

The Trafficking Protocol and the Anti-Trafficking Framework: Insufficient to address exploitation

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The Trafficking Protocol¹ has shaped and advanced a global movement against human trafficking; notably through establishing a global definition and creating criminal justice remedies befitting an international crime.² Borne out of and including the Protocol, a global anti-trafficking framework has emerged. This framework reflects these two central tenets at international, regional and national levels and includes initiatives by States not party to the Protocol, such as Singapore. However, the emphasis on these tenets, which comprise only part of a robust anti-trafficking strategy, has rendered the existing framework insufficient to address exploitation.

A clearly articulated and operationalised definition of human trafficking is absolutely necessary to identify victims and provide recourse to justice. A universal definition arguably promotes international standardisation and accountability, presuming States are party to the Protocol, and adopt and incorporate a definition proffered by national legislation. In practice, States may selectively implement anti-trafficking provisions (particularly those concerning sex trafficking over labour trafficking), detracting attention and resources from less clear-cut or politically divisive cases of exploitation and abuse.

One by-product of this focus is an underdevelopment of political will and funding dedicated to victim protection and primary prevention efforts. As a result, protections for victims are negligible; criminal justice responses may infringe on the rights of groups affected by trafficking, such as labour migrants and sex workers (through the use of raids, for instance); and very little investment in primary prevention research or interventions exists beyond those which claim to promote 'awareness raising'. To effectively prevent human trafficking, the anti-trafficking movement should reallocate its discourse and resources to the conditions that underpin exploitation.

Singapore provides an example of this deficient approach. At the time of writing, the city-state is not party to the Protocol, but recently passed the Prevention of Human Trafficking Act 2014, which creates a legislated definition of trafficking.

¹ In full: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
² K H Heinrich, 'Ten Years After the Palermo Protocol: Where are Protections for Human Trafficking?', *Human Rights Brief* 18, no.1, 2010, retrieved 5 January 2015, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1145&context=hrbrief>; K E Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, *Human Rights Brief* 8, no. 2, 2001, retrieved 5 January 2015, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1492&context=hrbrief>

Mirroring the Protocol, the law prioritises criminal justice anti-trafficking strategies.³

The international prioritisation of criminal justice has unintentionally done a disservice to prevention and protection measures, which are inextricably linked, though little emphasised. Trust in law enforcement by potential victims is key in identifying and referring trafficking cases. Better-protected victims are more likely to participate with authorities.⁴ Building trust may be compromised and compounded by law enforcement interventions that increase risk or vulnerability to potentially trafficked persons.

For instance, in Singapore law enforcement raids are used, allegedly, to identify victims of sex trafficking, despite international research highlighting the ineffectiveness of identification in raids⁵ and local reports of abuse.⁶ The government also relies on law enforcement raids to identify illegal migrant workers and sex workers. Those who are identified as offenders are deported. As a component of its ongoing anti-sex trafficking approach, the government notes that it will ‘continue [its] efforts to keep the vice situation in Singapore under control’.⁷

The consequence of this selective use of the Protocol in Singapore is two-fold. First, it reflects a narrowly constructed anti-trafficking strategy, which favours criminal justice responses over victim protection and prevention. For instance, within the new law, victim protection measures are largely contingent upon participation in the criminal justice process, ignoring victims’ concerns about forced repatriation or the right to seek alternative employment. Moreover, prior to the law’s passing in November, protections afforded to (identified) victims were largely relegated to administrative discretion, provided piecemeal (where available) within existing legislation. As the new law remains in infancy, the extent to which it offers victim protection remains to be tested.

Second, the emphasis on trafficking per se by policymakers often supersedes the need to engage with and develop tailored approaches to conditions underpinning exploitation that may contribute to trafficking. For instance, deceptive practices are prevalent in the recruitment of migrant workers in Singapore.⁸ While the majority of these workers are not trafficked, cases of deceptive recruitment (a recognised indicator of trafficking) are considered by the government to fall under the protection of inadequately enforced local labour laws, distinct (in policy and practice) from potential cases of human trafficking.

³ Republic of Singapore, ‘Prevention of Human Trafficking Act 2014’, retrieved 2 March 2015, <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=Compld%3Ae87a7435-17f4-4bb7-8d47-5a3d5cb8d62a;rec=0>

⁴ A Ahmed & M Seshu, ‘Accountability and the Use of Raids to Fight Trafficking’, *Anti-Trafficking Review*, issue 1, 2012, pp. 134–148.

⁵ J Godwin, ‘Sex Work and the Law in Asia and the Pacific’, United Nations (UN) Development Programme Asia-Pacific Regional Centre and UN Population Fund Asia Pacific Regional Office, in partnership with the Joint United Nations Programme on HIV/AIDS, Asia Pacific Network of Sex Workers, 2012; M Ditmore & J Thukral, ‘Accountability and the Use of Raids to Fight Trafficking’, *Anti-Trafficking Review*, issue 1, 2012, pp.134–148.

⁶ ‘Project X 2013. Report on human rights violations against sex workers in Singapore: January to November 2013’ [confidential submission to the UN Special Rapporteur on violence against women, its causes and consequences].

⁷ T Y Chuan, ‘More than 300 views received on proposed human trafficking law: Taskforce’, *The Straights Times*, 25 May 2014, retrieved 5 January 2015, <http://www.straitstimes.com/news/singapore/more-singapore-stories/story/more-300-views-received-proposed-human-trafficking-law-t>

⁸ ECPAT International & S Yea, Commercial sexual exploitation and trafficking of children and young people in Singapore, Bangkok: ECPAT, 2010; Humanitarian Organization for Migration Economics (HOME), ‘FDW Trafficking Research Report’, HOME, 2012; Transient Workers Count Too (TWC2), ‘Worse Off for Working? Kickbacks, intermediary fees and migrant construction workers in Singapore’, TWC2, 2012.

This is partially the result of the political will to utilise the Protocol's definition of trafficking, which does not adequately define 'deception', paralleled by a disinterest in the substantial integration of supplementary anti-trafficking tools, including the International Labour Organization trafficking indicators. This view is reflected in the government's reply to concerns voiced by local NGOs about the lack of protections for victims of trafficking included within the aforementioned law during a consultation period for the Bill:

While we understand the desire for the Bill to comprehensively cover various situations where workers are mistreated, many of these wrongs are already addressed by existing employment laws which provide deterrent penalties against errant employers as well as avenues of redress to the workers. [...] This approach ensures that the Bill remains focused at targeting *genuine egregious trafficking cases* (emphasis added).⁹

It is not clear what is meant by the terms 'genuine' and 'egregious'. Nonetheless, the statement appears to distinguish between trafficking and worker mistreatment. Treated separately, the presence of human trafficking indicators is ignored or overlooked in cases of worker exploitation.

In addition, to address 'prevention' (a key component of the government's National Plan of Action Against Trafficking in Persons), the Task force initiated a grant to assist projects designed to heighten public awareness of human trafficking.¹⁰ This tactic assumes that an educated public would be more likely to detect and report cases of trafficking to the authorities. However, much of this awareness raising focuses on cases of trafficking that occur outside the local context (for instance, child sex trafficking in Cambodia); subsequently disengaging the public from Singapore-specific forms of exploitation (such as that which is experienced by domestic workers). Instead, primary prevention efforts would acknowledge underlying social structures, such as discrimination faced by foreign domestic workers,¹¹ support a greater understanding of the relationship between existing laws that aim to curb exploitation and trafficking indicators, and address gaps in migrant worker protections.

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⁹ Singapore Ministry of Home Affairs, Response to Consultations, retrieved 5 January 2015, http://www.mha.gov.sg/news_details.aspx?nid=MzE3OQ%3D%3D-Xh1WT7v%2Bq1o%3D

¹⁰ Ministry of Manpower, '\$80,000 Fund Launched to Raise Awareness for Trafficking-In-Persons', Singapore Government, 11 January 2013, retrieved 2 March 2015, <http://www.mom.gov.sg/newsroom/Pages/PressReleasesDetail.aspx?listid=480#sthash.HnK4zQwe.dpuf>

¹¹ L Clarke, 'Behind Closed Doors: Trafficking into domestic servitude in Singapore', *The Equal Rights Review*, vol. 10, 2013, pp. 33–58.