



World Vision

World Vision Policy Recommendations – Trafficking in Persons October 2009

Executive Summary

World Vision (WV) commends recent efforts by the Australian Government to combat and reduce the trafficking of persons in the Asia Pacific region.¹ Many positive achievements on the issue of trafficking in persons have been influenced by the financial and political support of the Australian Government, both past and present.

The current global economic environment calls for renewed effort to adequately address and reduce unsafe migration practices and labour exploitation, especially of migrants and children in Asia and the Pacific.

World Vision priority recommendations

World Vision has outlined a comprehensive set of priority recommendations to assist the Australian Government to improve its whole-of-government response to human trafficking in the Asia Pacific region. Australia can continue to provide support to combat the trafficking of persons and labour exploitation in the Asia Pacific region through:

- 1. Continued funding support to innovative interventions in the areas of prevention, protection and criminal justice responses**
- 2. Increased cooperation through regional / multilateral forums**
 - Increase Australian engagement with ASEAN as a framework to combat trafficking in persons

¹ WV uses the definition of Trafficking in Persons as internationally agreed in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, United Nations (2000). The definition (and thereby, application of the Protocol) covers all aspects of the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation is defined to include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth above. WV believes that there has been insufficient focus on the “harbouring” and “receipt” aspects of the definition, which has led to some misunderstanding that only the “movement” or “action” is the crime. The references to harbouring and receipt operate to bring not just the *process* but also the *end-situation* of trafficking within the international legal definition.

- Support adoption of the civil society proposal for the creation of an ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers
- Support the ASEAN Intergovernmental Commission on Human Rights (AICHR)
- Continue to support the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT)
- Support for the development of a regional framework against the trafficking in persons and labour exploitation in the Pacific Islands
- Encourage engagement in anti-trafficking and migrant labour protection initiatives by the major destination countries in the region: Malaysia, Singapore, Brunei, Japan, and the Republic of Korea
- Support the expansion of an anti-trafficking policy framework in South Asia
- Encourage the UN Human Rights Council Universal Periodic Review (UPR) process to continue to focus on trafficking
- Actively support the work of the UN Special Rapporteur on Trafficking in Persons, especially women and children

3. Increased bilateral engagement

- Bilateral diplomatic engagement to reduce the trafficking of persons
- Constructively address, review and commend efforts to combat trafficking in persons and labour exploitation at Australia's annual human rights dialogues
- In keeping with a recommendation of the Foreign Affairs Sub-Committee, Australia should include civil society representatives in the official government delegations at each of its annual bilateral human rights dialogues with China, Lao PDR and Vietnam
- Foreign Affairs Minister table an annual statement in Parliament on the status of each of Australia's Human Rights Dialogues

4. Promotion of common standards, policies and approaches that conform to international standards

- UN Trafficking ("Palermo") Protocol (2000)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

5. Domestic policy engagement

- Promote efforts to reduce trafficking of persons and labour exploitation domestically
- Clarify concepts of people smuggling and trafficking in persons to the Australian public
- Review the ethical purchasing practices of Australian Commonwealth, State and Territory governments and legislatures

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World Vision Policy Recommendations – Trafficking in Persons As of October 2009

Introduction

World Vision (WV) commends recent efforts by the Australian Government to combat and reduce the trafficking of persons in the Asia Pacific region.² Many positive achievements on the issue of trafficking in persons have been influenced by the financial and political support of the Australian Government, both past and present. This includes the adoption of new comprehensive laws and national plans of action on the trafficking of persons by many countries in the region; the strengthening of national criminal justice and victim support responses; and the establishment of inter-ministerial mechanisms for coordinated action.

The 2007-2008 Australian aid budget allocated AUD \$38.3 million over four years, including \$26.3 million for new initiatives on trafficking in persons. This builds on the initial funding of AUD \$20 million provided from Australia's anti-people trafficking strategy, established in 2003. We welcome the Australian Government's recent announcement that it will provide \$15 million over two years under a partnership arrangement with the International Labour Organisation (ILO) to support sustainable employment initiatives in South East Asia and the Pacific, and to undertake future work on the protection of child victims of sexual exploitation.

The Australian Government also continues to provide support to the Non Governmental Organization (NGO) Cooperation Programme, and funding for targeted and impact-oriented regional and national responses on the trafficking of persons which are led by NGOs, including WV, in the region.

Trafficking in the Asia and the Pacific: Challenges for Australia

The current global economic environment calls for renewed effort to adequately address and reduce unsafe migration practices and labour exploitation, especially of migrants and children in Asia and the Pacific. The growth of economic integration across Asia has significantly increased migration flows. Migration in Asia and the Pacific is often a necessity in light of the solid decline in real livelihood opportunities and the global increase in informal work. While there has increasingly freer trade, commerce and communications across borders, there has not been a corresponding increased ability for persons in the region to migrate legally, especially for the low-skilled. This regional environment has created a lucrative market for "people movers" or "facilitators" to match the growing supply with a strong demand for unskilled work. Trafficking is the worst type of outcome in an unsafe migration process and can be attributed to the lack of easy mechanisms to

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facilitate the movement of labour across borders, especially for the unskilled, and to the continued demand by “end-exploiters”³ for such trafficked labour.

The most recent ILO report *The Cost of Coercion* (May 2009) highlights that Asia accounts for by far the biggest share of the world’s forced labourers and the widespread trafficking of children and adults, both for sexual and labour purposes.⁴ Moreover, the report estimates that the “opportunity cost” of coercion to the workers affected by these abusive practices, in terms of lost earnings, now reaches over USD \$20 billion. According to the ILO’s estimates (2006) the number of child labourers fell by 11 percent globally in the previous four years and the number of children in hazardous work decreased by 26 percent. While these decreases are encouraging, it should not be forgotten that there are still 218 million child labourers worldwide; 126 million of which are engaged in hazardous work.⁵ It is predicted that these numbers will increase as a result of the impact of the global financial crisis. There is a continued need for further law enforcement against labour trafficking, with a particular focus on the end-exploiters, and support for preventative programs to protect children against core vulnerabilities.

Meeting the challenges: The ARTIP example

The Australian Government was one of the first of the major aid donors to recognise the importance of the criminal justice response to the trafficking of persons in ending the impunity of traffickers and securing justice for victims. In 2003, AusAID established a landmark initiative aimed at strengthening the criminal justice response to trafficking in South East Asia. The Asia Regional Trafficking in Persons Project (ARTIP)⁶ is widely recognized as one of the most innovative and influential anti-trafficking initiatives in the Asia region. ARTIP provides support and assistance to national criminal justice agencies based on a best practice model that has been internationally recognized.⁷ Working through the Association of Southeast Nations (ASEAN), ARTIP has helped to establish the *Heads of Specialist Trafficking Units Process (HSU Process)*, the first of its kind in the world. The project has also assisted with the development of a full set of common ASEAN training programs for front-line officials, specialist investigators prosecutors and judges that are currently being integrated at the national level. The project has also actively supported regional standard-setting. In 2007 ASEAN adopted its *Practitioner Guidelines on an Effective Criminal Justice Response to Trafficking* and Member States have recently expressed their support, in principle, for an ASEAN treaty on trafficking. It is relevant to note that the ASEAN region now boasts some of the world’s most impressive achievements in terms of criminal justice responses to trafficking.⁸

³ “End-exploiters” are those persons at the end of the trafficking chain, who are in receipt of persons for the purpose of exploitation. These traffickers are often referred to as the “worst offenders” in the trafficking chain.

⁴ Further information on the ILO report *The Cost of Coercion* is available at http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_106219/index.htm

⁵ For further information see <http://www.ilo.org/ipecc/areas/lang--en/index.htm>

⁶ ARTIP / ARCPPT is a project of the Australian aid programme (AusAid). The initial project commenced in 2003 and ARTIP is expected to run until 2011.

⁷ The model is based on growing international recognition that effective criminal justice responses to trafficking are essential to ending the current high levels of impunity for traffickers and ensuring security and justice for those who have been trafficked. The key elements of the model framework include a strong and realistic legal framework; capable frontline and specialist law enforcement agencies; informed and committed judges and prosecutors; a system for the quick and accurate identification of victims; and mechanisms to promote cooperation between criminal justice agencies within and across borders. See further A. Gallagher and P. Holmes, *Developing an Effective Criminal Justice Response to Trafficking in Persons: lessons from the Front Line*, 18 INTERNATIONAL CRIMINAL JUSTICE REVIEW (2008). Available from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1292563.

⁸ The sub-region covered by the project outperforms most if not all others on indicators used by the United Nations in measuring the national criminal justice response to trafficking: UNODC, *Global Report on Trafficking in Persons*, February, 2009). Relative to international averages, ASEAN countries record higher levels of compliance with regard to national legal framework and higher levels of prosecutions and convictions of traffickers. The ASEAN region has the highest concentration of specialist trafficking units in the world and boasts the only standing regional body of specialist units. There are also more national action plans on trafficking in this region than in most others.

ARTIP is one of a number of Australian initiatives that are changing the way in which trafficking is being dealt with throughout the Asia Pacific region. Despite these achievements much remains to be done. It is important that gaps and challenges in Australia's whole-of-government response to the trafficking of persons in the Asia Pacific region are acknowledged and addressed.

World Vision priority recommendations

World Vision has outlined a comprehensive set of priority recommendations to assist the Australian Government to improve its whole-of-government response to human trafficking in the Asia Pacific region. World Vision will continue to monitor the responses in the region, and to update these policy recommendations regularly as a working document. Australia can continue to provide support to combat the trafficking of persons and labour exploitation in the Asia Pacific region through:

- continued funding support to innovative interventions in the areas of prevention, protection and criminal justice responses
- increased cooperation through regional / multilateral forums
- increased bilateral engagement
- promotion of common standards, policies and approaches that conform to international standards
- domestic policy engagement

Continued funding support to innovative interventions in the areas of prevention, protection and criminal justice responses

The Australian Government should look to increase its support of innovative interventions being undertaken by the major agencies and organizations working in the region. The Australian Government has already adopted an action-oriented approach that involves close working partnerships with a range of organizations including ILO, IOM, UNODC, Save the Children and WV. However, much remains to be done and Australia should look at supporting interventions that address the whole trafficking continuum (prevention, protection, prosecution and punishment). The Government should advocate for necessary legislative and policy change. A recently released UNICEF report *Child Trafficking in East and Southeast Asia: Reversing the Trend* (September 2009)⁹ found that greater support is required for preventive programs that aim to address the factors that make children vulnerable to trafficking and other forms of abuse and exploitation including poverty, family breakdown, lack of educational opportunities, gender inequality, demand for cheap labour or brides, and widening disparities between and within countries.

It is widely accepted that an effective criminal justice response to trafficking is essential to ending the current high levels of impunity for traffickers and ensuring security and justice for those who have been trafficked. Australia, through ARTIP, is recognized as a leader in this field. WV encourages Australia to continue its support in this crucial and difficult area.

The evidence collected and lessons learnt from community interventions in the field (including knowledge gained from victims) should be incorporated into a holistic programme design and policy. For example WV advocates a return process that is efficient and rights-based with the aim of ensuring that individuals are not re-victimised.¹⁰ This in turn will work to ensure that achievements in combating trafficking are sustainable and have a greater lasting impact on efforts to reduce trafficking in persons and labour exploitation in Asia and the Pacific.

⁹ The seven countries assessed in the study were China, Indonesia, Lao PDR, Malaysia, Philippines, Thailand and Vietnam.

¹⁰ In practice human trafficking victims are often pressured to testify against accused traffickers. This often sees victims being detained in a shelter until a court case is concluded. Victims must be provided with greater options, such as video recording, when agreeing to testify. Victims should be provided with the option to not testify (especially if they cannot be provided with appropriate protection) and if so, should be able to return to their home.

Increased cooperation through regional / multilateral forums

Increase Australian engagement with ASEAN as a framework to combat trafficking in persons

Australia has a long-standing relationship with ASEAN and its Member States and has been working with this regional organization to promote regional prosperity and stability and address a range of regional problems.¹¹ The importance of this relationship is underscored by the recent appointment of an Australian Ambassador to ASEAN. It is essential that Australia coordinate its whole-of-government response to trafficking to take advantage of – and further strengthen – this relationship.

ASEAN provides a critical regional framework for the Australian Government to advocate for increased engagement by member states on the issues of trafficking in persons, especially of vulnerable migrant workers in South East Asia. The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) has major carriage of trafficking within the ASEAN system and has emerged as a significant player in regional anti-trafficking efforts. The SOMTC has initiated a regional declaration on trafficking, developed a detailed work plan to implement that Declaration and established a Working Group on Trafficking. Since 2006, ARTIP and SOMTC have operated under a detailed joint work plan. Outputs of this cooperation include, as mentioned above, a range of ASEAN policy instruments, training materials and tools to support more effective criminal justice responses as well as more and better cooperation between ASEAN Member States. SOMTC is currently considering taking over full responsibility for the heads of Specialist Trafficking Units process, a move that will serve to institutionalize this unique and important body.

We encourage Australia to continue its support to SOMTC and to enhance its engagement with other ASEAN Committees, including the Senior Officials Meeting on Social Welfare and development (SOMSWD). Such support may include, for this latter committee, Australian government support to secure observer status to the SOMSWD for Australian NGOs with a regional presence such as WV. Enhanced Australian engagement within the ASEAN Committee structure will ensure more coherent and effective human rights-based responses to trafficking in persons and labour exploitation within ASEAN that are aligned to international standards.

Support adoption of the civil society proposal for the creation of an ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers

WV urges the Australian Government to encourage ASEAN to adopt the civil society proposal put forward by the Civil Society Task Force on ASEAN Migrant Workers for the creation of an ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers.¹² It is essential that ASEAN

¹¹ Australia became ASEAN's first dialogue partner in 1974 and today's relationship with ASEAN encompasses trade and investment, security, transnational issues, development cooperation, social policy and people-to-people links through education, tourism and cultural exchange. Australia is an active partner of ASEAN through the ASEAN Regional Forum, the East Asia Summit, the ASEAN-Australia post Ministerial Conference, the ASEAN Economic Ministers – Closer Economic Relations Consultations, the ASEAN-Australia Forum, and the ASEAN-Australia Development Cooperation Joint Planning Committee.

¹² After two years of intensive consultation, the Civil Society Task Force on ASEAN Migrant Workers (TF-AMW) formerly proposed a detailed civil society Framework Instrument for the Protection and Promotion of the Rights of Migrant Workers. The ASEAN Declaration on the Protection and Promotion of the rights of Migrant Workers recognizes their sufferings and calls for: (1) fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers (Article 8); and (2) providing migrant workers, who may be victims of discrimination, abuse, exploitation, and violence, with adequate access to the legal and judicial system of the receiving states.

The civil society taskforce's proposal lists 192 recommendations covering the: (1) Obligations of receiving states; (2) Obligations of sending states; (3) Joint obligations of receiving and sending states; and (4) Commitments by ASEAN. The extensive document is a result of eight national consultations and seven regional consultations from 2007 to 2009 involving more than 1,000 civil society participants in eight ASEAN member countries. The ASEAN framework instrument proposed

pays serious attention to protecting migrant workers' rights in order to reduce their vulnerability to being trafficked. Millions of migrant workers in the region continue to seek a better future for themselves and their families by moving between and within ASEAN member states. The movement of people within and between ASEAN member states is anticipated to grow as economic integration intensifies and leads to the full economic integration by 2015.

Support the ASEAN Intergovernmental Commission on Human Rights (AICHR)

The AICHR is a new organ of ASEAN, established in accordance with the ASEAN Charter, with overall responsibility for the promotion and protection of human rights. This is the first regional human rights mechanism in the Asia Pacific region. Experience shows that regional mechanisms can improve upon mechanisms and instruments at the global level, and places them in closer proximity to people that need to access them (including victims of trafficking and labour exploitation). That said, the AICHR mandate does not yet currently include the authority to investigate and decide on individual complaints. A comprehensive regional human rights mechanism should include: (a) regional human rights instruments that reflect international standards; (b) commissioners who are independent and impartial experts in human rights; (c) mandates that enable the mechanisms to undertake both promotion and protection work; (d) a competent and full-time secretariat with sufficient resources; (e) its own rules of procedure, which include rules for interaction with both civil society and national human rights institutions as well as international human rights mechanisms.

WV encourages the Australian Government to support the continued strengthening of the AICHR mandate and functioning, as it represents an important commitment by states in the region to move beyond words and towards the implementation of their human rights commitments on the ground.

Continue to support the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT)¹³

WV urges the Australian Government to support anti-trafficking initiatives in the Mekong region as agreed to by Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) process. This includes providing funding support to regional activities for the six States of the Mekong region as per the latest COMMIT Sub-Regional Plan of Action (2006-2009). Funding should be prioritized to regional UN agencies and NGOs - who are best positioned through their individual mandates - to implement member-endorsed regional activities under the COMMIT Process. Direct funding is preferable to channelling support for COMMIT through its Secretariat, the UN Inter-agency Project to Combat Human Trafficking in the Greater Mekong Sub-region (UNIAP) project. As a temporary initiative, UNIAP is better suited to undertaking a coordination, rather than an implementation role.

Support for the development of a regional framework against the trafficking in persons and labour exploitation in the Pacific Islands

WV encourages Australia, as the current Pacific Islands Forum secretariat, to support the United Nations Office of Drugs and Crime (UNODC) and other relevant UN and non-governmental agencies to provide a technical workshop for Pacific nations on legislative drafting using model trafficking in persons' legislation.

by the civil society emphasizes the need for: (a) an agreement to protect migrant workers' rights and ensure that migrant workers are treated with dignity and respect; and (b) harmonization of national laws to correspond to ILO core labour standards, fundamental freedoms and rights at work. See <http://www.workersconnection.org/downloads.php?RCID=7>

¹³ The Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) is a process initiated by the Governments of Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam to establish a regional framework for cooperation on the issue of human trafficking. Although non-binding in nature, COMMIT provides a blueprint for regional and multi-sectoral cooperation and collaboration to combat and address all forms of cross-border cooperation and collaboration to combat and address human trafficking.

At the recent Pacific Trafficking Persons Forum held in New Zealand (September 2009)¹⁴ the particular issues the Pacific nations face in the response to trafficking in person were identified¹⁵. Australia can help Pacific Island countries to develop effective response strategies to trafficking in persons by using simplified and proactive techniques that enable Pacific nations to adhere to international / regional standards and operational guidelines, in a coordinated way. Australia's experience, through ARTIP, in relation to strengthening ASEAN's response to trafficking provides a useful precedent. WV is of the view that many of the major outputs of that cooperation, including training materials and operational guidelines could be usefully adapted by the Pacific Island countries for their specific needs and priorities,

Encourage engagement in anti-trafficking and migrant labour protection initiatives by the major destination countries in the region: Malaysia, Singapore, Brunei, Japan, and the Republic of Korea

The Australian government should look to encourage greater participation by recognized destination states in anti-trafficking initiatives, especially through regional cooperation agreements. For example the Australian Government should consider encouraging Brunei, China, Japan, the Republic of Korea and Singapore to ratify the UN Trafficking Protocol.

Support the expansion of an anti-trafficking policy framework in South Asia

WV urges the Australian Government to focus more efforts at reducing the extent of child labour and trafficking in South Asia, recognized as the global epicentre for such exploitation. WV welcomes Australia's inaugural participation as an observer at the South Asian Association for Regional Cooperation (SAARC)¹⁶ Summit in August 2008. Observer status to SAARC will provide Australia with the opportunity to annually engage South Asian Governments at the highest levels. This is a positive step towards promoting Australia's greater engagement in South Asia.

SAARC's engagement on the issue of trafficking to date has been *ad hoc*, with few identifiable achievements. A treaty on trafficking, concluded in 2002, deals only with the trafficking of women and children for purposes of prostitution and has not been effectively implemented. The SAARC member States have committed themselves to revising and strengthening this instrument to bring it in line with international standards including the internationally agreed definition of trafficking. Australia should encourage and support this process, which is now well overdue. The ratification of the UN Trafficking Protocol by SAARC countries also needs to be encouraged.¹⁷

Once again, lessons learned from the models developed and tested in the ASEAN region should be reviewed and refined for possible application in the South Asian region. The regional criminal justice models developed by ARTIP through ASEAN (such as the HSU Process and ASEAN Practitioner Guidelines) could be effectively promoted and used in South Asia – and should be encouraged for replication.

¹⁴ The Pacific Trafficking in Persons Forum, held in Wellington, New Zealand, 2-4 September 2009, was organized by the Australian Institute of Criminology, the Salvation Army New Zealand, Fiji and Tonga, and the Pacific Immigration Directors' Conference.

¹⁵ For more information, see <http://www.aic.gov.au/events/aic%20upcoming%20events/2009/peopletrafficking.aspx> sources cite incidences of trafficking of Chinese women into sex industry, child sex tourism, trafficking into labour exploitation in factories and the fishing industry. Responses to trafficking in persons is difficult in the Pacific context due to lack of legislative framework, lack of capacity of law enforcement and judiciary, limited victim support provisions, lack of government-NGO collaboration, lack of human and financial resources, and limited regional cooperation.

¹⁶ SAARC was established in 1985 with the aim of strengthening regional cooperation and accelerating the economic and social development of its eight Member States – Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. Other observers to SAARC are China, the European Union, Iran, Japan, Mauritius, South Korea and the United States.

¹⁷ Bangladesh, Nepal, and Pakistan are not signatories to the UN Trafficking Protocol. South Asian states that have signed the UN Trafficking Protocol but not yet ratified it are India and Sri Lanka.

WV recommends Australia consider supporting (and, given its leadership on this issue, perhaps even hosting) a regional forum to bring together government and NGO stakeholders from the SAARC region to observe and exchange lessons learned and good practices with their ASEAN counterparts.

Encourage the UN Human Rights Council Universal Periodic Review (UPR) process to continue to focus on trafficking

WV welcomes the Australian Government's renewed commitment to engage the UN system, in particular the UN Human Rights Council. The Rudd Government has stated its intention to work "constructively and actively"¹⁸ with the UN Human Rights Council under the revised Universal Periodic Reporting (UPR) process to ensure the Council is able to respond effectively to human rights situations that demand its attention.

To date, Australia's engagement in the UPR process is to be commended. Australia has used the process to constructively participate in assessing the promotion and protection of human rights in individual country reviews.¹⁹

The UPR process is an important international mechanism through which Australia can address trafficking and labour exploitation.²⁰ To date, almost all States reviewed under the UPR Process have raised the issues of trafficking in persons. Furthermore, recommendations have frequently been made to the State under review to address the issue of human trafficking.²¹ Future opportunities within the UPR Process for Australia to address trafficking in persons and labour exploitation in Asia are at the upcoming sixth UPR Working Group session in December, when Vietnam and Cambodia will be reviewed respectively, while Lao PDR will be reviewed at the eighth session of the UPR review process in 2010, and Myanmar and Nepal at the 10th session in 2011.

Actively support the work of the UN Special Rapporteur on Trafficking

WV welcomes the Australian Government's standing invitation to the UN Human Rights Council Special Procedures to visit Australia. By extending such a standing invitation, Australia joins 61 other countries, including the UK, New Zealand and Canada and provides important support for the continued effective functioning of the human rights special procedures.

In light of this evident commitment, WV encourages the Australian Government to consider how it could lend more and better support to the mandate of the UN Special Rapporteur on Trafficking, especially Women and Girls.²² For example, the Australian Government appears to have not yet responded to a questionnaire

¹⁸ The Hon. Stephen Smith MP, *Statement by Australia to the Human Rights Council, Seventh Session, 5 March 2008* accessed online at http://www.foreignminister.gov.au/releases/2008/fa-s046_08.html on 1 April 2009.

¹⁹ For example, in China's appearance before the UPR Process in 2009, Australia critiqued China's use of the death penalty.

²⁰ The UN General Assembly has mandated the UN Human Rights Council to undertake a UPR Process of all UN member states every four years. The UPR Process is also a mechanism in which the fulfilment by each State's human rights obligations and their compliance with international human rights standards are reviewed and measured. It is a mechanism that seeks to engage member states in interactive and constructive dialogues.

²¹ Due to the extensive field presence World Vision has in close to 100 countries, WV is well positioned to assist the Australian Government through its field-based evidence, in order to highlight human rights abuses. When and as appropriate, WV is willing to submit specific country reports for consideration by the UN Human Rights Council to the Department of Foreign Affairs and Trade (DFAT) and the Australian Agency for International Development (AusAID). Recently, WV provided DFAT with a report on Afghanistan, outlining recommendations for Australia's consideration at the fifth session of the UPR in May 2009.

²² The Special Rapporteur on trafficking in persons, especially women and children focuses on the human rights aspects of the victims of trafficking in persons. The Special Rapporteur, who reports to the UN Human Rights Council, is empowered to respond effectively to reliable information on possible human rights violations with a view to protecting the human rights of actual or potential victims of trafficking. Country visits are an important aspect of the Special Rapporteur's work.

distributed by the Special Rapporteur to all UN member states in an effort to gather baseline information on the problem of human trafficking.²³

Support the establishment of a Complaints Mechanism under the Convention on the Rights of the Child (CRC)

We commend the Australian Government for recently signalling its intention to sign the Optional Protocol to UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which provides for a formal international complaints mechanism to protect the rights of women.²⁴

WV also encourages the Australian Government to support the establishment of a complaints mechanism under the CRC.²⁵ The CRC is the only core international human rights treaty that lacks a complaints procedure. This leaves children with limited means to seek remedies for violations. A complaints mechanism would allow children or their advocates to gain access to remedies for the full range of their rights when they have been violated by State parties to the CRC. The mechanism also would have a tangible impact on the lives of children individually and collectively. The Committee would be able to recommend remedies for the individual(s) whose rights have been violated (such as compensation), as well as changes to government policies that would impact groups of children or all children in that given country (for instance, access to education or health care). Under such mechanism, children would be able to have their complaints reviewed by the CRC Committee who have the greatest level of expertise to consider such matters.

In June 2009, after many years of NGO campaigning in which WV Canada played a leading role, the UN Human Rights Council adopted by consensus a resolution to set up a working group to discuss the development of an Optional Protocol to allow the CRC Committee to receive and examine communications about violations of the Convention. WV encourages the Australian Government to support the drafting of a strong and effective Optional Protocol to address the violations of children's rights, and its subsequent adoption at the General Assembly.

Raise relevant regional issues regarding trafficking in persons and share good practice in the response at Beijing +15

WV encourages the Australian Government to raise relevant regional issues regarding trafficking in persons and share good practice in the response at the next global review of the Beijing Declaration and Platform for Action which will be held at the 54th Session on the Status of Women (Beijing +15) from 1-12 March, 2010 in New York. This session will be emphasizing the sharing of experiences and good practices, with a view to overcoming remaining obstacles and new challenges, including those related to the Millennium Development Goals.

Increased Bilateral engagement

Bilateral diplomatic engagement to reduce the trafficking of persons

Federal Parliamentarians are well positioned to promote efforts to reduce the trafficking of persons and labour exploitation domestically and internationally through their engagement with Parliamentary colleagues and

²³ Responses received have been predominantly from recognized source countries rather than destination countries for trafficking in persons. The Special Rapporteur has consulted widely with civil society and NGOs working to combat trafficking to inform her mandate. World Vision was among the organizations consulted by the Special Rapporteur.

²⁴ See full text of the CEDAW at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> The specific protections against trafficking in women are found in Article 6.

²⁵ See full text of the CRC at <http://www2.ohchr.org/english/law/crc.htm> The specific protections for children against trafficking and other forms of labour and sexual exploitation are found in Articles 32, 34 and 35.

government representatives in Asia and the Pacific including through relevant parliamentary committees and regional parliamentary committees such as the ASEAN parliamentary process.

Constructively address, review and commend efforts to combat trafficking in persons and labour exploitation at Australia's annual human rights dialogues

WV recommends Australia continue to address trafficking and related issues including labour exploitation through its annual Human Rights dialogues, in particular with China, Lao PDR and Vietnam. For example at the 2010 Australia-China Human Rights Dialogue to be held in Beijing, Australia could:

- Request information on progress towards ratification, by China, of the UN Trafficking protocol and the development of domestic anti-trafficking legislation in line with international standards;
- Request information on progress and achievements in the implementation of China's National Plan of Action to combat human trafficking

In keeping with a recommendation of the Foreign Affairs Sub-Committee, Australia should include civil society representatives in the official government delegations at each of its annual bilateral human rights dialogues with China, Lao PDR and Vietnam²⁶

Civil society delegates have decades of relevant experience, are well positioned to provide meaningful participation in dialogue discussion topics and can provide useful stakeholder training services in anti-trafficking and other program activity areas.

Adequate mechanisms should be in place to ensure that Australian delegations to human rights dialogue meetings are aware of the views, expertise, and interests of relevant civil society organizations. The input of NGOs should be requested in advance of each round of dialogue and organisations providing such input should be debriefed after each dialogue.

Foreign Affairs Minister table an annual statement in Parliament on the status of each of Australia's Human Rights Dialogues

WV encourages the Australian Government to table an annual statement in Parliament on the status and proceedings in each of Australia's bilateral human rights dialogues.²⁷ This would allow for a more transparent and accountable process to monitor Australia's bilateral engagement with all three dialogue partner countries.

WV also encourages the Australian Government to consider initiating similar dialogues with other countries in the region, where appropriate.

Promotion of common standards, policies and approaches that conform to international standards

WV encourages the Australian Government to promote the ratification and effective implementation of the major international legal agreements that have been developed to protect people from trafficking in persons and labour exploitation.

²⁶ The 2005 Foreign Affairs Sub-Committee Inquiry into Australia's Human Rights Dialogue Process encouraged the Australian Government to nominate one or more non-government parties to participate in each of Australia's ongoing human rights dialogues with China, Lao PDR and Vietnam.

²⁷ This was another recommendation of the 2005 Inquiry by the Foreign Affairs Sub-Committee into Australia's Human Rights dialogue process. The full report can be found at <http://www.apf.gov.au/house/committee/jfadt/hrdialogue/chapter1.htm>

UN Trafficking (“Palermo”) Protocol (2000)

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (UN Trafficking Protocol) and its parent treaty, the Convention against Transnational Organized Crime (both adopted 15 November 2000)²⁸, provide the framework for global action to prevent and respond to trafficking in persons. The Protocol requires States parties to criminalize trafficking and to take certain measures towards protecting and supporting victims and cooperating with each other. The Protocol, which entered into force in late 2003, has 133 State Parties²⁹.

Australia should take every opportunity to encourage those States that are not yet party to the Protocol to accede to it as soon as possible; this is a critical step towards greater regional cooperation to combat trafficking in persons and reduce labour exploitation.³⁰ It is also an important aspect of developing common standards and common approaches by, for example, ensuring the adoption of an agreed definition that can form the basis for cross-border cooperation.³¹

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families³² is one of the core international human rights treaties, focusing particularly on the protection of migrant workers’ rights and seeking to foster respect for those rights. Convention does not create new rights for migrants but rather brings together the relevant international standards that have been developed in this area. It relies on the fundamental notion that all migrants should have access to a minimum degree of protection. The Convention recognises that legal migrants have different entitlements to undocumented migrants, but stresses that the basic rights of all migrants, including those who are undocumented migrants must be respected and upheld. WV encourages all states, including Australian, to consider ratification of this important Convention.

Domestic Policy Engagement

Promote efforts to reduce trafficking of persons and labour exploitation domestically

Australia has adopted a whole-of-government response to trafficking in persons, which includes a national policing strategy and specialist police investigation teams. WV commends the recent amendments to the Australia’s domestic anti-people trafficking strategy to provide improved support to victims of human trafficking and changes to the people trafficking visa framework.³³ These changes simplify the framework, enable a wider range of victims to access support and improve victim and family support services. WV

²⁸ For the full text of the Convention Against Transnational Organized Crime and the Protocols thereto see: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

²⁹ See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en

³⁰ Asian states that are not yet party to the UN Trafficking Protocol include: Bangladesh, Brunei, China, Nepal, Pakistan, Singapore and Timor-Leste. There are very few Pacific Island states parties.

³¹ To date, most legislation, research, projects and prosecution cases have focused on trafficking for the purposes of sexual exploitation, while human trafficking for other exploitative practices have not been given much attention. Forced labour is not, for instance, recognized in the national legislation of certain GMS countries. As a result, men and boys who are victims of labour trafficking are frequently ignored. Without adequate legislation, labour trafficking victims are often only considered to be illegal migrants and so are detained, fined and deported with little regard to their human rights or the suffering they may have been subjected to.

³² For full text see <http://www2.ohchr.org/english/law/cmw.htm>

³³ On July 1, 2009 the Australian Government implemented changes to the *Support for Victims of People Trafficking Program* and the *People Trafficking Visa Framework*. These changes mean that victims of trafficking in Australia now have access to a more flexible support framework for themselves and their families.

encourages greater efforts to bring domestic legislation (Criminal Code Act 1995) completely in line with the UN Trafficking Protocol (i.e. including in the definition of all acts and means laid out in the UN Trafficking Protocol).

Furthermore, we support greater efforts to resource and increase the capacity of the domestic investigatory response to ensure that the true nature and extent of trafficking is being revealed, and all perpetrators are brought to justice.

Clarify concepts of people smuggling and trafficking in persons to the Australian public

Recent events highlight the need for Australian Parliamentarians and government representatives to clarify the definitions of trafficking in persons, illegal migration, the smuggling of migrants and asylum-seekers to the Australian public to ensure definitions are used correctly and appropriately, and there is no conflation of concepts and issues. The terms 'people smuggling' and 'trafficking of persons' are frequently used incorrectly and interchangeably, and the differences and linkages between the two are poorly understood. Migrant smuggling presumes the existence of an element of choice on the part of the individual involved; the relationship between the smuggler and the individual is specific and short-term; and there is no intention of exploitation at the final destination. Trafficking in persons is very different because it involves, always, an intention to exploit. There are however overlaps and smuggled migrants can be (or become) trafficked persons. This reality is clearly articulated in the Australian Government's Anti-People Trafficking Strategy.³⁴

The use of competing and often incorrect definitions across and within countries also makes comparing trafficking data difficult and creates considerable and ongoing confusion in distinguishing between trafficking, smuggling, illegal migration and exploitation. There is great scope for rationalizing the current laws in Australia to remove legal uncertainties that surround the definitions of slavery, debt bondage and trafficking, and to specifically criminalize forced labour as separate offence.

Review emerging issue of climate change and forced migration

Emerging research is showing that climate change will have significant impact on people movement in Asia and the Pacific, especially in areas where there is coastal vulnerability due to sea level rise, water stress, flooding and cyclones, as well as areas where climate change affects food and energy supply³⁵. There is growing concern that climate change will cause a dramatic increase in the displacement of people and in forced migration in the region. Climate change problems and responses to them have the potential to exacerbate existing social inequalities especially in the least developed nations in Asia and the Pacific. This in turn could lead to increased instances of exploitation.

WV encourages the Australian Government to proactively review and address current protection mechanisms for this emerging vulnerable group must be considered and addressed.

Review the ethical purchasing practices of Australian Commonwealth, State and Territory governments and legislatures

WV encourages Australian Commonwealth, State and Territory governments and legislatures to review their procurement practices, including examining existing provisions surrounding ethical procurement and advocating for their strengthening where necessary (specifically in relation to business supply chains in developing countries). This will ensure existing provisions and standards for the selection of government

³⁴ Australian Government Anti-People Trafficking Strategy can be located at <http://www.ag.gov.au>

³⁵ Asian Development Bank, *Climate Change and Migration in Asia and the Pacific*, 2009.

contracts are enforced and Australian states and territories are not directly implicated in exploitative labour practices and human rights violations. WV is also mindful that such approaches must always consider the best interests of the child and must ensure the best protection for children in countries that are a source of such commodities. Practices adopted in developed nations should never force children into worse forms of exploitation or increase their vulnerabilities. Consequently, working with NGOs on the ground is an essential component of an ethical approach to procurement.

WV commends Adelaide City Council's initiative to become the first Capital City Council in Australia to officially embrace Fair Trade principles and encourages other city councils to do the same.

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