite expertise to address the multiple exploitations faced by women migrants, including trafficking.

2. Given that most of the former NHRCT’s recommendations have not brought about concrete changes, the new NHRCT must not only make recommendations for policy change, but must also indicate how such changes should be brought about.

3. As the NHRCT in the past has only monitored law and policy implementation of the Thai government, it should expand its role to monitoring the drafting process of any legislation that could be used for combating exploitation faced by women migrants, including trafficking.

4. Since the only successful example of advocacy cited from the previous NHRCT was in the Boowa case, the new NHRCT should enhance advocacy efforts.

5. In terms of prevention, the new NHRCT should conduct an analysis of the efficacy of the former NHRCT’s prevention campaigns before conducting any further campaigns.

6. Although the former NHRCT identified itself as a monitoring rather than an implementing body, there are ways that the Commission can be more active. For example, it could work towards increased outreach to those at risk of being trafficked.

7. The NHRCT should organize more capacity building activities and conduct trainings to educate trafficked persons on their rights, as access to health care, legal assistance and protection, employment and education. In the same vein, they should work to better educate provincial officials about rights-based approaches to trafficked persons and the confidentiality of trafficked persons.
Introduction to the Indonesian Context

Indonesia - with its proximity to more developed and labour exporting countries such as Malaysia, Hong Kong and Singapore, its religious affinity with Islamic Middle Eastern countries, and its policy to boost development through outsourcing human resources - has a complex trafficking problem. From 1999 to 2004 the Indonesian Government reported 574 trafficking cases handled by the Indonesian Police.145 With regards to imported migrant workers during 2005 the Indonesian Department for Work and Migration recorded 1,092 cases.146 During 2006, the Indonesian Women’s National Commission, together with 16 migrant workers advocacy organisations, recorded 1,259 migrant worker cases - consisting of labour conflict cases, 295 blackmail cases, and 3 cases of fraud.147

The Indonesian Government has established several regulations, policies, and bilateral agreements related to combating trafficking and to deal with migrant workers:

- At the ASEAN level: (1) the Indonesian Government has extradition treaties with Malaysia, Thailand, Australia, Philippines and Hong Kong. Indonesia Extradition Law No. 1 of 1979 includes crimes in trafficking, slavery and abduction in its list of extraditable offences; (2) The Indonesian Government together with other ASEAN members states has agreed to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).


- National level: (1) The Indonesia Presidential Decree No.88-2002, concerning the National Strategic Action Plan of Elimination of Trafficking, followed by the establishment of National Regulation No.21-2007, concerning the elimination of All Forms of Trafficking; (2) The Indonesia Presidential Decree No.59-200, concerning the National Strategic Action Plan of Elimination of the worst forms of working activities for Children; (3) The Indonesia Presidential Decree No.87-2002, concerning the National Strategic Action Plan of Elimination of All Form of Children Sexual Exploitation and Commercialization; (4) The Indonesia Presidential Decree No.40-2004 for a National Strategic Action Plan on Human Rights.

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145 The Elimination of Trafficking in Indonesia 2004-2005 “ Position papers of State Minister of Public welfare, 30 March 2005
146 Sources: Department of Workers and Transmigration – Ditjen PPTKLN until December 2005.
147 The end year note about women violence 2007, Komnas Perempuan, 7 March 2008
• Five Laws: (1) the Child Protection Act 23 of 2002; (2) the Man Power Act 2003; (3) the Act of Republic Indonesia No. 39 year 2004 concerning Placement and Protection of Indonesian Overseas Worker; (4) The Law of the Republic of Indonesia No. 23 of the year 2004 regarding elimination of violence in household and (5) the Law of the Republic of Indonesia No. 21 of the year 2007 concerning combating the Crime of Trafficking in Persons.

• Provincial level: at the city and district levels there are 40 local government regulations and policies, 6 anti trafficking policies, 2 migrant worker protection policies, and 23 women and children related policies, all acting to aid victims of violence and provide services to trafficked persons.

• Finally beyond the policies cited above there are 4 local governmental policies concerning migrant workers and discrimination against women. These regulations are: (1) Cianjur District Government Regulation No.15 – 2002 (the Protection of Indonesian Migrant Workers in the Cianjur District); (2) Cianjur District Government Regulation No.13 -2005 (Recruitment of Indonesian Migrant Workers from the Cianjur District); (3) Karawang District Government Regulation No.22/2001 (The distribution of services and workers between sectors ) and (4) East Java Province Regulation No.2/2004 (Replacement Services and Indonesian Migrant Workers Protection from East Java Regions). These four regulations and policies do not provide the protections required for migrant workers and are particularly limiting for women by in area of work and scope.148

The Indonesian Government has made efforts in this area through state institutions such as Komnas HAM (National Commission of Human Rights of Indonesia), Komnas Perempuan (National Commission on Women Rights of Indonesia), Komnas Anak (National Commission on Child Rights of Indonesia) and BNP2TKI (Indonesia Placement and Protection of Indonesian Migrant Workers)149.

The Indonesian Presidential Decree No.69/2008, laid down in 2008, created a Task force on the Elimination of Trafficking in Persons. This body works to optimize the implementation of National Regulation No. 21/2007. The Task Force is led by the State Minister for the Coordination of Welfare and the State Minister for Women’s Empowerment. Other State Ministers also serve as members, including: the State Minister for Internal Domestic Affairs, the State Minister for Foreign Affairs, the State Minister for Finance, the State Minister for Law and Human Rights, the State Minister for Social Affairs, the State Minister for Transport, the State Minister for labour and migration, the State Minister for Public Health, the State Minister for National Education, the State Minister for Tourism and Culture, the State Minister for Information and Communication, the State Minister for National Strategic Development , the State Minister for Sport and Youth, the Chief of Police

148. Monitoring Report of Komnas Perempuan about condition of fulfilment of legal rights constitution for women in 16 Kabupaten/City at 7 Province” on the name of local autonomy: discrimination institution in side state order of Indonesia : April 2009

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the District Attorney General, the head of the National Intelligence Agency, and The Head of the National Statistics Centre.

To optimize involvement within the Task Force, the Indonesian Chief Police Department published 2 regulations: the Indonesian Chief Police Department Decree No.10/2007, creating the Terms of Reference for the Women and Children’s Unit within the police (which entered into force on July 6, 2007), and the Indonesian Chief Police Department Regulation No.3/2008 (which entered into force on May 22, 2008), creating Special Units to deal with witnesses and victims of crime.

The Indonesian Police Headquarters is also working to address services for women and children as victims of violence under General Criminal Regulations. To this end, National Regulation No. 21/2007 was passed, creating the National Task Force for Women and Children within the Transnational Crime Department.

In developing this Task Force, The Indonesian Government cooperated with the International Catholic Migration Commission (ICMC), The American Centre for International Labour Solidarity (ACILS) and the International Organization for Migration (IOM). IOM provides direct assistance to trafficking victims, as well as training for the State Attorney and Police Departments. This training details how cases should be handled from a human rights perspective. On the level of direct assistance, the Task Force is involved with the police department and government hospitals. Moreover, the Task Force is currently developing networks at a provincial level.

As of January 2008, there are 129 Women and Children’s Service Units (Unit Pelayanan Perempuan dan Anak) in the police department, 36 Integrated Post Service Units in Bhayangkara (Police) Hospital with 23 for Women and Children, and 41 units of other, miscellaneous, services. These other services are provided by NGOs, civil society organizations, and religious organizations that exist in several provinces in Indonesia. These organizations provide services to trafficked women and children.

Civil Society Organisations (CSOs) working on Trafficking and Migration Issues

Asosiasi Tenaga Kerja Indonesia (ATKI)

ATKI (the Association of Indonesian Migrant Workers) is a self-organized group of Indonesian domestic migrant workers. The group advocates migrant worker policies and regulations in destination countries and Indonesia. They also provide direct assistance, counselling, and legal aid referral services for migrant abuse and trafficking cases.

150 Interview with Khatarina Ekorini Indriati, Young Investigator Unit III/PPA Dit I/Kam & Trannas Bareskrim POLRI, 08.06.2009
151 Interview with Anna Sakreti, staff Counter Trafficking IOM, 02.06.2009
152 The end year note about women violence 2007, Komnas Perempuan, 7 March 2008.
153 Reporting Report Komnas Perempuan about The condition of fulfilment of women legal rights constitution
Lembaga Bantuan Hukum APIK Pontianak (LBH APIK Pontianak)

LBH APIK Pontianak (Legal Aid for Women) provides legal aid assistance and referral services on counselling and health services for migrant workers and trafficked persons. They also work with the Task Force on the Elimination of Trafficking in Persons in West Kalimantan Province and are members of ‘Indonesia Against Child Trafficking’ (Indonesia ACTs).

Legal Resource Center Untuk Keadilan Gender dan HAM (LRC-KJHAM)

LRC-KJHAM (or the Legal Resource Centre for Gender Justice and Human Rights) provides legal aid assistance, counselling, and health referral services for migrant workers and trafficked persons. They also advocate for both migrant workers rights and anti-trafficking policies in the Central Java Province. The organisation has also developed a self-organised group of returnee migrant workers, and is a member of Indonesia Against Child Trafficking (Indonesia ACTs).

Indonesia Against Child Trafficking (Indonesia ACTs)

Indonesia Against Child Trafficking (Indonesia ACTs) is a national campaign to combat child trafficking in Indonesia. It is a part of the Asia ACTs, a regional campaign to fight child trafficking in Southeast Asian countries (which itself is a part of the International Campaign against Child Trafficking (ICaCT) coordinated by Terre des Hommes-Germany and the International Federation of Terre des Hommes). Indonesia ACTs is made up of 12 organizations and works towards engendering greater respect for children’s rights through helping communities to protect children from trafficking and encouraging the state to fully implement the National Plans of Action and enact laws and ordinances for the prevention, protection, recovery and reintegration of children from trafficking[^3].

Introduction to NHRIs in Indonesia

The following national commissions, each acting in theory as independent state institutions, are involved in work to monitor and respond to government anti-trafficking responses:

Human Rights National Commission of Indonesia (Komnas HAM)

Komnas HAM is an independent institution that researches, monitors, advocates on and mediates human rights issues. It was founded on 7, June 1993 by Indonesian Presidential Decree No.50/1993. The National Regulation No.39/1999 further solidified Komnas HAM’s legal position.

[^3]: [http://indonesia-acts.com/002/?page_id=2](http://indonesia-acts.com/002/?page_id=2)
Komnas HAM is divided into units, such as the General Assembly, Sub-commissions and General Secretariat. Over 5 year mandate periods sub-commissions are divided based on the functions of the institution as specified in the National Regulations. These sub-commissions are as follows: the Sub-commission on Research and Study, the Sub-commission on Education and Socialization, the Sub Commission on Monitoring, and the Sub Commission on Mediation.  

Women’s National Commission (Komnas Perempuan)

Komnas Perempuan was established during the May 1998 riots, a violent time in which Chinese individuals, primarily women, were targeted. This situation encouraged civil society, especially women’s groups, to demand state responsibility in response to the situation. One such demand was met in the creation of the Women’s National Commission (Komnas Perempuan).

Komnas Perempuan was established on October 15, 1998 by Indonesian Presidential Decree No.181/1998. It was later renewed by Indonesian Presidential Decree No.65/2005 - the Women’s National Commission against violence in women.

Komnas Perempuan is mandated to perform the following functions: (1) to act as a women’s rights resource centre; (2) to work as an intermediary between the government, victims, the community, and women’s activists, centred on the victims needs and interests; (3) to initiate and formulate policy; (4) to act independently, reporting on and monitoring human rights violations locally, nationally and internationally.

LPSK (Institution on Witness & Victim Protection)

LPSK was established on August 8, 2008 by National Regulation No.13/2006. This institution is responsible for protecting witnesses and victims, and is directly responsible to the President. LPSK consists of 7 officials, with a legal and human rights background. These individuals come from organisations such as the Police Department, the State Attorney’s Office, the State Department of Law and Human Rights, and include academics, lawyers, and NGO staff. The LPSK is also assisted by a secretariat, comprised of government officers.

LPSK is charged with the following functions; (a) to provide witness and victim protection in criminal court proceedings; (b) to comply with witness protection requests for certain criminal cases; (c) to determine the terms and conditions for witness protection measures based on its research; (d) to coordinate and partner with related parties in regards to witness and victims protection programs; (e) to protect and give assistance to witnesses and victims; (f) to determine processes for witness and victim protection activities. LPSK was created from a civil society movement working to enforce human rights for witnesses and victims in Indonesia.

154 http://www.komnasham.go.id/portal/id/content/tentang-komnas-ham
155 http://www.komnasperempuan.or.id/?page_id=4
156 http://www.komnasperempuan.or.id/?page_id=196
157 http://hukumham.info/index.php?option=com_content&task=view&id=101&Itemid=50
158 Profile LPSK
Institutional Framework on Trafficking in Persons

Komnas HAM does not have specific anti-trafficking infrastructure. This said, trafficking issues are included in its response to labour issues. The sub-commission responsible for this is charged with monitoring, reporting, and providing opinions in certain agreed cases.

Komnas HAM is obliged to provide opinion and information in cases dealing with human rights violations. The Sub Commission on Monitoring is managed by 2 commissioner members (Nur Kholis and Johny Nelson Simanjuntak), 9 complaint division staff (Asri Oktavianty Wahono, Budhy Latif, Firdiansyah, Endang Sri Melanie, Mimin Dwi Hartono, Nurjaman, Unun Kholisa, Agus Suntoro), 4 complaint administration and finance staff (Husendro, Rajab, Selvy, Yunita dan Bayu), and 1 Head of Monitoring Administration and Investigation staff (Sriyana).

In regards to monitoring, Komnas HAM is working on a funding proposal to the State for 2010. The proposal asks for improvements to the organisation’s infrastructure, which in turn would provide the ability to monitor migrant worker’s cases in several destination countries. With its limited, budget constraints Komnas HAM currently only monitors migrant workers cases inside the country159.

Komnas Perempuan has no dedicated programmes on trafficking, but the Task Force for Migrant Workers and Monitoring Division works on the issue. This Task Force’s work falls under the remit of the Education and Development sub commission, (formed on February 2008), which works to implement advocacy strategies for migrant workers. This Task Force is led by Sri Wiyanti Eddyono, and supported by the Board Team, which consists of Arimbi Heroepoetri, Kamala Chandrakirana, Neng Dara Affiah dan Sjamsiah Achmad. A support team is also in place, consisting of Henny, Yeni, Patricia Yocie and Yolanda.

The Task Force on Migrant Workers aims to: (1) develop monitoring mechanisms for human rights violations against migrant workers; (2) improve the quality of government services for women as victims of migrant work; (3) advocate a national policy, and create migrant worker regulations (especially for women migrant workers); (4) to provide advocacy at a regional and international level in regards to human rights of migrant workers (especially domestic migrant workers); and (5) to improve community and government involvement in enforcing the ratification of the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) 1990.160

The Sub-commission on Monitoring within Komnas Perempuan acts as a receiving body for migrant worker’s complaints. It consists of The Head of Sub Commission of Monitoring (Arimbi Heroepoetri) and 4 working staff; Dwi Ayu, Betty Sitanggang, Atiyatun Homisah dan Siti Nurjanah.161 This sub-commission works to uncover and publicise systematic and continuous violations of human rights, especially those related to gender. Moreover it works to eliminate all forms of violence against women, and enforce women’s’ rights.

159 Interview with Nur Kholis, Sub-Commission of Monitoring and investigation Komnas HAM, 01.06.2009
160 http://www.komnasperempuan.or.id/?page_id=427
161 http://www.komnasperempuan.or.id/?page_id=255
Komnas Perempuan also collects female migrant workers’ cases and monitors policy related to migrant work annually. This work is part of a broader annual report, which examines violence against women.

Unlike Komnas HAM and Komnas Perempuan, the LPSK is directly mandated, in article 5 sub-article 2 of National Regulation No.13/2006 (Witness and Victims Protection), to provide protection in trafficking cases. LPSK therefore has dedicated infrastructure to deal with witnesses and trafficked persons. Like other criminal cases, trafficking cases follow these steps: Submission of request, research and analysis, advocacy and protection. A Commissioner and an expert staff member oversee each step.

**Scrutiny of Government Anti-Trafficking Responses**

**Legislation**

In April 2007 Indonesia passed comprehensive anti-trafficking legislation. The law, “criminalizes debt bondage, labour exploitation, sexual exploitation, and transnational and internal trafficking,” with penalties ranging from three to fifteen years imprisonment. The law moreover provides for corporate and government prosecution measures. Komnas HAM, Komnas Perempuan, and LPSK have not been involved in formulating and monitoring the implementation of this national legislation. Rather, Komnas HAM and Komnas Perempuan are more actively involved in monitoring migrant worker regulations.

Komnas HAM has studied and analyzed the ICRMW, and is currently preparing a report in partnership with NGOs that work in this area. Komnas Perempuan along with CSOs also advocate for policy changes and have been lobbying the Indonesian government to ratify the ICRMW. These advocacy efforts have succeeded in pushing the Indonesian Government to provide better protection for Indonesian migrant workers. The Indonesian National Strategic Action Plan for Human Rights 2004-2009 (RAN HAM) notes the government’s intention to ratify the ICRMW, referring to the State’s CEDAW obligations as one compelling reason for ratification.

Komnas Perempuan together with CSOs monitors Indonesian Presidential Decree No.6/2006 (Concerning the reformation of the labour replacement system and the protection of migrant workers). Through this monitoring work they found that the State’s protections for Indonesian migrant workers whilst working overseas are weak and that moreover the focus is primarily on the replacement of labour rather than the protection of migrants.

This perspective, founded in a view of migrant workers as a commodity and the effort to solve unemployment problems, has affected the implementation of the policy itself. For example, coordination between central and regional offices is sporadic, and there is no standardised procedures for protecting the rights of migrant workers. Komnas Perempuan has

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162 Interview with Ilii Pintaulli, Commissioner Aid Division LPSK, 03.06.2009
164 HumanTrafficking.org. *Indonesia.* [online] Available at: http://www.humantrafficking.org/countries/indonesia [Accessed 23.05.09].
165 2007 Year report of Komnas HAM
therefore asked both the central and regional governments to make amendments to the protection system for exploited migrant workers. In this regard the organisation has recommended that human rights standards be created, along with better documentation and monitoring of violations by government officers. 

In regard to local government policies, Komnas Perempuan monitored activities related to 154 local government policies. The organisation found 64 regulations to be discriminatory towards women, with 4 of these related to migrant work (Kabupaten, Cianjur, Sukabumi, Karawang, and 1 province in East Java), furthermore 3 of these lacked measures to protect migrant workers and furthermore limited the scope of employment for women. Komnas Perempuan asked the government to withdraw these regulations, on legal grounds. The organization was also able to locate and monitor 40 local government regulations that are conducive to upholding human rights. These 40 regulations are partially made up of: 2 regulations to manage migrant workers protection, 6 to regulate efforts to combat trafficking, and 23 regulations providing services to the victims, which in turn work to improve service to trafficked women.

LPSK, as a new institution, still focuses on integration and its mandate as stated in National Regulation No.13/2006 regarding its role in offering protection to trafficked witnesses and victims.

Law enforcement responses and access to justice

Komnas HAM does not specifically focus on monitoring, providing services, or providing protection in regards to trafficking issues. However, it is mandated to receive human rights complaints from citizens, and in response to this it conducts some direct monitoring of anti-trafficking responses. Komnas HAM has subpoena powers and the authority to conduct binding mediation as well. This said, its current jurisdiction is limited to conducting preliminary probes and raising recommendations with the Attorney General’s Office (AGO). These recommendations concern investigations into possible human rights violations. Komnas HAM wants, and is in the process of drafting, a request for prosecution powers.

Law enforcement monitoring is conducted via recommendations, which Komnas HAM gives to a related institution in order to protect migrant workers rights. These are submitted to the State Minister for Labour and Migration, as well as the National Body for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI).

Komnas HAM sends the results of any monitoring information to the State Minister for Labour and Migration. BNP2TKI, however, has never given a direct response to Komnas HAM,

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166 http://www.komnasperempuan.or.id/?p=975
167 Monitoring Report of Komnas Perempuan about condition of fulfilment of legal rights constitution for women in 16 Kabupaten/City at 7 Province” on the name of local autonomy: discrimination institution in side state order of Indonesia : April 2009
168 Interview with Myra Diarsi, Commissioner for Protection Division LPSK, 03.06.2009
despite several cases in which a more involved interaction would have been helpful. Komnas HAM also sends reports to the Indonesian Migrant Worker Company (PJTKI) calling for it to provide improved and swifter assistance to migrant workers.

In respect to its institutional capacity to conduct monitoring work, Komnas HAM is working to develop a MoU with the Indonesian Chief of Police to increase coordination in handling cases, including cases dealing with migrant workers and trafficking.\(^\text{171}\)

Like Komnas HAM, Komnas Perempuan doesn’t monitor trafficking responses specifically, but rather focuses on this issue when offering general assistance to victims of violence. Komnas Perempuan operates strategic partnerships with the police, hospitals, and the department of social services with the aim of developing better services founded in a gender and human rights perspective.

Since 2002, the Indonesian Government has started to focus on the importance of integrated services for victims by establishing an agreement between the State Minister for Women’s Empowerment, the State Minister for Health, the State Minister for Social Services and The Indonesian Chief of Police (No.14/MenPP/Dep.V/X/2002; Letter No 1329/Menkes/SKB/X/2002; Letter no 75/Huk/2002 Integrated Services for Women as Victims of Violence). Komnas Perempuan has also worked to facilitate the development of a service system for cross sector victims between NGOs, hospitals, and the police department.

Such integrated services have been established in some cities and provinces. After the Indonesian Government established policy relating to the Task Force for the Elimination of Trafficking in Persons created under the Elimination of Trafficking Act, services for trafficked persons have become increasingly integrated. For example, in the National Police Department, services for women and children as victims of violence previously fell under the general criminal section, however, now that the National Regulation No.21/2007 (The Elimination of Trafficking Act and the forming of the Task Force for the Elimination of Trafficking in Persons) has entered into effect, the Direct Services Unit for Women and Children falls under the jurisdiction of the Department for Transnational Crime.

Komnas Perempuan’s monitoring work involves hospitals, police forces, and courts. It collects information detailing violence against women, as well as on trafficking and migration. Komnas Perempuan publishes an annual report citing these efforts. In partnership with Komnas HAM it is also working to develop monitoring instruments to better document human rights violations against migrant workers.\(^\text{172}\)

LPSK, as a new institution, has worked mainly with law enforcement and the justice system, building partnerships among institutions. In its research efforts, LPSK has worked with the Police Department and the State Attorney to gain a more diverse set of research inputs. This partnership has been formalized through a MoU between these institutions.\(^\text{173}\)

\(^{171}\) Interview with Nur Kholis, Sub Commission of Monitoring and investigation Komnas HAM, 01.06.2009

\(^{172}\) Interview with Kamala Chandrakirana, Chairman of Komnas Perempuan, 01.06.2009

LPSK is currently developing a Standard Operational Procedure (SOP) that will provide operating protocol in the provision of assistance to victims. To develop this SOP, LPSK has partnered with the Supreme Court, the State Attorney, the departments of Health and Social Services, NGOs, and other professionals such as forensic experts. To this end, the public have also been consulted in several regions.\textsuperscript{174}

**Prevention Measures and Research**

Komnas HAM and Komnas Perempuan do not specifically work towards trafficking prevention. However, they address the issue through their work on migrant workers’ issues. One such prevention effort by Komnas HAM involved training on monitoring and documentation. This training involves work with NGOs, the police department, and local government officials in Batam and Lombok on human rights violations against migrant workers.\textsuperscript{175} Komnas HAM has also taken steps towards monitoring some trafficking related situations. The institute investigated, for example, a trafficking case in Singkawang. This investigation resulted in the identification of many children and women, trafficked via contractual marriage and misused identity cards. Komnas HAM, more generally, also publishes annual reports, which cover various human rights issues, including trafficking.\textsuperscript{176}

Komnas Perempuan approaches prevention from a research focus. It pushes for gender and human rights sensitive regulations through model guidelines for formulating local regulations relating to migrant workers. The commission also publishes several reports, such as:

- “Indonesian Migrant Workers as Household/Domestic workers (TKW-PRT), “Indonesia Report” for UN Special Reporter for Human rights of Migrant Workers (2003);
- “Indonesian Migrant Workers: The systematic Abuse in and outside the country, Indonesia Report” for UN Special Reporter for Human rights of Migrant Workers (2003);
- “Jakarta Process”, a regional meeting consisting of 13 civil organizations, 2 Associations of Migrant Workers and 5 Human rights institutions from 8 Asian countries to review the protection system for undocumented migrant workers on the book “The Acknowledgement and Protection of undocumented migrant workers and women migrant workers as household/domestic workers”
- Report on a dialogue between Komnas Perempuan and human rights activists from Middle East in the book: To build better understanding with dialogue across cultures to give protection for Indonesian Migrant Workers in the Middle East; Cross-regional Dialogue with human rights activists from Middle East, Jakarta 2-7 July 2006

\textsuperscript{174} “News: The Designing of SOP Aid of LPSK,” Testimony Edition March – April 2009
\textsuperscript{175} 2007 Yearly Report of Komnas HAM
\textsuperscript{176} Komnas HAM. 2008. The Indonesian National Human Rights Commission on Indonesia’s Compliance with the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. [online] Available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/KommasHAMIndonesia40.pdf [Accessed on 20.06.09].
\textsuperscript{177} Komnas HAM. 2006. Annual Report. [online] Available at: http://www.komnasham.go.id/portal/files/Annual.pdf [Accessed on 20.06.09].
In order to help monitor situations of violence against women and policies related to women’s human rights, the commission also publishes, “The End of Year Note concerning Violence against Women.” on an annual basis. In this, Komnas Perempuan provides independent data on violence towards women migrant workers and those vulnerable to trafficking. The report also contains information on policies that deepen human rights violations, especially those enforced at a provincial, regional, and national level. In conducting this work the commission partners with 240 police departments, state attorneys, courts, and NGOs in Indonesia to gain a comprehensive overview of the issues and to deepen the reach of their work.

Finally Komnas Perempuan interacts with the media in order to advocate for the rights of women migrant workers to be upheld.

**Conclusions**

Komnas HAM and Komnas Perempuan conduct research, advocacy and direct service delivery in relation to human trafficking from a migrant rights perspective. This is an appropriate starting point. The Indonesian Government has adopted a policy of promoting labour migration as a result of which a large number of women migrate to various countries including Malaysia, Singapore and Middle Eastern States (including Bahrain and Saudi Arabia) primarily to take up positions as domestic workers. However, neither the Government nor human rights bodies such as Komnas Ham and Komnas Perempuan seem to monitor the migration policies of the Government and push for rights protective policies. While it is commendable that the two human rights bodies in Indonesia conceptualize trafficking in the context of migration they also need to be able to differentiate between types of trafficking and effectively use the different frameworks which exist to protect the rights of migrant workers as well as all trafficked persons. Trafficking occurs in the context of labour migration but not all cases of migrant workers’ rights’ violations can be classified as human trafficking. The challenge is to analyze cases carefully and decide on the most suitable framework. While these two human rights bodies seem to conflate the two frameworks, anti-trafficking organizations and networks in the country seem to overwhelmingly see both issues as completely distinct and sometimes see sexual exploitation as the defining feature of trafficking. This leaves these human rights bodies unable to work with NGO movements to jointly influence government anti-trafficking policies.

An example of this relates to discussions regarding National Regulation No.21/2007 (the Elimination of All form of Trafficking), during which several NGOs stated that they would not collaborate with the NHRI in formulating anti-trafficking policies. This situation is markedly different from approaches to migrant rights policy formulation - in this area Komnas Perempuan has formed many partnerships with migrant workers organisations and NGOs.

Moreover, by treating trafficking and migrant issues often as one and the same issue, complaints procedures have become increasingly obtuse. Without the proper framework for

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178 Interview with Emy, Indonesia ACT, 04.06.2009
179 Interview with Emy, Coordinator Indonesia ACT, 04.06.09
180 Interview with team LBH APIK Pontianak, 05.06.09 and Retno Dewi, ATKI Indonesia, 03.06.09
understanding trafficking, trafficking cases can be incorrectly classified as migrant workers cases and vice versa.\textsuperscript{181}

The government, law enforcement officers, and civil society are not yet keen to partner with Komnas HAM and Komnas Perempuan in formulating anti-trafficking policies. This can be observed in the formation of the Task Force for the Elimination of Trafficking in Persons, which has yet to involve the NHRIs in anti trafficking matters.\textsuperscript{182}

Moreover, these 3 human rights institutions still need to work on their relationship with the Indonesian government. This said, efforts have been made, and results visible - several local government regulations have been established that have proven to be very effective in furthering human rights and migrant rights.\textsuperscript{183}

In respect to regulations, the establishment of several anti-trafficking policies has given the public a better understanding of the issue, although implementation suffers from several obstacles. Examples of such obstacles include:

- Not all policies are based on a human rights perspective and protection for trafficked persons. Consequently, there are 4 local government policies that provide protection for migrant workers at the expense of a woman’s fundamental right to choose her own profession. For example, the Cianjur District Government Regulation No. 15 year 2002, and Sukabumi District Government regulation limit women to specific professions.

- Not all law enforcement and judicial institutions understand current regulations and policies. As such, they are unable to use them, especially when devising national anti trafficking regulation and in addressing specific cases.\textsuperscript{184}

- The implementation of services for trafficked persons through the Task Force on the Elimination of Trafficking in Persons is already operational at national level and in several provinces such as West Kalimantan. Plans to implement the services in several Central Java provinces in the future exist.\textsuperscript{185}

- The process to establish the Task Force on the Elimination of Trafficking in Persons has not yet fully engaged anti-trafficking or migrant rights organisations and NHRIs. Consequently, these bodies have not been fully informed about the mandate and functions of the Task Force to date.\textsuperscript{186}

\textsuperscript{181} Interview with Siti Nurjanah, Unit of Complain & Mediation, Komnas Perempuan, 07.07.2009

\textsuperscript{182} Interview with Emy, Coordinator Indonesia ACT, 04.06.09, team LBH APIK Pontianak, 05.06.09, Evarisan, Coordinator LRC-KJHAM, 04.07.2009

\textsuperscript{183} Interview with Yocie, Komnas Perempuan, 07.07.09

\textsuperscript{184} Interview with Evarisan, Coordinator Legal Resource Centre for Gender justice and HAM (LRC_KJHAM), 04.07.2009

\textsuperscript{185} Interview with Anna Sakreti, staff Counter Trafficking IOM, 02.06.2009, team LBH APIK Pontianak, 05.06.2009 and Evarisan, Coordinator LRC-KJHAM, 04.07.2009

\textsuperscript{186} Interview team LPSK, 03.06.2009, Renido Dewi, ATKI Indonesia, 03.06.2009, Emy, Indonesia ACT, 04.06.09.
Recommendations to Komnas HAM, Komnas Perempuan and LPSK

1. To treat anti-trafficking issues with the same level of importance other human rights violations are given, both in regards to how cases are handled, and how policy is reviewed and monitored.

2. To strengthen partnerships, both with state institutions and CSOs that work on anti-trafficking issues.

3. To formalize relationships across all three NHRIs on anti-trafficking and migrant worker related issues, rather than creating ad-hoc partnerships.

4. To improve the anti-trafficking infrastructure in their organisations, in order to: provide greater conceptual clarity on trafficking; monitor government anti-trafficking policies and practice; and to offer much needed protection to trafficked persons.
## ANNEXES

Treaties and ILO Convention Ratifications

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HUMAN RIGHTS
at home, abroad and on the way

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