

## Trafficking In Women And Children

Delivered by: *Judge Nimfa Cuesta Vilches* at the  
4th World Congress on Family Law and Children's Rights  
20-23 March, 2005, Cape Town, South Africa  
<http://www.lawrights.asn.au/>

Just like the dark ages, women and children are once again treated as properties and chattels--and the "goods" must be kept moving. Women and children are victims of unspeakable abuse, gender discrimination, violence, torture and the worst form of labor called "trafficking." By the way, many of them have died, and no one has been made accountable.

What is trafficking? Trafficking is procuring women and children (but it is more for their exploitation rather than their movement), to join activities ranging from what seems to be harmless ones--such as employment, training, cultural exchange, sports, marriage (with the trafficker posing as the bridegroom), and child adoption--to more serious cases of white slavery and abduction, within or across national borders, almost always leading to sexual exploitation. It is for this reason why trafficking is often linked to prostitution.

Child trafficking for purposes of using children in armed conflict; as couriers of drugs; for child labor; for recruitment into criminal gangs; and for sale of organs will be dealt with in Session 24 right after this plenary.

In trafficking, there is use of threat, force, fraud, and abuse of power in taking advantage of a person's vulnerability. Women and children are tricked into agreeing with what the traffickers want, and once they are lured, their travel documents are taken away; they are placed in rooms that are locked in from the outside; forced to use drugs; raped 10 times or are imposed a daily quota of 10 to a record high of 80 customers on holidays; are not paid or given money; and the victims go hungry each day.

In Colombia and Ethiopia, the abduction of women and children for trafficking is common, while women and girls from orphanages, abused in their childhood and coming from dysfunctional families are high-risk ones in Romania. In Bulgaria, most victims of trafficking are between 15-21 years of age and are still schoolgirls or girls with only primary education. United Kingdom police confirm that the girls are getting progressively younger, mostly 13 years old in Korea.

United Nations data tell us about the magnitude of trafficking. There are over 4M trafficked persons right now and 1M of them are children. On a yearly basis, the US State Department estimates the number of persons trafficked to be 600,000 - 800,000, 70% of them are women and 50% are children. In Asia alone, there are 2 M prostituted women while around 100,000 children in the Philippines are forced into prostitution. Boys are trafficked also from the United Kingdom to Amsterdam to work in sex clubs, so with boys from India who are trafficked in to the Middle East. No wonder, trafficking is a \$ 12B criminal enterprise and is second only to the illegal drug trade.

There are 3 ways a country may be involved in trafficking: 1) as *source* or country of *origin* like the Philippines, with women and children trafficked to Japan as entertainers or hostesses (this is

expected to end after the new immigration law of Japan took effect on March 15, 2005) and to Europe and Korea as mail order brides-- with the parents paid \$400, the recruiter \$200 and a \$3000 penalty if the girl escapes; 2) as *transit* country such as Russia through which people are trafficked from Central Asia, and China from where people are moved to Europe; and 3) as *destination* country such as the United Kingdom of women and children from Eastern Europe, or Italy, of persons coming from Albania and Nigeria.

Other patterns of trafficking are organizing sex tours and escort services; and the most innovative to date--(or electronic)-trafficking. Such trading of women and children is done through on-line pornography and cyber sex; setting up chat-rooms with cameras where young girls are made to use sex gadgets; circulating pornographic materials in mobile or cellular phones; and production of child sexual abuse videos peddled by no less than the children themselves.

Inter-country child adoption is also a popular front for trafficking. In Guatemala, for instance, there is a staggering number of babies trafficked to the USA and Canada for adoption. Each child costs \$5000-25,000, or at times, a baby is just exchanged with something else like furniture or drugs by the parents. To this day, around 50,000 children are in foreign adoption, and a good number of them finish up in the hands of pedophiles. In many countries like the Philippines, when an adopted child is trafficked, the adoption is revoked outright.

Perhaps the biggest factor that works on trafficking is creating a demand for it. This means that people promote and facilitate trafficking for sexual exploitation on the notion--that prostitution is the world's "oldest profession". For them, sex is a commodity--hence, if sex can be bought, sex can be sold. And, as long as borders of countries remain porous, women and children can be sold globally, and on a regular basis. Let me emphasize at this juncture--that to legalize or regulate prostitution so as to promote healthy "sex workers" will not help-- as this will only reinforce the demand.

In the Philippines, persons who facilitate or promote trafficking in women and children are penalized with 15 years imprisonment and a fine of \$10,000. These are for acts of pandering to leasing spaces for brothels; publishing pornographic materials; giving fictitious pre-departure documents or assisting entry and exit with forged papers; and retaining or destroying passports to prevent victims from leaving or seeking assistance.

When trafficking is done under serious circumstances, it becomes a qualified offense. This happens when the victim is a child (because we should never let child abuse travel); when it is committed by a syndicate (that is, by more than 3 traffickers) or is carried out on large-scale (or with more than 3 victims). Victims, of course, may easily expose their traffickers, hence, "networks" operate in larger populations to meet the volume of clients and at the same time ensure impunity.

Trafficking is likewise qualified when the perpetrator: has parental authority over the victim; is a government, military or police officer as contemplated in the anti-trafficking laws of the Philippines and Honduras; or when, as a result of the trafficking the victim dies, becomes insane, suffers mutilation, or acquires HIV-AIDS. Please remember that pay is higher for sex without a condom.

HIV-AIDS itself is best tackled against the backdrop of trafficking. A recent study shows that there are more than 45M people suffering from HIV-AIDS, 20M are in Asia, and 50% of them are prostituted women. Once sick with the disease, the women and girls are released to the streets, and left in our midst.

A word of caution, though, qualified trafficking that carries with it a penalty of death or life imprisonment may deter extradition and prosecution of traffickers.

Buying sex in the Philippines is an offense. The penalty is 6 months community service and fine of \$1000 for first-time offenders; and 1 year imprisonment and fine of \$2000 for subsequent violations. In Denmark, using the sexual services of a woman under 18 is also a crime. Just recently, France put to trial some 66 parents and people close to 45 children and babies who abused them usually by “playing doctor.” These shameless adults also prostituted and exchanged the children with food or alcohol.

Various international instruments protect women and children from trafficking such as the 1926 UN Convention to Suppress Slave Trade and Slavery; UN Declaration of Human Rights; UN Convention on the Rights of the Child; UN Convention on the Protection of Migrant Workers; UN Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress Trafficking in Persons Especially Women and Children; and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These ought to be complied with by state parties and should be the framework for domestic laws.

Laws of countries against trafficking on the other hand, must be comprehensive in coverage and must have protection perspective. Such legislations shall include but not limited to laws on anti-child abuse; exploitation and labor; anti-sexual harassment; rape and victim assistance; on migrant and overseas workers (but must never consider trafficking as a mere labor or migration problem); passport and visa requirements for foreigners; inter-country child adoption; anti-violence against women and children; and anti-human trafficking.

Trafficking breeds other crimes or is committed in combination with other offenses--sale and use of narcotics; money laundering; smuggling of firearms; and corruption of government officials. As a deterrent, the Philippines proposes to consider child prostitution as predicate crime under the anti-money laundering law, triggering immediate investigation to stop the flow of money.

Once we learn that trafficking is being committed, how do we rescue the victims? States must adopt a “country-team approach” whereby representatives of government who work abroad must come together as a team. During the rescue, there ought to be system responses--victims do not want to be rescued from what they call as “work,” or that they have no work in their own countries. If rescued, victims must be made to execute police statements on the individuals, entities and paraphernalia involved for investigation and prosecution of the perpetrators. Temporary shelter and extended stay of victims for at least 3 months such as that allowed in the Netherlands must be requested from the destination country.

Migrant workers who are trafficked under Philippine anti-trafficking law, are considered as overseas workers in “distress.” The government may terminate work in the interest of the country and assist the victim with money claims against the employer. The victim is repatriated to her own country, a policy that is also observed by the government of Mali, whether the travel

abroad was documented or not. Residency extension in the destination country may be requested especially when repatriation exposes the victim to risk. In all instances, trafficking should be an extraditable offense.

Victims and returnees should receive social services such as treatment, temporary shelter as that practiced in Belgium; counseling; and access to asylum procedures as that in France so that the victim feels secure and is free from reprisal. In their own countries, victims should receive care that is community-based because that is direct service to them; food provision; educational and livelihood assistance; skills training; periodic evaluation of service plans; and monitoring of the victim's case until recovery and reintegration into family and society.

Building the capacities of service providers is essential to fighting trafficking. In 2001 for example, the Border Police of South Africa included suppressing trafficking in women and children in their strategic plan. Front-line services must have people who are well trained and they must possess the necessary tools for effective crisis intervention, healing, and prevention of further trauma.

In combating trafficking, each justice system must have laws that provide, although unorthodox, rules of procedure that will strengthen the position of the victim in the entire legal process. And, the principle of restorative justice that takes into consideration the feelings of the victim must be observed to reinstate every human right violated and lost.

The investigation and prosecution of trafficking offenses must be made simple and easy similar to the process prescribed by the anti-trafficking law of Thailand. There should be no bias against women and children trafficked, because most of the time-- they are considered as illegal migrants rather than victims of trafficking. An all-female team should handle the case giving victims rights to privacy and closed-door investigations.

The language used must one that the victim understands and there should be no shaming or name-calling of the victim such as "whore", "child prostitute", "hospitality girl", etc. A single and multi-agency interview of victims is ideal to avoid their feeling re-victimized through repeated questioning. There should be no media sensationalism, and they should have preferential right to witness protection.

And then let us give victims the justice they deserve. A special court must deal with trafficking cases and there should be no delay in the litigation. The duty-holders in the courtroom must have gender sensitivity and should have a child-focused perspective. A victim should be presumed a competent witness and is given alternative ways to testify such as by live-link television and videotaped statement. Each victim must receive legal representation.

Courts must apply anti-trafficking laws to the fullest and we should already be seeing at this point in time increasing convictions for traffickers. Legal safeguards must be in place when perpetrators seek a reversal of verdict or reduction of penalty on appeal to higher courts. And, any foreigner trafficked in a country, should be accorded the same benefits as that of a national.

The penalty for trafficking ranges from 1-20 years imprisonment as can be seen in the laws of Australia, Sweden, Brazil, Cambodia, and Nepal. In the Philippines, the fines can go up to \$50,000. Penalties and fines, however, must be proportionate to the huge profits that traffickers

bring in. For corporations, the officers are punished and license to operate is cancelled. If the trafficker is a foreign national, after the prison term is served, the perpetrator is deported. In the event that the offender is able to depart from the country, an application for extradition is made. In all instances, properties and proceeds of the crime are confiscated.

When the trafficking case is terminated, attention is shifted back to the victim for aftercare services that will assure recovery, return to normal life with the family, and to the community. The victim participates throughout the process and is given the right to report or file a case, claim for damages, and be a part of a support and advocacy group.

Most importantly, a trust fund should be established out of the fines, proceeds and properties forfeited from traffickers-- for programs to prevent trafficking; protect victims; for data gathering; technical support; and to raise the awareness of the public about trafficking concerns. A database should exist for situation analysis; country assessment; to document best practices; and for gathering valuable information about the causes of trafficking.

Trafficking in women and children is underground; it is an organized crime that is transnational in nature but is not illegal in all countries--and stopping it cannot be done alone. It needs an inter-agency approach, and the duty-holders are many: law enforcement, justice department, social welfare, labor, immigration and foreign affairs, education and the non-government actors.

What else must be done?

1. Keep your eyes open. Traffickers will form loose alliances with weak governments, losing banks, unscrupulous job recruiters and travel agencies. Prostituted women are even used as dummies to hide corruption money. And traffickers may appear "nice" and say that they only want to help people in need. UNICEF reported that traffickers attempted to smuggle 35,000 orphans out of Aceh Province in Indonesia after the tsunami on the pretext of having them cared for by others through adoption.

2. Let us transform bilateral and regional agreements to check trafficking into multilateral ones, so that our laws will have longer arms. Victims must have relief outside of countries involved and before a neutral tribunal that can decide cases on the *merits*.

3. We need to address the effects of poverty, lack of work opportunity, and the availability of women and children, and the ever-expanding market for them. Today, there are 750M – 1 B children in poverty. This year, we will have in the Philippines 17.4 M girl-children and it is a great cause for worry to us.

Let us look into people's desire to benefit from globalization. Families and friends are now the very ones entrusting girls to traffickers unaware of the dangers that sexual exploitation brings.

Moreover, there are those who mainstream sex-oriented activities into their national economies, making them a significant source of their GDP. Of course, we cannot solve severe poverty by making women, children and sex as our main export, for that solution is far worse than the problem. Let us not forget, further, that sooner than we expect, self-prostitution will be upon us-- the frightening moment when the victim becomes the trafficker-- and when a crime is committed but there is no perpetrator. Imagine a world as grim as that.

4. Interests of victims such as women's and children's rights, equality, and empowerment that are long-term should be placed above the superficial interests of states such as defense of territory; politics; and profit.

5. Lastly, let us transform words into action. Enact laws to end trafficking and revise outdated ones that do not respond to our concerns. Then, implement, apply, and monitor compliance of these laws. When necessary, seek the help of other countries. Australia and the United Kingdom have been helping the Philippines in many ways we can deal with trafficking. The US President, for that matter, is empowered to impose non-trade and non-humanitarian sanctions on countries that do not comply with minimum standards to eliminate trafficking.

When all these are done, we realize too that we are tired of putting plaster on gaping wounds and thus start to work on prevention measures—starting from our very families, from our own communities. Let us have the courage to look at this problem of trafficking for some of us do not even have a name for it. Every effort at this point counts-- for it will be a noble step towards building a future structure that is good for our women, and best for our children... Then and only then we can face the children who sang to us beautifully in the opening plenary— that indeed we have moved from “human wrongs” to “human rights”--- a mission that is possible for all of us, NOW! Thank you...

#### *About the Author*

Judge Nimfa Cuesta Vilches is a graduate of the Ateneo de Manila University and the Ateneo Law School. From 1983-1989, she worked as an Attorney in the Offices of Justices Hermogenes Concepcion, Jr., Jose Y. Feria and Teodoro Padilla, Supreme Court of the Philippines, Manila.

In 1989, she was appointed as Municipal Trial Court Judge of Barugo, Leyte, and was assigned to the Metropolitan Trial Courts of Manila, Makati, and Caloocan. In 1999, she was appointed as Presiding Judge, Regional Trial Court, Branch 48, Manila, a family court.

Judge Vilches received trainings on “Evidence” conducted by the National Judicial Institute Of Canada (NJI), Kelowna, British Columbia, Canada, on 23-27 August 2004 sponsored by NJI and the Supreme Court of the Philippines; “Children's Rights” at Oxford University, England, sponsored by the British Council; “Trafficking In Persons” at Hertfordshire, United Kingdom, sponsored by the British Council and the Supreme Court of the Philippines; “Evidence In Family Court and Role of the Judge” at the University of Nevada in Reno, USA, sponsored by UNICEF; DNA and Forensic Matters at the Home Office, United Kingdom, arranged by the British Embassy, Manila; Philippines; “The Legal and Technical Aspects of DNA” at the Applied Biosystem in Foster City, California, USA; “Crimes Against Children” conducted by the US Federal Bureau of Investigation and the Department of Justice; and “Juvenile Justice”, conducted by the National Council of Juvenile and Family Court Judges (NCJFCJ) in Houston, Texas, USA.

The professional qualifications of Judge Vilches are as follows: Professor of Family Law, Ateneo Law School and recipient of the Chief Justice Ramon Avancena Professorial Chair in Civil Law for the years 2004-2005 and 2003-2004; Chairperson, Task-Force On Justice For Children, Council For the Welfare of Children (CWC), Office of the President of the Philippines; a Member of the Faculty and Research Group of the Philippine Judicial Academy (PhilJA), Supreme Court;

Lecturer for the University of the Philippines Law Center-Institute of Judicial Administration (UP-IJA) and UNDP to train Nepal judges and justices on women and children's concerns, the Integrated Bar of the Philippines (IBP) and the Public Attorneys Office (PAO) of the Department of Justice for the mandatory continuing legal education program; provides study tours of the juvenile and family court system to visiting counterparts from the United States, United Kingdom, Canada, Bhutan, Cambodia and Mongolia; and gives trainings for UNICEF-Manila.

In May 2002, Judge Vilches was chosen as a Member of the Philippine Delegation to the UN General Assembly Special Session for Children in New York, USA; was a Delegate-Rapporteur to the 1st Australasian Judicial Forum in Manila in January 2003, and was a Delegate-Rapporteur, Asia-Europe Experts Meeting in Manila in March 2003. In August 2004, Judge Vilches presented the paper on "Trafficking In Women and Children" at the 31st International Convention Of Social Welfare Agencies (ICSWA) in Kuala Lumpur, Malaysia <http://www.ncwsm-icsw31.org/>. In September 2004, Judge Vilches was part of the Canadian-Philippine judicial team that developed a course on family mediation.

Judge Vilches has written the articles "Trafficking In Women and Children"; "Are You Ready To Be A CASA/GAL Volunteer?;" and "DNA And The Courts" which have been widely published locally and internationally. In 1999, she started a program in the Philippines called "CASA/GAL" composed of trained community volunteers who advocate and promote the best interests of children in court. In 2004, CASA/GAL was voted by UNICEF as one of the ten innovative initiatives for East Asia and the Pacific.

In February 2004, Judge Vilches was nominated by the Judicial and Bar Council, Supreme Court of the Philippines for the post of Associate Justice, Court of Appeals and was nominated in March 2004 to the Gender Justice Awards. She is a member of the National Council of Juvenile and Family Court Judges (NCJFCJ), Reno Nevada, USA; The International Association of Youth and Family Judges and Magistrates (IAYFJM), Belfast, Northern Ireland; and The International Association of Women Judges (IAWJ), United States of America.

Judge Vilches has delivered the paper "Trafficking In Women And Children" in one of the plenary sessions at the recently conclude 4th World Congress on Family Law and Children's Rights, 20-23 March, 2005 at Cape Town, South Africa. [www.lawrights.asn.au](http://www.lawrights.asn.au)