

INTERNATIONAL LAW, HUMAN TRAFFICKING AND PROPOSED DEATH PENALTY REINTRODUCTION IN THE PHILIPPINES¹

A study by the Commission on Human Rights of the Philippines²

and

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1. This study was formulated in relation to proposed House Bill No. 1239 in the House of Representatives in the Republic of the Philippines. House Bill No. 1239 aims to extend the proposed reintroduction of the death penalty for *qualified* human trafficking cases. House Bill No. 1239 proposes amending s.10(c) Republic Act No.9208 as follows:
 - a. “Section 10. Penalties and Sanctions. – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

¹ The authors would like to thank research assistants Courtney Keefe and Sophie Upperton.

² The Commission on Human Rights of the Philippines (CHR) is the National Human Rights Institution (NHRI) of the Philippines. Established by the 1987 Philippine Constitution, the CHR has a general jurisdiction for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection. An “A” NHRI, the CHR complies with the Paris Principles on the Status of National Human Rights Institutions adopted by the UN General Assembly in 1995. The CHR demonstrates the following characteristics of Paris Principles- compliant NHRI: independence, pluralism, broad mandate, transparency, accessibility and operational efficiency.

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[...] (c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of [life imprisonment] DEATH and a fine of not less than two million pesos but not more than five million pesos”

2. It is important to note at the outset that the Philippines is rightly committed through both law and policy to combatting human trafficking and modern slavery.⁴ However, this study finds that the proposed House Bill No. 1239 is problematic and risks compromising international obligations to prevent human trafficking and protect trafficked persons. Broadly this study provides research to support the following three propositions:
 - a. Firstly, the proposal is a serious breach of international law. It would reverse the historic precedent the Philippines set in 1987 in a determined effort to restore respect for human rights by becoming the first Asian country in modern times to abolish the death penalty for all crimes.⁵ An overview of this issue is set out below and further information is available in the 2017 Study “*In Defence of the Right to Life: International Law and Death Penalty in the Philippines*,” by The Commission and Chris Ward SC.⁶
 - b. Secondly, the proposal demonstrates a significant lack of understanding of human trafficking, particularly in the context of international commitments and domestic criminal law frameworks which is set out in some detail below.
 - c. Thirdly, the proposal creates multiple other implications for the Philippines, particularly the economic issue of slavery in supply chains. The overlap with

⁴ U.S. Department of State, ‘Trafficking in Persons Report,’ (June 2019) <<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>>.

⁵ Amnesty International, ‘The Death Penalty: Criminality, Justice and Human Rights’, (online, 1 October 1997) <<https://www.refworld.org/docid/3ae6a99f4.html>>.

⁶ Commission on Human Rights of the Philippines and Dr. Christopher Ward, SC, “In Defence of the Right to Life: International Law and Death Penalty in the Philippines,” 7 March 2017, <http://regnet.anu.edu.au/sites/default/files/uploads/2017-03/In-Defense-of-the-Right-to-Life-IL-and-Death-Penalty-in-the-Philippines.pdf>.

the law on human trafficking means there is a real risk that proposed House Bill No. 1239 could have a significant downward effect on trade and commerce. For example, the UK and Australia both have modern slavery legislation which requires corporate reporting of slavery in supply chains. The introduction of the death penalty, even in a restricted way, in relation to human trafficking could directly affect the Philippines' economic environment, particularly where slavery in supply chains can be connected to corruption. Furthermore, a study analysing the modern slavery statements of 418 companies found that the most common remediation method for identified modern slavery is cancelling contracts.⁷ This presents a financial and reputational risk for subsidiaries based in the Philippines.

3. In addition, attached to this study (at Annex B) is a schedule of potential economic and possible Constitutional issues which clearly have not been considered in the proposal of House Bill No. 1239 and should be the subject of detailed further legal consideration. These include foreign investment, corporate reporting of slavery in supply chains and child protection. These issues would need further study before the introduction of any legislation, including House Bill 1239.
4. It is recommended that proposed House Bill 1239 is withdrawn.

The Death Penalty and International Covenant on Civil and Political Rights (ICCPR)

5. Under Section 19 (1) of the Constitution of the Republic of the Philippines, the death penalty must not be imposed unless for compelling reasons involving *heinous* (serious) crimes. However, the Philippines abolished the use of the death penalty through Republic Act (RA) 9346, hence, the proposal in House Bill No 1239 is part of a suite of proposals for **reintroduction**. A timeline can be found at Annex 1 to this study.

⁷ WikiRate and the WalkFree Foundation 'Beyond Compliance: The Modern Slavery Act Research Project' *The Minderoo Foundation* (2018), 5 <
https://cdn.minderoo.com.au/content/uploads/2019/05/27154005/Wikirates_WFF_MSA-Analysis_180917_Digital.pdf>.

6. The trend globally is towards universal abolition of the death penalty: At the end of 2018, 106 countries (a majority of the world's states) had abolished the death penalty in law for all crimes, and 142 countries (more than two-thirds) had abolished the death penalty in law or practice.⁸ In 1977 only 16 countries had abolished the death penalty; by 1995 that had increased to 59 and at the end of 2018, as set out above, that number stood at 106. The trend follows the Universal Declaration of Human Rights which provides that 'everyone has the right to life, liberty and security of person.' This post-World War II statement on the sanctity of life was later given legal force under the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states that 'no one shall be arbitrarily deprived of his life;' that 'sentence of death may be imposed only for the most serious of crimes pursuant to a final judgement of a competent court;' and that 'anyone sentenced to death shall have the right to seek pardon or commutation.' Further, that 'sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.' The ICCPR, is subject to almost universal adoption.

7. The Second Optional Protocol to the ICCPR abolishes the death penalty entirely (subject to provision allowing for states to reserve serious wartime crimes of a military nature); and envisions that state parties will undertake an international commitment to abolish the death penalty. The Philippines is party to the Second Optional Protocol. In addition to the ICCPR's express prohibition against execution for a crime committed when a person was under 18 years of age, the U.N. Convention on the Rights of the Child also precludes the death penalty being imposed in such circumstances. The ban is so broadly accepted that it is considered a norm of customary international law. In 1997 the U.N. High Commission for Human Rights approved a resolution that the 'abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights.' Subsequent resolutions called for restriction of death eligible offences and for a moratorium on all executions (leading to abolition).⁹

⁸ Amnesty International, 'Death Penalty in 2018: Facts and Figures', (online, 10 April 2019) <<https://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/>>.

⁹ In *Judge v Canada*, the UNHRC decided that Canada had breached its obligations under ICCPR Article 6(1) when deporting the Applicant without ensuring the death penalty would not be imposed. The Committee

8. When introducing House Bill No. 1239, Representative Micaela S. Violago asserted that the Constitution grants the flexibility to impose the death penalty under certain circumstances and based on the current wisdom of the times. It is true that the Constitution of the Philippines contains a Bill of Rights, section 1 of which protects the right to life, subject to due process of law; however, House Bill No. 1239 is not concerned with the imposition of the death penalty in an individual case but with the *reintroduction* of the death penalty after abolition. According to Article 6, paragraph 2, ICCPR, countries that have already abolished the death penalty cannot reintroduce and impose this punishment, even for most serious crimes. This is re-iterated in General Comment 36 on Article 6 of the ICCPR. Accordingly, any reintroduction of the death penalty in the Philippines may well constitute a violation of its obligation under Article 6, paragraph 2 which guarantees the permanent non-reintroduction of the death penalty in States that ratified the Protocol.¹⁰
9. Breaches of obligations under international law have been the subject of requests for interpretation before the International Court of Justice.¹¹ In the context of the House Bill 1239 approach to qualified human trafficking, the likelihood is that foreign nationals will be subject to investigation and potential prosecution. In the Philippines, trafficker profiles include citizens of Australia, New Zealand, the United Kingdom, and the United States with an increasing number of reports from China, Japan, Morocco, Iraq, and Denmark.¹² All of these jurisdictions would have standing to raise any breach of an international obligation (here by violation of the terms of the ICCPR Second Optional Protocol) at the international level, which has the potential to create enormous international difficulties for the Philippines.

referred to the “obligation” not to expose a person to a “real risk” of the application of the death penalty by deportation or extradition without ensuring that the death penalty would not be carried out. Communication No. 829/1998, UN Doc. CCPR/C/78?D/829/1998 (2003).

¹⁰ General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf>.

¹¹ *31 March 2004 Case concerning Avena and other Mexican Nationals (Mexico v United States of America) (Interpretation of Judgment)* [19 January 2009] ICJ General List No. 39 <<https://www.refworld.org/cases,ICJ,497d8ef82.html>>.

¹² U.S. Department of State, ‘Trafficking in Persons Report,’ (June 2019), 383 <<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>>.

10. It is also pertinent to note that, contrary to the assertions made by Representative Micaela S. Violago introducing House Bill No. 1239, research shows that the litigation of cases involving the imposition of the death penalty is more expensive and that the death penalty is not an effective deterrent in relation to the commission of serious crime.¹³ In addition, in a recent analysis, statistics did not conclusively show that the death penalty deters the commission of crimes. In the years following the abolition of the death penalty, it was found that crime volume had been decreasing.¹⁴

Human Trafficking – international law and domestic responses

11. Various strategies are employed by traffickers to recruit and exploit victims, ranging from the simple false promise of a job to kidnappings. Often, they gain the confidence of victims through a combination of deception and manipulation. At times, unscrupulous employment agencies deceive workers into entering abusive work situations; what first seems to be a legitimate job is in fact exploitative.¹⁵ Women and children are particularly vulnerable to trafficking and may be trafficked by their own communities, families and in public places of business and commerce. Desperate families may even resort to selling their children to traffickers for the promise of immediate payment.¹⁶

12. In addition, whilst this study does not focus on technology, it is worth considering the role of technology in combatting human trafficking but also risking data and privacy rights: Combating human trafficking has become an important political priority for many governments around the world. In this context, reliance on technological

¹³ John Donohue, 'There's No Evidence That Death Penalty is a Deterrent Against Crime,' *The Conversation*, (online, 8 August 2015) <<https://theconversation.com/theres-no-evidence-that-death-penalty-is-a-deterrent-against-crime-43227>>; Professor Jeffrey Fagan, 'Deterrence and the Death Penalty Internationally and in Kenya' in 'Pathways to Justice: Implementing a Fair and Effective Remedy following Abolition of the Mandatory Death Penalty in Kenya', Death Penalty Project, London, (2019), p61; FLAG Anti-Death Penalty Taskforce 'FLAG Anti-Death Penalty Taskforce Position Paper on the Death Penalty' (7 October 2019).

¹⁴ FLAG Anti-Death Penalty Taskforce 'FLAG Anti-Death Penalty Taskforce Position Paper on the Death Penalty' (7 October 2019).

¹⁵ UNODC, 'The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons,' (Vienna, 2015) <https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf>.

¹⁶ The Protection Project at John Hopkins University, 'Understanding Human Trafficking in Persons in the MENA Region: The Causes, Forms, Routes and the Measures to Combat a Serious Violation of Human Rights,' (2013), 6, <<https://slavefreetoday.org/understanding-trafficking-persons-mena-region-causes-forms-routes-measures-combat-serious-violation-human-rights/>>.

developments has been equally growing. Ignoring the role of technology would be a mistake and would give perpetrators, who already take advantage of it in numerous ways, an unnecessary edge. At the same time, the privacy of individuals in general and the protection of their personal data in particular must be respected to the extent possible, while balancing against the fact that many trafficking victims are at risk of torture, serious sexual abuse and even death. In the context of criminal investigations, the difference between a regular procedure in a typical case and an emergency response is crucial, because it can affect the tools that can be used and eventually the impact on the right to the private life of the individuals affected, as well as to fundamental rights of data protection. In the context of forced labour, technology may be better harnessed by mandatory reporting and requirements to scrutiny by regulators. Ultimately there is a balance that needs to be achieved to which House Bill 1239 makes no contribution at all. The issues with technology highlight the overall issues in the human trafficking context: Solutions require law, policies and procedures to be ethically applied and the scale of human trafficking requires that balance to be achieved to ensure that we have survivors not victims and no impunity for perpetrators.¹⁷

13. The Philippines, as a member of ASEAN, is committed to combatting human trafficking in all its forms in a range of ways including as a member of ASEAN.
14. The 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children states the importance of distinguishing victims of trafficking from perpetrators and reinforces the need to ensure that the ‘dignity and human rights of genuine victims of trafficking’ are respected.¹⁸ At the Sixth Experts Working Group Meeting on ASEAN Convention on Trafficking in Persons and Regional Plan of Action (3-5 June 2014, Yangon, Myanmar), the Chair of the meeting noted that: ‘It is also important that victims of trafficking are not treated like irregular migrants and deported or charged with criminal offences even before they are identified as victims.’¹⁹

¹⁷ Gerry F., Muraszkievicz J., Vavoula N., *The role of technology in the fight against human trafficking: reflections on privacy and data protection concerns* Computer Law & Security Review 32 (2 0 1 6) 2015-217

¹⁸ Association of Southeast Asian Nations, *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*, adopted 29 November 2004, available at: < <https://asean.org/asean-declaration-againsttrafficking-in-persons-particularly-women-and-children-4/>>.

¹⁹ Ibid.

15. Since 2004, ASEAN as a whole has committed to combating human trafficking through the ASEAN Convention on Trafficking in Persons (‘the ASEAN Trafficking Convention’) which follows the U.N. model and has similar definitions of human trafficking and objectives to punish perpetrators and protect victims (see below).²⁰ There is a recognition of issues that relate to both human trafficking in organised crime and slavery in corporate supply chains. Implementation is anticipated to be through the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (‘APA’)²¹ and ASEAN guidelines on Corporate Social Responsibility in Labour (‘CSR’).²²
16. General Principle 4 of the ASEAN Human Rights Declaration provides that “the rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms”²³ and principle 13 provides that “no person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs”.²⁴ Article 14 of the ASEAN Convention Against Trafficking in Persons Especially Women and Children provides protective provisions including Article 14(7) which provides

“Each party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons

²⁰ ASEAN *Convention Against Trafficking in Persons Especially Women and Children*, signed 21 November 2015 (entered into force 8 March 2017) available at:

<http://agreement.asean.org/media/download/20160303122945.pdf> (‘ASEAN Convention Against Trafficking’)

²¹ Ibid. The ASEAN Trafficking Convention is not the first instrument in the region relating to human trafficking: It reaffirmed “commitment to the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children adopted in 2004; the Criminal Justice Responses to Trafficking in Persons; Ending Impunity for Traffickers and Securing Justice for Victims in 2007 (“ASEAN Practitioner Guidelines”); The ASEAN Leaders’ Joint Statement in Enhancing Cooperation Against Trafficking in Persons in South East Asia in 2011; and ASEAN’s efforts in promoting human rights including the ASEAN Human Rights Declaration in 2012”.

²² Association of Southeast Asian Nations (ASEAN) ‘ASEAN Guidelines for Corporate Social Responsibility (CSR) on Labour’ available at: < <https://asean.org/storage/2012/05/ASEAN-Guideline-on-CSR-in-Labour.pdf> >.

²³ Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012, available at: <https://www.refworld.org/docid/50c9fea82.html> [accessed 16 February 2020] (‘ASEAN Human Rights Declaration’)

²⁴ Ibid, 6.

criminally or administratively liable, for unlawful acts committed by them, if such acts are directedly related to the acts of trafficking”²⁵.

17. The ASEAN Plan of Action Against Trafficking in Persons encourages member states to be “mindful of the equal rights and inherent human dignity of women, and men, as well as the rights of children”.²⁶ Overall, members of ASEAN have committed to tackling human trafficking but there are a range of responses which involve both reforms to enhance the likelihood of successful prosecution and also to allow for the non-prosecution and non-punishment of trafficked persons who commit crime. It is therefore understandable that the Philippines is taking its commitments seriously. However, attempting to reintroduce the death penalty is not the solution and, to see why, it is necessary to understand the complexities of human trafficking particularly as means of an organised crime and the need for more effective protection for human trafficking victims, particularly women and girls:

18. The Philippines is a signatory to the U.N. Trafficking in Persons Protocol which was adopted by the U.N. General Assembly resolution 55/25.²⁷ It entered into force on 25 December 2003. It is described by the U.N. Office on Drugs and Crime (UNODC) as “the first global legally binding instrument with an agreed definition on trafficking in persons”.²⁸ The intention is “to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases.”²⁹ The U.N. Trafficking Protocol defines human trafficking widely.³⁰ This was

²⁵ *ASEAN Convention Against Trafficking in Persons Especially Women and Children*, signed 21 November 2015 (entered into force 8 March 2017) available at: <http://agreement.asean.org/media/download/20160303122945.pdf>. [accessed 17 February 2020].

²⁶ United National Action for Cooperation against Trafficking in Persons, ‘ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children’, ASEAN 2015, <http://un-act.org/publication/view/asean-plan-of-action-against-trafficking-in-persons-especially-women-and-children/>

²⁷ Philippines signed 14th December 2002 and ratified 28th May 2002.

²⁸ *United Nations Convention against Transnational Organised Crime and the Protocols Thereto*, GA Res 55/25 (15 November 2000).

²⁹ *Council of Europe Convention Against Trafficking in Human Beings* (Explanatory Report, COETSER 3, 16 May 2005) <<http://www.worldlii.org/int/other/COETSER/2005/3.html>>.

³⁰ Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall

intended to be inclusive avoiding separate definitions of slavery, forced labour or sexual exploitation which can inhibit legal and policy responses because the actions or actors do not fit within existing definitions. The International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) has provided guidance on the scope of the definition of forced labour, stressing that it encompasses trafficking in persons for the purposes of labour and sexual exploitation as defined by The Trafficking in Persons Protocol. The international objective is to protect and assist the victims of trafficking in persons with full respect for their human rights and the context is not limited.

19. States which are signatories to the U.N. Trafficking in Persons Protocol have declared their commitment through the preamble as follows:³¹

“Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights”.

20. The U.N. Trafficking in Persons Protocol is designed to identify and protect victims through global cooperation. Article 2 of the UN protocol provides the statement of purpose as follows:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

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 removal of organs.

³¹ *United Nations Convention against Transnational Organised Crime and the Protocols Thereto*, GA Res 55/25 (15 November 2000).

21. The ILO Committee of Experts on the Application of Conventions and Recommendations has provided guidance on the scope of the definition of forced labour, stressing that it encompasses trafficking in persons for the purposes of labour and sexual exploitation.³² In this context, it is clear that a high degree of criminal income is generated by the trafficking of women.³³ The ILO *Profits and Poverty Report* states that, in addition to formalized structures, “there is an urgent need to address the socio-economic root causes of this hugely profitable illegal practice if it is to be overcome”.³⁴ To reinforce the point, the report sets out some startling figures in relation to women:³⁵

- Women and girls make up about 55 per cent of all forced labour victims and they represent the vast majority of victims exploited for commercial sex work.
- Annual profits made per victim range from \$4100 to \$37,100. This includes construction, manufacture, mining and utilities, agriculture, fishing and domestic work. Profits are highest in forced sexual exploitation.

22. Human trafficking may occur within territorial boundaries but it has become increasingly transnational.³⁶ It is predominantly directed at women and girls and has a uniquely traumatic effect, particularly in the context of abuse of vulnerability.³⁷ Although the causes of trafficking may differ depending on the relationship between

³² International Labour Conference, ‘Report of the Committee of Experts on the Application of Conventions and Recommendation,’ (102nd Session, International Labour Office, Geneva, 2013).

³³ Polaris Project Human Trafficking, ‘An Overview’ (online), <<http://www.polarisproject.org/human-trafficking/overview>>.

³⁴ International Labour Office, *Profits and Poverty: The economics of forced labour* (International Labour Office, Switzerland, 2014), <http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm>.

³⁵ Ibid, p45.

³⁶ Due to their inherent vulnerabilities, children are particularly at risk from online sexual exploitation. In the United Kingdom the National Crime Agency has an arm devoted to tackling this area: the Child Exploitation and Online Protection Centre (CEOP). Article 2 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography still uses the phrase ‘child pornography’, which unfortunately implies some element of consent but the definition in relation to indecent images is useful: as ‘any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.’ In UN, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, (a protocol to the Convention on the Rights of the Child) (A/RES/54/263 of 25 May 2000).

³⁷ World Health Organisation, *World Report on Violence and Health* (2002). See also Felicity Gerry and Catarina Sjölin, ‘Achieving gender equality through uniformity, extra territoriality and corporate responsibility’ (Proceedings of the 4th Annual International Conference on Law, Regulations and Public Policy, Singapore, 8-9 June 2015). <<http://whqlibdoc.who.int/hq/2002/9241545615.pdf>>.

victim and perpetrator, the result is the same: there is always a victim.³⁸ International research has also demonstrated the victim-offender overlap, especially among female traffickers.³⁹ Female offenders were often previously trafficked.⁴⁰ The consequences of commitment to protection of trafficked persons who commit crime is that law and policy act together to ensure that criminal justice systems act to prevent and as both protector and prosecutor. This is no so much an issue of rehabilitation but a recognition that the trafficked person is not responsible for the crime.⁴¹

23. The non – punishment principle is well developed in the UK.⁴² This includes protective services.⁴³ There are referral mechanisms for trafficked persons accused of crimes⁴⁴, policy for non prosecution⁴⁵ and a specific defence for those compelled to commit certain crimes.⁴⁶ Referrals through the Single Competent Authority provide trafficked persons with protective services. There is also a trauma informed code of conduct for all professionals working with survivors of Human trafficking and slavery.⁴⁷ In the context of drug trafficking, a study by the Sentencing in England and Wales of female drug mules provided a basis for reduced sentencing as an acknowledgement of

³⁸ ‘Empowering Women for Economic Growth: the Smart Choice for the G20,’ (Forum, London, 11 July 2016).

³⁹ Alexandra Baxter ‘When the Line between Victimization and Criminalization Blurs: The Victim-Offender Overlap Observed in Female Offenders in Cases of Trafficking in Persons for Sexual Exploitation in Australia’ (2019) *Journal of Human Trafficking*, 1-12, 3.

⁴⁰ Ibid.

⁴¹ For the particular complexities of trafficking of women and girls in migration see UNHRC draft recommendation:

<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CallTraffickingGlobalMigration.aspx>.

⁴² See Human Trafficking and Modern Slavery Law and Practice Bloomsbury (2nd Ed forthcoming) to which Professor Felicity Gerry QC is a contributor and, in relation to children, see UNICEF Report here https://www.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf

⁴³ *CPS Policy for Prosecuting Cases of Human Trafficking Crown Prosecution Service* (May 2011) available at: https://www.cps.gov.uk/sites/default/files/documents/publications/policy_for_prosecuting_cases_of_human_trafficking.pdf [accessed 17 February 2020].

⁴⁴ *Victims of modern slavery – Competent Authority guidance* The Home Office (UK) (2 September 2019) v.8.0 available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828756/victim-s-modern-slavery-competent-auth-v8.0.pdf [accessed 17 February 2020].

⁴⁵ *CPS Policy for Prosecuting Cases of Human Trafficking Crown Prosecution Service* (May 2011) available at: https://www.cps.gov.uk/sites/default/files/documents/publications/policy_for_prosecuting_cases_of_human_trafficking.pdf [accessed 17 February 2020].

⁴⁶ *Modern Slavery Act 2015* (UK) s 45(1)(b).

⁴⁷ Rachel Witkin and Dr Katy Robjant ‘Trauma-informed Code of Conduct For all Professionals working with Survivors of Human Trafficking and Slavery’ Helen Bamber Foundation (19 October 2018), available at: <http://www.helenbamber.org/wp-content/uploads/2019/01/Trauma-Informed-Code-of-Conduct.pdf>.

vulnerability and control by others.⁴⁸ In addition, the Court of Appeal of England and Wales has quashed convictions on applications from several trafficked persons who appealed out of time, on the basis that they should never have been prosecuted where there was credible evidence they were victims of human trafficking.⁴⁹

24. The ASEAN Convention Against Trafficking in Persons Especially Women and Children defines human trafficking using the same language as the UN Trafficking in Persons Protocol. Human Trafficking refers to *acts of* recruitment, transportation, transfer, harboring 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 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 which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or removal of organs.

25. On the basis of the definition given in the Trafficking in Persons Protocol, it is evident that trafficking in persons has three constituent elements; **the Act** (What is done), **the Means** (How it is done) and **the Purpose** (Why it is done). Notably a victim is defined to include a wide range of vulnerability. It is not limited to duress.

Prevention of Human Trafficking in the Philippines

26. Proposed House Bill No. 1239 does not appear to have taken into account the progress of the Philippines in its programme of prevention. The 2019 Trafficking in Persons Report for the Philippines sets out a summary of prevention of human trafficking in the Philippines as follows:

⁴⁸ Jennifer Fleetwood ‘Shorter sentences for drug mules: The early impact of the sentencing guidelines in England and Wales’ (16 March 2015) 22(5) *Drugs: Education, Prevention, Policy and see the case studies* (March 2011).

⁴⁹ in *R v. Joseph and others* (Anti-Slavery International intervening) [2017] EWCA Crim 36 (09 February 2017).

The government increased its efforts to prevent trafficking. The IACAT, which the secretaries of DOJ and DSWD chaired, including three NGO members, and the government task forces involved in anti-trafficking activities met regularly during the reporting period to share information and coordinate policies. The IACAT member agencies and organizations conducted an assessment of the government's third strategic action plan against human trafficking (2017–2021), including analysis of ongoing efforts, key challenges and priorities, best practices, and stakeholder sustainability. The government increased the number of staff supporting the IACAT and anti-trafficking regional task forces. However, it decreased the IACAT's budget from 95.28 million pesos (\$1.82 million) in 2017 to 80.39 million pesos (\$1.53 million) in 2018 following underspending of IACAT's budget the preceding year. The government collaborated with NGOs, international organizations, and foreign donors to improve data collection on trafficking cases and services, but comprehensive data remained a challenge. The IACAT and its member agencies continued to lead national and regional trafficking awareness raising events. The CFO conducted a national prevention campaign across 12 provinces and reached 4,122 persons. The POEA held 48 seminars on illegal recruitment and trafficking for 3,239 participants and provided information about worker protection, legal recruitment, and government services available to OFWs to 30,517 individuals through community-based pre-employment orientation seminars and to 798,589 individuals through online seminars, compared to 722,132 total the prior year. DOLE distributed informational materials to 34,634 individuals within communities that were vulnerable to illegal recruitment and trafficking. In response to the increased number of underage females identified prior to departing from Mindanao for domestic work in Middle East, DOLE created a task force against illegal recruitment, recruitment of minor workers, and trafficking in persons. IACAT member agencies and local government units also partnered with an NGO and private recruitment agencies to conduct six awareness-raising events that reached 1,245 stakeholders in Mindanao.

NBI and POEA officials investigated 278 cases of alleged illegal recruitment and recommended 123 cases for filing in the courts. The government reported

11 convictions. This compared with 309 investigations and eight convictions in 2017. The POEA filed 1,432 administrative charges against licensed recruitment agencies for fraudulent employment or exorbitant fees, resulting in the cancellation of 40 agencies' licenses. The BI Travel Control and Enforcement Unit continued to screen departing passengers and deferred the departure of 24,753 passengers due to incomplete or missing travel documents or misrepresentation. The BI Travel Control and Enforcement Unit also referred 286 potential cases of suspected trafficking to IACAT task forces for further investigation, identified 286 potential victims of trafficking, and arrested nine suspected traffickers. The government stopped 199 foreign registered sex offenders from entering the country and the government increased its efforts to reduce the demand for commercial sex acts. POEA reviewed 30 bilateral and multilateral labor agreements with other countries and signed two multilateral and nine bilateral agreements aimed at preventing trafficking and reducing the vulnerability of OFWs.

27. The above is plainly a summary. It is not possible from such a summary to extract data as to how many trafficked persons were identified in organised criminal networks, how many incidents of human trafficking were prevented nor how many persons had been trafficked to commit crime as principal offender or as an accessory. However, for the purposes of this study it is clear that House Bill No.1239 is being proposed without an understanding or assessment of the effectiveness of the current national strategies for **prevention.**

Prosecution of Human Traffickers – Principal Liability in the Philippines

28. The Philippines has responded to the above international and ASEAN commitments with legislation that criminalises human trafficking in a range of respects. These actions have led to the arrest of 689 suspects, an increase from 283 in 2017. The government initiated prosecution of 227 alleged traffickers (177 in 2017); these included 18 labor trafficking defendants, 195 sex trafficking defendants, and one defendant charged with using a child for soldiering. The government convicted 77 traffickers (65 traffickers in 2017), including three for labor trafficking and 27 for sex trafficking children online.

Sentences imposed ranged from four years to life imprisonment. In three cases prosecuted in prior years, the appellate courts reversed the acquittal of eight alleged traffickers and sentenced them to life imprisonment.⁵⁰ This study does not evaluate each of these cases but recognises the ongoing provision for prosecution of perpetrators

29. The Anti Trafficking in Persons Act (RA No. 9208) defines human trafficking in the same terms as the U.N. Trafficking in Persons Protocol. It criminalises a range of conduct, as set out in section 4, which reads as follows:

It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

- (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.
- (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage
- (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (d) To undertake or organise tours and travel plans consisting of tourism packages or activities for the purpose of utilising and offering persons for prostitution, pornography or sexual exploitation.
- (e) To maintain or hire a person to engage in prostitution or pornography;

⁵⁰ Above n 4, 381.

- (f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion or intimidation for the purpose of removal or sale of organs of said person; and
- (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

30. Section 6 RA No. 9208 deals with *qualified* Trafficking in Persons, which is the target of House Bill No. 1239. It needs to be read together with section 4 because, for example, if the offender is a parent or the victim is a child, House Bill No. 1239 would allow for the death penalty for any form of trafficking in persons as set out in section 4.

31. The following are considered as *qualified* trafficking:

- i. When the trafficked person is a child (section 3 defines a child as under 18 or over 18 but unable to fully take care of or protect himself / herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition);
- ii. When the adoption is effected through Republic Act No. 8043, otherwise known as “the Inter Country Adoption Act of 1995” and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;
- iii. When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if committed by three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;
- iv. When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offence is committed by a public officer or employee.

- v. When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies.

Prosecution of Human Traffickers – Accessorial Liability in the Philippines

32. Accessorial liability in relation to human trafficking arises in several ways in the law of the Philippines:

- a. Section 5 Republic Act No. 9208 defines acts which ‘promote or facilitate trafficking in persons,’ i.e. who will be considered ‘accessories’ to the crime. The provisions are very extensive relating to leasing premises, documentation, broadcasting, use of IT, government clearances, border issues and travel documents.
- b. Section 4-B Republic Act No. 10364 sets out *Accomplice Liability*, ‘whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts as defined in this Act shall be punished in accordance with the provisions of section 10(c) of this Act’.
- c. Section 4-C Republic Act No. 10364 sets out *Accessories Liability* as, ‘whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices, take part in its commission in any of the following manners:
 - (a) By profiting themselves or assisting the offender to profit by the effects of the crime;
 - (b) By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;
 - (c) by harbouring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with the abuse of his or her public functions or is known to be habitually guilty of some other crime.

33. Accordingly, House Bill No. 1239 seeks to apply the death penalty to a range of personnel who are not the principal offenders, thus providing huge scope for the death penalty for what would otherwise be conduct which was not heinous by way of accessorial liability. This massive extension of penalties does not appear to have been considered in the written introduction of House Bill No. 1239 at all. It is perhaps also

notable that the UK Supreme Court in *R v Jogee*⁵¹ has relatively recently recognised that the common law on complicity has been the subject of error in the formulation of constructed liability, causing widespread concern over miscarriages of justice.⁵²

34. By failing to consider the complexities of human trafficking where trafficked persons can appear in a range of contexts, including as principal or secondary criminal offenders, House bill No. 1239 does not appear to have taken into account the risk that the death penalty could be used as against trafficked persons rather than traffickers. To the traffickers such persons are expendable. States should not legislate to create further victimisation. The danger with House Bill 1239 is that the focus will be on execution rather than prevention and protection. This is not to suggest that human traffickers should not be prosecuted but that the focus should be on a range of strategies which allow for prosecution of those in leadership and controlling roles, whilst at the same time achieving effective crime prevention strategies and protection of victims, to include non prosecution for those further down the chain of command. Such a differentiation is not clearly established in the current proposal for House Bill No. 1239 which particularly fails to recognise the range of necessary preventive strategies to combat human trafficking.

Protection of human trafficking victims

35. Proposed House Bill No. 1239 also does not appear to have taken into account the progress of the Philippines in its programme of protection. The 2019 Trafficking in Persons Report for the Philippines sets out a summary of protection of trafficked persons in the Philippines as follows:

The government increased protection efforts. The government continued to implement formal procedures to identify trafficking victims in the Philippines and overseas and to refer them to official agencies or NGO facilities for care. While comprehensive unduplicated data was not available, the government reported identifying 2,953 potential victims of trafficking through law enforcement activities, compared to 1,839

⁵¹ [2016] UKSC 8

⁵² The author was leading counsel on behalf of Ameen Jogee.

potential victims in 2017. The Department of Social Welfare and Development (DSWD) reported serving 2,318 possible trafficking victims, at least 1,269 of whom were female, compared with 1,659 victims in 2017. While compilation of services data for victims of different types of trafficking remained a challenge, DSWD reported assisting 672 victims of sex trafficking, 425 victims of labor trafficking, and 159 victims of illegal recruitment, compared with 516 victims of sex trafficking, 646 victims of labor trafficking, and 298 victims of illegal recruitment the prior year. The Philippine Overseas Employment Administration (POEA) reported identifying 215 female trafficking victims, all but two of whom were victims of domestic servitude, but did not report information about services provided to these victims. Through its recovery and reintegration program for trafficked persons, DSWD provided case management, psycho-social support, medical services, legal assistance, livelihood assistance, skills training, and reintegration services to identified victims and implemented the national referral system and maintained the national recovery and reintegration database. The government allocated 25.13 million pesos (\$478,760), an increase from 24.8 million pesos (\$472,470) in 2017, to implement this program. DSWD continued to operate 44 residential care facilities that provided services to victims of trafficking and other forms of exploitation. Of these facilities, 24 served children, 13 served women. The government also began construction of a new shelter to serve men. DSWD provided trauma-informed care and temporary shelter for 917 trafficking victims in its facilities, local government shelters, or an NGO facility, but most shelters were above capacity thus compromising the quality of care provided to victims. Specialized assistance services such as mental health services, community reintegration, job training, and access to employment remained inadequate to address the individual needs of trafficking victims, including child victims of online sexual exploitation and male victims. The government also provided an unknown amount of support for two NGO-operated halfway houses at border entry points and a facility in the National Capital Region that serves as a safe space

and processing center where law enforcement officials, working with DSWD, interviewed suspected victims immediately after police removed them from a trafficking situation.

During the reporting period, the IACAT revised immigration and law enforcement guidelines for the proactive identification of potential trafficking victims in airports and seaports. The government continued to support victims who served as witnesses during trials by providing assistance, security, and transportation. Two regional task force victim-witness coordinators provided support and assistance to 225 victims who participated as witnesses in criminal proceedings. In addition, 12 victims entered the witness protection program in 2018 and DOJ allotted 2.97 million pesos (\$56,580) for the newly admitted victims. Under this program, justice officials protected 86 victims from reprisals by providing security, immunity from criminal prosecution, housing, livelihood and travel expenses, medical benefits, education, and vocational placement. Judicial officials awarded 600,000 pesos (\$11,430) in moral and punitive damages in at least one case to the minor victims. However, victims were often unable to navigate the complex legal process required to obtain the compensation from convicted traffickers. Through its Inter-Agency Council Against Child Pornography, the government issued new guidelines for the management of compensation that foreign courts order foreign perpetrators to pay to young Filipino survivors of online sexual exploitation. Staff permitted adult victims residing in shelters to leave unchaperoned, provided there were no threats to their personal security or psychological care issues. While the government did not identify foreign victims in the Philippines during the reporting period, it had long-term alternatives to deportation of victims to countries where victims may face hardship or retribution. In the Bangsamoro Autonomous Region in Muslim Mindanao, armed conflict and violence displaced an estimated 80,000 persons, and reports of recruitment and use of child soldiers by armed groups continued. There were reports soldiers of the Armed Forces of the Philippines detaining a child

suspected of associating with an armed group and using him to perform support duties on a base.

The government continued its robust services for Filipino victims abroad. The DFA, in coordination with DSWD social welfare attaches and DOLE labor attaches, assisted 2,591 potential Filipino trafficking victims in the Middle East, Asia, and Europe, compared to 1,476 potential victims in the preceding reporting period. Assistance included referral to appropriate agencies, coordination with the host government, contract buy-out, repatriation, shelter, provision of personal necessities, medical aid, financial assistance, and payment of legal fees. Some overseas posts maintained resource centers that included temporary shelter where female and male trafficking victims resided while awaiting the resolution of their cases or their repatriation. DSWD deployed social welfare attachés to Philippine diplomatic missions in Saudi Arabia, the UAE, Kuwait, South Korea, Qatar, Malaysia, and Hong Kong. DFA increased its expenditures for the Assistance to Nationals (ATN) Fund, which covered assistance such as airfare, meal allowance, medical care, and other needs of overseas Filipino workers (OFW) from 22.7 million pesos (\$432,460) the previous year to 1 billion pesos (\$19.05 million). DFA also expended 160.8 million pesos (\$3.06 million) through its Legal Assistance Fund (LAF) for OFW; a decrease from 184 million pesos (\$3.51 million). The Overseas Workers Welfare Authority (OWWA) and DSWD social workers assisted an unknown number of OFWs with services ranging from airport assistance, air tickets, or halfway home accommodation. With 5.3 million pesos (\$100,970) allocated by the IACAT, the Commission of Filipinos Overseas (CFO) responded to 3,853 calls and assisted nine possible victims.

36. Again, the above discussion is plainly a summary. It is not possible from such summary to extract data as to how many trafficked persons were identified *and protected* in organised criminal networks or had been trafficked to commit crime as principal offender or as an accessory. Again, it seems that House Bill No.1239 is being proposed

without an understanding or assessment of the effectiveness of the current national strategies nor the need to provide **both protection and prevention**.

Non prosecution of human trafficking victims who commit crime

37. In criminal justice systems, there are important questions to answer regarding the treatment of traffickers who have experienced trafficking themselves.⁵³ The Philippines affords substantial legal protection to victims of trafficking, and invests in their rehabilitation. Filipino women are recognised in statute as common victims, and as such are deserving of explicit protection. Research shows that in the human trafficking context, women can go from victim to perpetrator.⁵⁴ Accordingly it is necessary to consider persons who commit crime as trafficked persons and ensure non-prosecution processes as part of the program to protect trafficked persons. The understanding of the global human trafficking issues and the need to particularly protect women and girls will all be undermined if the death penalty were reintroduced for human trafficking with a disregard for these complex issues.

38. Legislation includes the following:

- a. Section 24(a) Republic Act No. 9208 provides that trafficked persons come under the category of ‘Overseas Filipino in Distress’ for legal aid, per Republic Act No. 8042. Arguably foreign countries will be less likely to share data/information to the Philippines when it comes to human trafficking (victim or perpetrator) if there is a good chance that they could face the death penalty;
- b. Section 4(b) Republic Act No. 9208 defines ‘acts of trafficking in persons’, as that explicitly involving “any Filipino women” who are “introduced or matched for money, profit, material, economic or other consideration ... to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/ her to engage in prostitution, pornography, sexual exploitation,

⁵³ Kate Seear, ‘Impending Bali Executions Rely on Mistaken Ideas About Drugs,’ *The Conversation*, (online, 23 February 2015) <<https://theconversation.com/amp/impending-bali-executions-rely-on-mistaken-ideas-about-drugs-37694>>.

⁵⁴ Alexandra Louise Anderson Baxter (2019): When the Line between Victimization and Criminalization Blurs: The Victim-Offender Overlap Observed in Female Offenders in Cases of Trafficking in Persons for Sexual Exploitation in Australia, *Journal of Human Trafficking*, DOI: 10.1080/23322705.2019.1578579.

forced labour, slavery, involuntary servitude or debt bondage. This shows a focus on rehabilitation of victims – not their culpability and prosecution;

- c. Section 16 Republic Act No. 9208 sets out rehabilitative Programs that Address Trafficking in Persons, which mandates the government to ‘implement preventative, protective and rehabilitative programs for trafficked persons ...’. This shows a focus on rehabilitation of victims – not their culpability and prosecution;
- d. Section 16 Republic Act No. 9208 sets out the Department of Social Welfare and Development (DSWD) as the agency mandated under the section to ‘implement rehabilitative and protective programs for trafficked persons ...’;
- e. Section 23 Republic Act No. 9208 dictates ‘Mandatory Services to Trafficked Persons’ ‘to ensure recovery, rehabilitation and reintegration into mainstream of society ...’.

39. However, most importantly, in relation to human trafficking victims who commit crime, under RA 9208, section 17, there is some legal protection for trafficked persons who commit crime. It reads as follows:

Section 17 Legal Protection to Trafficked Persons – Trafficked persons shall be recognised as victims of the act or acts of trafficking and as such shall not be penalised for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

40. Section 17 Republic Act No. 10364 amends section 17 to offer legal protection to trafficked persons who committed unlawful acts as a direct result of, or as an incident in relation to being trafficked.

41. These provisions are a clear attempt by the Philippines to protect its people – wholly contrary to the threat of the death penalty. They also give clear domestic legislative effect to the Philippines international and regional obligations: There are a series of communications coming out from the UN as to the importance of non-punishment especially in relation to women and girls. The Office of the United Nations High Commissioner for Human Rights Trafficking Principles and Guidelines (2002), at

Principle 7 states:

Trafficked Persons shall not be detained, charged or prosecuted for their illegal entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

42. This is reinforced by the ILO Protocol of June 2014 (updating the existing ILO Convention 29 on Forced Labour). Article 4(2) of the ILO Protocol (2014) requires states to:

... take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

43. International frameworks in this context do not *require* non-prosecution or non-punishment but allow for implementation by the provision of systems which recognize the possibility of not imposing any penalty on people who act under compulsion. Signatories to the UN Trafficking in Persons Protocol and the ASEAN Convention Against Trafficking in Persons Especially Women and Children therefore commit to tackling all forms of human trafficking. However, implementation in the criminal context is a challenge. Justice systems are generally geared towards prosecution and punishment of offenders whereas commitment to the UN Trafficking in Persons Protocol and the ASEAN Convention Against Trafficking in Persons Especially Women and Children inevitably requires a contrary approach. The ASEAN Convention Against Trafficking in Persons Especially Women and Children provides protective provisions including Article 14(7) which states:

“Each party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking”.

44. The U.N. Trafficking in Persons Protocol supplements the United Nations Convention against Transnational Organized Crime (UNOTC)⁵⁵ so, it has long been recognised that people are trafficked in criminal networks. There are obvious examples of human trafficking in drug trafficking⁵⁶ and begging. There is also some emerging research on how trafficked persons engage in trafficking of others in order to survive.⁵⁷ However, it is not known how many trafficked persons are compelled to commit criminal offences or act as accessories to serious crime or are exploited in organised criminal networks or used to facilitate multinational fraud, where there may also be a corporate overlap.
45. Criminal justice systems generally operate to focus on the arrest, trial and disposal of offenders, treating any personal circumstances as factors in mitigation of sentence. Where the offender is also a victim of human trafficking, commitments to protect trafficked persons are beginning to lead to a change of approach in the criminal context through the burgeoning discourse driven by the human rights underpinning victimology. The point being that the trafficked person is not liable for the crime, rather liability falls on the trafficker. In the European context, Muraszkievicz has observed as follows:⁵⁸

There is [.....] a lack of uniform standard of protection. Moreover, some states will implement the obligations in inadequate ways [.....] states may refer to existing defences of duress or necessity as trajectories for competent authorities having entitlement not to hold victims liable or showcasing that they provide for the possibility of not imposing penalties on victims. Although this is not wrong from the perspective of what the regional document requires of states, it may lead to trafficked persons not being protected from liability. Thus, the aim of non liability principle will not be achieved.⁵⁹

⁵⁵ 2237 UNTS 319 Doc A/55/383 (signed 15 November 2000, entered into force 15 November 2003)

⁵⁶ Felicity Gerry, Narelle Sherwill, 'Human Trafficking, Drug Trafficking and the Death Penalty,' (2016) 6(3) *Indonesia Law Review*, 265-282.

⁵⁷ *Ibid.*

⁵⁸ Julia Maria Muraszkievicz, *Protecting Victims of Human Trafficking From Liability: The European Approach*, Palgrave Studies in Victims and Victimology, London, (2019).

⁵⁹ Above n57, p200. See also Gerry et al, 'Game Theory and the Human Trafficking Dilemma': *The Journal of Human Trafficking* (published online 16th December 2019).

<<https://www.tandfonline.com/doi/abs/10.1080/23322705.2019.1688086?journalCode=uhmt20>>

46. It is startling that the Philippines would even consider House Bill No. 1239 when it has made such an effort to understand the complexities of human trafficking and attempt to properly and more effectively legislate.
47. The international approach to those with a “rotten social background” who commit serious crime is perhaps also relevant here and best demonstrated by the prosecution at the International Criminal Court of the Case of Dominic Ongwen. Ongwen was charged with war crimes, crime against humanity and various other heinous matters, none of which carry the death penalty. Ongwen was abducted as a child and indoctrinated into becoming a child soldier. He was tortured and forced to watch violent rituals of people being killed. He rose in the ranks and eventually became the head of a brigade. His charges include forced marriage, rape, torture, sexual slavery and enslavement and the conscription and use of children under the age of 15 to participate in hostilities. The trial of Ongwen, and indeed the entire question of culpability when victim becomes perpetrator, is “a tug-of-war between *liability*, as imposed under international humanitarian law (IHL) and international criminal law (ICL), and *protection*, as embodied throughout international human rights law (IHRL), IHL and ICL.”⁶⁰
48. Conduct by traffickers can cause harm.⁶¹ This is particularly pertinent in the trafficking of children and has been recognised in UK County Lines investigations where dual ‘safeguarding and arrest operations were carried out.’⁶² Exploited children were safeguarded rather than prosecuted. The age of criminal responsibility is low in the UK but this policy response is one of a suite of measures which has seen a significant reduction in the prosecution of children⁶³. That could be avoided by *raising* the age of

⁶⁰ Raphael Pangalangan ‘Dominic Ongwen and the Rotten Social Background Defense: The Criminal Culpability of Child Soldiers Turned War Criminals,’ (2018) 33(3) *American University International Law Review* 605, 608. Notably, Raphael Pangalangan, Human Rights Lawyer, Oxford graduate, Prosecution Officer to the Office of the Ombudsmen of the Republic of the Philippines, won the 2017 Academy on human Rights and Humanitarian Law International Essay Award for his research in relation to Ongwen.

⁶¹ Raphael Pangalangan ‘Dominic Ongwen and the Rotten Social Background Defense: The Criminal Culpability of Child Soldiers Turned War Criminals,’ (2018) 33(3) *American University International Law Review* 605, 608. Notably, Raphael Pangalangan, Human Rights Lawyer, Oxford graduate, Prosecution Officer to the Office of the Ombudsmen of the Republic of the Philippines, won the 2017 Academy on human Rights and Humanitarian Law International Essay Award for his research in relation to Ongwen.

⁶² Nick Hunt ‘Serious Violence Strategy’ The Home Office (12 July 2018), available at:< <https://www.local.gov.uk/sites/default/files/documents/Violence%20Strategy%20and%20County%20Lines%20Action%20Plan%20-%20Nick%20Hunt.pdf>>.

⁶³ Department of Education *The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers* (November 2018), available at:<

criminal responsibility from 15 to the international norm of 18. There is currently significant concerns over ongoing efforts in Congress to lower the minimum age of criminal responsibility in the Philippines below 15 years of age. The proposed lowering vary from 9 and 12 years, and UNICEF has warned that this goes against the letter and spirit of child rights. Lowering the age of criminal responsibility will not deter adult offenders from abusing children to commit crimes.⁶⁴

49. The risks arising from the proposed reintroduction of the death penalty by House Bill 1239 are perhaps best demonstrated by the following examples:

- a. The introduction of proposed House Bill No. 1239 would put any employer at risk of the death penalty for forcing a child up to the age of 17 years or any disabled person to carry out labour or other services. The term “services” is not limited to sexual services but can apply to labour services. In a criminal trial there may be an issue over whether the child was forced or enslaved but the practical reality is that, even if considered serious slavery or servitude, the availability of the death penalty will stifle the employment of anyone under the age of 18. The same reasoning applies to any disabled person.
- b. The introduction of proposed House Bill No. 1239 would have extra territorial effect since it would put any overseas potential adoptive parent at risk of the death penalty. In a criminal trial there may be an issue over whether the adoption was for a trafficking *purpose*. The practical reality is that, the availability of the death penalty will stifle intercountry adoption by eligible persons. Intercountry adoption is already the subject of significant regulation, including a blanket refusal to accept applications from Australia. The likelihood is that if House Bill No. 1239 is enacted into law, the adoption of children through illegal networks will be more, rather than less likely.
- c. The introduction of proposed House Bill No. 1239 would risk the death penalty for very minor roles in a trafficking network, often committed by the most vulnerable of people. For example, if a victim is moved via a taxi service. Whilst accepting that the offence requires the knowledge of an accessory, the risk is

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765082/The_national_protocol_on_reducing_unnecessary_criminalisation_of_looked-after_children_and_care.pdf.

⁶⁴ Ms. Lotta Sylwander Lowering the age of criminal responsibility is against child rights: UNICEF (18 January 2019) UNICEF Philippines < <https://www.unicef.org/philippines/press-releases/lowering-age-criminal-responsibility-against-child-rights-unicef>>.

that the death penalty would be available for an enormous number of Philippine individuals for conduct which of itself, was **not heinous**, albeit assisting a trafficking network. The likelihood is that if House Bill No. 1239 is enacted into law, the exploitation of vulnerable people, particularly women and children, by criminal networks will be more, rather than less likely.

- d. The introduction of proposed House Bill No. 1239 would risk the death penalty for a vast range of family members, contrary to a range of family and child protection laws in the Philippines. Qualified trafficking could potentially apply to all persons in arrangements for employment opportunities. In a criminal trial there may be an issue over whether the work or a marriage was for the purpose as set out in section 4 but the practical reality is that the range of death penalty cases could potentially involve investigations against a very broad class of individuals in the Philippines since the law applies to ascendants, parents, siblings (including children), guardians or a person who exercises authority over the trafficked person or a public officer or employee. In relation to public officers, such investigations could also arise in the context of allegations of corruption (see below).
- e. The introduction of proposed House Bill No. 1239 would risk the death penalty for military and law enforcement personnel who seek sexual services and women who work in the sex trade. It is unfortunate that the legislation uses 'prostitution' rather than 'sex work' as this fails to acknowledge the autonomy of women in this context. In a criminal trial, aside from the issue of whether or not the individual was a victim of trafficking, there may well be an issue over whether the sex worker was recruited to engage in prostitution or whether they made an autonomous choice.

50. Ultimately, there is a real risk that proposed House Bill No. 1239 would cause the criminal justice system in the Philippines to grind to a halt if such issues were raised in a vast array of criminal cases involving qualified human trafficking.

Protective laws in relation to children

Whilst it is accepted that human trafficking legislation is part of a suite of measures designed for child protection to compliment robust legal frameworks already in place regarding family law and the protection of children, the application of the death penalty has the potential for a contrary effect. Traffickers are often the victims' parents or close relatives.⁶⁵ It is notable that Article 3.1 of the Convention of the Rights of a Child (CRC)⁶⁶ concerns children where decisions are undertaken by a public institution and the best interest of the child should be the primary consideration. This is capable of direct conflict with a law which allows for the death of a parent, whether that parent is the parent of the trafficked child, other siblings or indeed of children per se. It is also relevant to note that Article 2 of the CRC places a duty on the state to protect children from discrimination or punishment which they suffer due to the status or activities of their parents.⁶⁷ Proposed House Bill No. 1239 therefore has the potential for a range of family law challenges.

Protective Laws on HIV / AIDS / Discrimination in the Philippines

51. Proposed House Bill No. 1239 specifically targets traffickers who cause the spread of HIV/ AIDS, albeit in the context of qualified human trafficking. Targetting those carrying HIV is contrary to the current move in the Philippines towards non - stigmatisation and non- criminalisation of those living with HIV which is encouraged by the Global Commission on HIV and Criminal Law.⁶⁸ HIV is a health issue not an aggravating factor for criminal proceedings.⁶⁹ The move will no doubt be of significant concern to the Philippine National AIDS Council (PNAC) since the U.N. Development Programme's *Human Trafficking and HIV: exploring vulnerabilities and responses in*

⁶⁵ Above n4, 383.

⁶⁶ *Convention on the Rights of the Child* (CRC) (1989) (resolution 44/25), opened for signature 20 November 1989, entered into force 2 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁶⁷ Ibid.

⁶⁸ Global Commission on HIV and the Law, 'Advancing HIV Justice 3: Growing the Global Movement Against HIV Criminalisation,' (29 May 2019) <<https://hivlawcommission.org/2019/05/29/new-report-analyses-the-successes-and-challenges-of-the-growing-global-movement-against-hiv-criminalisation/>>.

⁶⁹ Matthew J Wait 'How and Why We Can and Should Decriminalise HIV Transmission, Exposure, And NonDisclosure' (2019) 27(4) *Medical Law Review* available at: < <https://academic.oup.com/medlaw/article-abstract/27/4/576/5601128?redirectedFrom=fulltext>>.

South Asia’ specifically found that human trafficking and HIV infection share many common underlying factors, such as poverty and gender discrimination.

52. The relevant provisions in the Laws of the Philippines are as follows:

- a. Republic Act No. 11166: ‘An Act strengthening the Philippine Comprehensive Policy on Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Prevention, Treatment, Care, and Support, and, Reconstituting the Philippine National Aids Council (PNAC), Repealing for the Purpose Republic Act No. 8504.
- b. Republic Act No. 11166, Section 3:
 - (h) ‘Discrimination’ refers to unfair or unjust treatment that distinguishes, excludes, restricts, or shows preferences based on any ground such as sex gender, age, sexual orientation, gender identity and expression, economic status, disability, ethnicity, and HIV status, whether actual or perceived, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons similarly situated, of all their rights and freedoms;
 - (m) ‘High-risk Behaviour’ refers to a person’s involvement in certain activities that increase the risk of transmitting or acquiring HIV;
 - (qq) ‘Social Protection’ refers to a set of policies and programs designed to reduce poverty and vulnerability by promoting efficient labor markets, diminishing people’s exposure to risks, and enhancing their capacity to protect themselves against hazards, and interruptions on, or loss of income;
 - (uu) ‘Vulnerable Communities’ refer to the communities and groups suffering from vulnerabilities such as unequal opportunities, social exclusion, poverty, unemployment, and other similar social exclusion, poverty, unemployment, and other similar social economic, cultural and political conditions making them more susceptible to HIV infection and to developing AIDS;
- c. Republic Act No. 11166 Section 10 ‘Protection of Human Rights’ provides that the Philippines response to the HIV and AIDS situation shall be anchored on the principle of human rights and human dignity. Public health concerns shall

be aligned with internationally-recognized human rights instruments and standards. Towards this end, the members of the PNAC, in cooperation with CSOs, and in collaboration with the Department of Justice (DOJ) and the Commission on Human Rights (CHR), shall ensure the delivery of non-discriminatory HIV and AIDS services by government and private HIV and AIDS service provider. Further, the DOJ and CHR, in coordination with the PNAC, shall take the lead in developing redress mechanisms for PLHIV and key affected populations to ensure that their civil, political, economic, and social rights are protected. The PNAC shall cooperate with local government units (LGUs) to strengthen existing mediation and reconciliation mechanisms at the local level.

53. It is particularly notable that the proposed Senate Discrimination Bill 948⁷⁰ has strong popular support. If passed it will apply to discrimination based on HIV status or other forms of differential treatment or grounds of discrimination which either undermines human dignity, causes or perpetuates systemic disadvantage, or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner. It will apply to state and non-state actors including government agencies and the military who are specifically targeted in qualified trafficking. House Bill No. 1239 therefore appears to be in direct conflict with the objectives of Senate Discrimination Bill 948. In addition, concerns in relation to discrimination regarding HIV are particular to youth trading sex in the Philippines.⁷¹ The proposed House Bill 1239 threat of death penalty for human trafficking drives such trade deeper underground and it will be less likely for underage sex workers to seek help for fear of the death penalty and more likely for them to remain captive and spread HIV.

The role of Corruption

⁷⁰ 'Senate Bill 948 17th Congress of the Republic of the Philippines (August 1, 2016) available at: <https://www.senate.gov.ph/lisdata/2450621092!.pdf> [accessed 17 February 2020].

⁷¹ Lianna A. Urada, Jay G Silverman, Laura Tsai & Donald Morisky, 'Underage Youth Trading Sex in the Philippines: Trafficking and HIV Risk,' *AIDS Care* (2014) 26(12), 1586-1591.

54. Corruption is an endemic feature of human trafficking, enabling traffickers to evade justice through state and corporate systemic failure.⁷² It also inhibits access to justice. The UN Convention against Corruption ('UNCAC') defines corruption as a force 'undermining the institutions and values of democracy, ethical values and justice and jeopardising sustainable development and the rule of law.'⁷³ Transparency International has defined corruption simply as the 'abuse of entrusted power for private gain'.⁷⁴ Research from the World Bank has also found that gender inequality is linked to development.⁷⁵ State parties to UNCAC are required to establish criminal, civil or administrative offences within domestic law. In addition, the UN Convention on Transnational Organised Crime ('UNTOC') requires state parties to criminalise bribery and the private sector to take preventative measures against corruption. Signatories to the OECD Anti-bribery Convention⁷⁶ are also subject to binding standards to investigate and prosecute incidents of suspected bribery including of foreign officials. Responses to these commitments are not uniform. For example, Australia criminalises the offence of bribing a public official. Australia's legislation applies to foreign bribery but it is rarely enforced in relation to either domestic or foreign transactions. In addition, it does not include an offence of failure by a commercial organisation to prevent bribery similar to those contained in the UK Bribery Act.⁷⁷ In the UK discussion is now around the implementation of further provisions to tackle corruption by way of a corporate offence of failure to prevent economic crime.⁷⁸ In addition, some global commercial organizations will be subject to the provisions of The Modern Slavery Act (Cth) as well as the Modern Slavery Act (UK) and the UK Bribery Act extraterritorial provisions.

⁷² United Nations Office on Drugs and Crime, 'The Role of Corruption in Trafficking in persons' (Issue Article, UNODC, 2011) <https://www.unodc.org/documents/human-trafficking/2011/Issue_Article_-_The_Role_of_Corruption_in_Trafficking_in_Persons.pdf>; International Bar Association, 'Human Trafficking and Public Corruption', (Presidential Task Force Report, September 2016) <http://www.ibanet.org/Committees/task_force.aspx>.

⁷³ *United Nations Convention against Corruption*, GA Res 58/4 (31 October 2003); International Bar Association, n 51.

⁷⁴ Transparency International, 'What is Corruption?', (2019), <https://www.transparency.org/what-is-corruption>

⁷⁵ World Bank 'Gender Equality for Development' <<https://www.worldbank.org/en/research/dime/brief/dime-gender-program>>

⁷⁶ Organisation for Economic Co-operation and Development, 'Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,' (OECD 2011).

⁷⁷ *Bribery Act 2010* (UK) c 23.

⁷⁸ Ashurst 'Business and Corruption: Risk Update for 2019' <<https://www.ashurst.com/en/news-and-insights/legal-updates/bribery-and-corruption-what-now-for-2019/>>

55. Furthermore, trafficker profiles in the Philippines in relation to the use of children for combat and non-combat roles include the following:

- Armed groups operating in the Philippines, including the New People’s Army, Maute Group, the Moro National Liberation Front, the Abu Sayyaf Group, and the Bangsamoro Islamic Freedom Fighters, recruit and use children, at times through force, for combat and noncombat roles.⁷⁹
- Officials, including those in diplomatic missions, law enforcement agencies, and other government entities, allegedly have been complicit in trafficking or allowed traffickers to operate.⁸⁰
- Some officials working in immigration, allegedly accept bribes to facilitate illegal departures for overseas workers, reduce trafficking charges, or overlook illegal labour recruiters.⁸¹
- Police: Previous TIP reports allege that police extort money from managers operating commercial sex establishments as well as clients and victims.⁸²
- Embassy personnel: There are reports of embassy personnel withholding back wages procured for their domestic workers, subjecting them to domestic servitude, or coerce sexual acts in exchange for government protection services.⁸³

56. Whilst tackling corruption and modern slavery is laudable, House Bill No. 1239 is not the solution: Its reach would affect the Philippines in the context of economic development and, in relation to Government agencies to an extent which would be unmanageable. Further issues are raised on these topics in the attached Annex B (as referred to in paragraph 3 above).

57. Furthermore, having regard to the issues summarised in Annex B, there is a real need for further study in relation to modern slavery in corporate supply chains. There is also a need to reserach its overlap with human trafficking in organised crime in the Philippines, as well as a range of other issues which ought to be a greater priority than the reintroduction of the death penalty.

⁷⁹ Above n 4, 383.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

Dangers for Mutual Legal and Consular Assistance

58. Consistent with international obligations and opposition to the death penalty, proposed House Bill No. 1239 will have a significant impact on international assistance and cooperation in the contexts of both legal and consular assistance. With any reintroduction of the death penalty, it is highly likely that requests for mutual assistance by the Philippines will be refused creating potentially insurmountable investigatory and diplomatic hurdles. It is notable that the Philippine Inter-Agency Council Against Trafficking (IACAT) mission statement at paragraph 4 lists international cooperation as a core function of what is “the central authority of the Republic of the Philippines”.⁸⁴ In addition, the UN Convention Against Transnational Organised Crime (UNTOC) is pertinent:

- a. Per Article 27 UNTOC the Philippines is legally bound to cooperate with other countries and work towards enhancing the effectiveness of domestic and overseas law enforcement actions to combat transnational crime;
- b. In particular, the Philippines is required to form bilateral and multilateral agreements enhancing the effectiveness of extradition.⁸⁵

59. Accordingly, countries are required to refuse extradition and MLA (mutual legal assistance) where a death sentence is likely. These include the following:

- a. Australia
- b. Canada
- c. Spain
- d. Switzerland
- e. U.K.
- f. U.S.

⁸⁴ Republic of the Philippines Department of Justice, ‘Vision, Mission, Quality Policy/ Objectives, Mandate and Functions,’ (web page) <<https://www.doj.gov.ph/vision-mission-and-mandate.html>>.

⁸⁵ Refer also to the Commission on Human Rights advisory, “Advisory on the Effect of the Reimposition of the Death Penalty on the Philippines’ Extradition Treaties (CHR A2019-007), <<http://chr.gov.ph/wp-content/uploads/2020/07/Human-Rights-Advisory-Effect-of-the-Reimposition-of-the-Death-Penalty-on-the-Philippines-Extradition-Treaties-CHR-A-2019-007.pdf>>.

60. Where refusal is not mandatory by law, countries have a discretionary right to refuse these requests if the death penalty is imminent. This includes the following:

- a. Australia
- b. Canada
- c. Hong Kong
- d. India
- e. Indonesia
- f. South Korea
- g. Spain
- h. UK
- i. US.

61. There are further global examples as follows:

- a. Hong Kong (abolished 1993) –
 - i. per article 6(2) of *Hong Kong, China-Philippines Extradition Treaty*, Hong Kong has the power to refuse extradition to the Philippines in circumstances where the death penalty is likely to be carried out.
 - ii. per s 5(3) of *Hong Kong, China Mutual Legal Assistance in Criminal Matters Ordinance*, Hong Kong has the power to refuse mutual legal assistance where they do not receive a satisfactory undertaking that the related matter will not result in the death penalty being imposed.
- b. Australia (abolished 1973) –
 - i. *Mutual Assistance in Criminal Matters Act 1987* strictly prevents Australia from providing any assistance relating to investigations, prosecution or punishment of a person suspected or convicted of an offence that carries the death penalty.
- c. European Union –
 - i. The Philippines' possible reintroduction of the death penalty was raised as a serious point of concern in the European Commission's report to the European Parliament and the Council on the GSP from 2016-2017, stating it would 'raise questions regarding the Philippines' international commitments,' and possibly result in a loss of preferential trading with

the EU.⁸⁶ In *Soering v United Kingdom* 1989, the European Court of Human Rights, held that extradition to a jurisdiction where capital punishment is imminent is violation of Article 3 of the European Convention of Human Rights (ECHR).⁸⁷ Even where a country is willing to extradite to such a jurisdiction, the ECHR has jurisdiction to overrule these requests and this was exemplified in *Othman (Abu Qatada) v United Kingdom* in 2012.⁸⁸

62. The above lists are not comprehensive but provide a window into the complexities which arise from the proposed House Bill No. 1239.

63. The Vienna Convention on Consular Relations provides a framework for consular relations between independent countries. Article 36 provides for foreign nationals who are arrested or detained to be given notice ‘without delay’ of their right to have their embassy notified of that arrest so that they may receive consular advice and support. There are 177 state parties to this convention; however its use in practice is severely limited by the training of front line enforcement officers and their being made aware of the accused rights under it. Without this, many individuals on death row may make culturally inappropriate decisions regarding their case, with lethal consequences. Such dangers require a comprehensive framework in both death penalty reform and protection of human trafficking victims, not the reintroduction of the death penalty.

Conclusion

64. It follows from what is set out above and in the Annexures attached that proposed House Bill No. 1239 is a retrograde proposal that fails to consider the legal mechanisms binding on the Philippines, fails to consider the potential consequences for the Philippines in economic and international terms and fails to consider the impact on the

⁸⁶ European Commission, *Report from the commission to the European parliament and the council*, COM(2018) 36 final, (Jan. 19, 2018); E.U. High Representative of the Union for Foreign Affairs and Security Policy, *The EU special incentive arrangement for sustainable development and good governance ('GSP+') assessment of the Philippines covering the period 2016-2017*, SWD(2018) 32 final, (Jan. 19, 2018).

⁸⁷ *Soering v The United Kingdom*, 14038/88, Jul. 7, 1989, available at <http://hudoc.echr.coe.int/eng?i=001-57619> (last accessed Aug. 12, 2019) (E.U.).

⁸⁸ *Othman (Abu Quatada) v The United Kingdom*, 8139/09, May 9, 2012, available at <http://hudoc.echr.coe.int/eng?i=001-108629> (last accessed Aug. 12, 2019) (E.U.).

criminal justice, family law and child protection systems. The proposal also fails to consider the necessary preventative strategies and protections for trafficked persons.

65. This study is an *overview* of a range of problems created by proposed House Bill No. 1239. Perhaps the biggest problem that is exposed by this study is an apparent lack of awareness of the complexities of human trafficking, particularly in organised criminal networks and within the context of corporate slavery in supply chains.
66. There are a range of sources to enable public awareness and education on such issues. One is the UNODC Education for Justice (E4J) initiative which helps educators teach the next generation to better understand and address problems that can undermine the rule of law and encourage students to actively engage in their communities and future professions in this regard. There are a range of open source materials in relation to human trafficking which may also be of use to increase understanding of Parliamentarians. The 14 modules on trafficking in persons and smuggling of migrants provide practically oriented tools to teach on these issues. Given the considerable safety risks posed by trafficking in persons and the related need to ensure that perpetrators are made accountable, the course relies heavily on a legal approach. Other sources are available.
67. In conclusion, this study recommends the following:
 - a. That House Bill No. 1239 is withdrawn and not enacted into law.
 - b. That the death penalty is not reintroduced.
 - c. That policies and laws for the prevention of human trafficking, prosecution of traffickers and protection of trafficked persons, including those who commit crime are continued and enhanced in accordance with international and ASEAN commitments.
 - d. That there are further programs for Parliamentarian, stakeholder and public awareness in relation to prevention, prosecution and protection in human trafficking and modern slavery contexts.
 - e. That law and policy as to the non prosecution of trafficked persons who commit crime be developed and enhanced.
 - f. That further study is made on the impact of corruption in combatting human trafficking in the Philippines.

- g. That further study is made in relation to international and transnational mutual cooperation between states in the context.
- h. That further study is made on slavery in corporate supply chains in the Philippines, including the overlap with criminal trafficking networks.

See below for Annex A and B

The Commission

And

Professor Felicity Gerry QC

19 May 2020

ANNEX A

A timeline of the recent history of the death penalty in the Philippines

YEAR	ACTION TAKEN
1987	Government abolishes the death penalty via Article III, section 19 of the 1987 constitution. ⁸⁹
1996	Government re-instates the death penalty. ⁹⁰
2006	New government abolishes the death penalty ⁹¹ and signs the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). ⁹²

⁸⁹ *The Constitution of the Republic of the Philippines 1987* Article III, s 19 (since removed).

⁹⁰ *Republic Act No. 8177* (Philippines) Congress of the Philippines, entered into effect 20 March 1996 <https://www.lawphil.net/statutes/repacts/ra1996/ra_8177_1996.html>.

⁹¹ *Republic Act 9346 of 2006* (Philippines) Congress of the Philippines, signed on 24 June 2006 <<https://www.officialgazette.gov.ph/2006/06/24/republic-act-no-9346/>>.

⁹² *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*, signed on 20 September 2006, ratification and accession on 20 November 2007 <<https://www.ohchr.org/en/professionalinterest/pages/2ndopccpr.aspx>>.

2016	House of Representatives introduces HB4727 to re-instate the death penalty. ⁹³
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⁹³ House Bill 4727 <http://www.congress.gov.ph/legisdocs/basic_17/HB00001.pdf>.

ANNEX B

EXECUTIVE SUMMARY	
Possible Constitutional Violations⁹⁴ based on trafficker profiles	
Provision	Risk of breach
<p>ARTICLE III Bill of Rights</p> <p>Section 12 (2) “No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.”</p>	<p>International courts have increasingly held held that the death penalty, both as a general practice and through the specific methods of implementation and other surrounding circumstances, can amount to CIDT or even torture.⁹⁵</p> <p>Proposed legislation may be at risk of breaching s 12(2) and s19 ss1 - 2.</p>
<p>ARTICLE III Bill of Rights</p> <p>SECTION 19 (1) “Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.</p>	<p>See above</p>

⁹⁴ The Constitution of the Republic of the Philippines < <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>>.

⁹⁵ Juan E Mendez ‘The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment,’ quote adapted from his writings about the United States, stating, “Regional and domestic courts have increasingly held that the death penalty, both as a general practice and through the specific methods of implementation and other surrounding circumstances, can amount to CIDT or even torture.” Human Rights Brief 20, no. 1 (2012) 1 < <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1849&context=hrbrief>>.

<p>SECTION 19 (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.</p>	
<p>ARTICLE III Bill of Rights SECTION 18 (1) No person shall be detained solely by reason of his political beliefs and aspirations.</p>	<p>Armed groups operating in the Philippines, including the New People’s Army, Maute Group, the Moro National Liberation Front, the Abu Sayyaf Group, and the Bangsamoro Islamic Freedom Fighters, recruit and use children, at times through force, for combat and noncombat roles.⁹⁶ These groups</p> <p>These groups may be deemed political groups; in some cases they have been explicitly outlawed by the Filipino gov’t.⁹⁷</p> <p>Proposed legislation may be at risk of breaching s 18(1) of Article III of the Bill of Rights.</p>
<p>ARTICLE XI Accountability of Public Officers SECTION 1 Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency,</p>	<p>These provisions appear to be a constitutional obligation to ensure the accountability of those in public office, including the investigation and prosecution of those engaged in illegal acts.</p> <p>Government officials, including police officers, embassy and immigration personnel and those on diplomatic missions have been implicated in supporting/enabling the trafficking of various groups in and out of the Philippines.</p>

⁹⁶ Ibid.

⁹⁷ Jim Gomez ‘Here’s how communist guerrillas celebrated a half-century rebellion’

< <https://www.navytimes.com/news/your-navy/2019/03/29/heres-how-communist-guerrillas-celebrated-a-half-century-rebellion/>>.

act with patriotism and justice, and lead modest lives.

SECTION 2

The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **All other public officers and employees may be removed from office as provided by law**, but not by impeachment.

SECTION 13

The Office of the Ombudsman shall have the following powers, functions, and duties:
(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop,

Accountability of public officers is a Constitutional obligations. Arguably, House bill No. 1239 would create huge investigative powers in relation to public officers, perhaps more so that the general public, given the Constitutional obligations. Any reluctance to investigate, prosecute or charge public officers in this context could be interpreted as a breach of Constitutional obligations. The consequence of House Bill No. 1239, if enacted, could be wholesale investigation of every arm of Government or conversely, complexities on domestic invalidity.

<p>prevent, and correct any abuse or impropriety in the performance of duties.</p> <p>(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.</p>	
<p>ARTICLE XIII Agrarian and Natural Resources Reform</p> <p>SECTION 7</p> <p>The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of local marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.</p>	<p>Philippines is vulnerable to having forced labour in their own national fishing industries and also to being a source for fishers who become victims of modern slavery aboard foreign-flagged vessels that fish in their waters.</p> <p>There is potential for Filipino fishermen to be engaged in elements of modern slavery within Filipino fisheries.⁹⁸</p> <p>Proposed legislation may be at risk of breaching s 7of Article XIII of the Constitution as well as affecting foreign investment, given global commitments to corporate responsibility</p>

⁹⁸ Global Slavery Index: Fishing < <https://www.globallslaveryindex.org/2018/findings/importing-risk/fishing/>>.

	in relation to slavery in supply chains (see below).
<p>ARTICLE XIII Women</p> <p>SECTION 14: “The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”</p>	<p>International research has demonstrated the victim-offender overlap, especially among female traffickers.⁹⁹ Female offenders were often previously trafficked.¹⁰⁰</p> <p>Proposed legislation risks breaching s14 of Article XIII of the Constitution.</p>
Foreign Investment Law: Modern Slavery Legislative Considerations	
Foreign Investments Act of 1991: Philippines	The following analysis is based on the fact that s2 of the Foreign Investments Act encourages and promotes foreign investment and seeks to expand and enhance investment opportunities that build employment opportunities for Filipinos. ¹⁰¹
AUSTRALIA: Modern Slavery Act 2018 (Cth)	
<p>Part 2, s 11 Modern Slavery Act Australia</p> <p>“This Part requires modern slavery statements to be given annually to the Minister, describing the risks of modern slavery in the operations and</p>	CONSIDERATIONS:

⁹⁹ Alexandra Baxter ‘When the Line between Victimization and Criminalization Blurs: The Victim-Offender Overlap Observed in Female Offenders in Cases of Trafficking in Persons for Sexual Exploitation in Australia’ (2019) *Journal of Human Trafficking*

¹⁰⁰ Ibid.

¹⁰¹ *Foreign Investments Act 1991* (PH) s2 < <http://boi.gov.ph/r-a-7042-foreign-investments-act-of-1991/>>.

<p>supply chains of reporting entities and entities owned or controlled by those entities.”¹⁰²</p> <p>WHO? Part 1 s3</p> <p>Under the reporting requirement, large entities with over AU\$100 million annual consolidated revenue must prepare annual Modern Slavery Statements.¹⁰³</p> <p>S 16 defining mandatory reporting criteria include, (but are not limited to):</p> <p>(a) identify the reporting entity; and</p> <p>(b) describe the structure, operations and supply chains of the reporting entity; and</p>	<ul style="list-style-type: none"> • More than 3000 large business and other entities will need to submit modern slavery statements.¹⁰⁵ • Parent companies may worry about their liability for actions of overseas subsidiaries and employees based in Philippines. Would need to be considered in risk assessment¹⁰⁶ • Effect would be enormous reputational risk to Australian companies if employees of overseas subsidiaries were executed. • Risk of weakening the bilateral relationship between Australia and the Philippines.¹⁰⁷ • May deter Australian business entities who finds modern slavery in their supply chains from reporting to law enforcement. Further complicated by allegations of law enforcement involvement in human trafficking.¹⁰⁸ • Due to additional risks, companies may need to spend more money to invest in Philippines should they employ companies to investigate the risk of modern slavery and related activities. This may be compounded if the death penalty is applied to human trafficking. • Under the Act, the Government has the power to publicly name entities that fail to comply with the reporting requirement. Failure to comply can also significantly damage your entity’s reputation, undermine your ability to do business, and damage investor confidence.¹⁰⁹ • Philippines breaching its Second Optional Protocol commitment may result in international backlash, possibly sanctions, affecting overseas businesses based in Philippines. This would be further compounded if a foreign national was put on death row or executed.¹¹⁰
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¹⁰² *Modern Slavery Act 2018* (Cth) Part 2, s11 < <https://www.legislation.gov.au/Details/C2018A00153>>.

¹⁰³ *Modern Slavery Act 2018* (Cth) Part 1 s3 < <https://www.legislation.gov.au/Details/C2018A00153>>.

¹⁰⁵ Shelley Dempsey ‘Modern slavery laws: how boards must comply’ Australian Institute of Company Directors < <https://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-16-issue-12/modern-slavery-laws-how-boards-must-comply>> .

¹⁰⁶ Laws differ across jurisdictions by relevant case law may include *Royal Dutch Shell, Daimler v Bauman et al*,

¹⁰⁷ As inferred from Australia’s Strategy for Abolition of the Death Penalty

<https://dfat.gov.au/international-relations/themes/human-rights/Pages/australias-strategy-for-abolition-of-the-death-penalty.aspx>

¹⁰⁸ Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities < <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>> 80.

¹⁰⁹ Ibid 16.

¹¹⁰ Based on public outrage over Andrew Chan and Myuran Sukumaran, as demonstrated by national campaign < <https://www.change.org/p/mercy-for-andrew-chan-and-myuran-sukumaran>>.

<p>(c) describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls; and</p> <p>(d) describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes; and</p> <p>(e) describe how the reporting entity assesses the effectiveness of such actions.¹⁰⁴</p>	<ul style="list-style-type: none"> • The risk of execution for any implicated in human trafficking may alienate staff as well as customers and very well may have a negative impact on employees based in Philippines. Talent may leave based on the risk that if they don't properly monitor supply chains, they could be implicated in HT and risk the harsh sentencing.¹¹¹ • Literature suggests that transnational corporations seek regimes that respect human rights.¹¹² • Risk of death penalty sentence may further complicate business' response to modern slavery within their supply chains.¹¹³ • Businesses may not be aware of all the perpetrators and victims involved and should act cautiously. Such risk aversion may be detrimental to investment.¹¹⁴ • Investor will embed modern slavery risk assessments into their investment processes – they may cite the existence of the death penalty in Philippines as an additional risk.¹¹⁵ • Studies suggest that regimes that respect human rights attract foreign investment because it reduces a transnational company's risk of reputational damage.¹¹⁶ • Execution of a foreign national would attract significant negative attention from the international community.¹¹⁷
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¹⁰⁴ *Modern Slavery Act 2018* (Cth) s16.

¹¹¹ S. Blanton and R. Blanton. "Human Rights and Foreign Direct Investment: A Two-Stage Analysis." *Business and Society*, Vol. 45, No. 4 (2006) < <https://journals.sagepub.com/doi/abs/10.1177/0007650306293392>>

¹¹² Ibid

¹¹³ Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities < <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>> 85-86.

¹¹⁴ Ibid.

¹¹⁵ Ibid 11.

¹¹⁶ S. Blanton and R. Blanton. "What Attracts Foreign Investors? An Examination of Human Rights and Foreign Direct Investment." *Journal of Politics*, Vol., 69, No. 1 (2007).

¹¹⁷ As was the case with Chan and Sukumaran in Indonesia evidenced by public campaign and petitions.

Child Protection¹¹⁸	
Statute	Relevance
<p>ARTICLE XIII – Social and Human Rights Section 11:</p> <p>‘The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.’</p>	<p>The State has Constitutional obligations regarding healthcare and social services for children.</p>
<p>ARTICLE XIV - Education Section 2 (2):</p> <p>‘(2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age...’</p>	<p>Constitutional obligation on the State to provide free public education for all children of school age.</p> <p>ARGUMENT: This may be linked with the economic argument. Families cannot afford to send their children to school due to economic pressures on the family. The State cannot fulfil their obligation to provide education to school-aged children if families can’t afford to eat, therefore they must [sell children, exploit their labour].</p>

¹¹⁸ *The Constitution of the Republic of the Philippines 1987* <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

<p>ARTICLE XV - The Family Section 3(2) ‘The State shall defend...The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development...’</p>	<p>Constitutional obligation to provide care for children.</p> <p>ARGUMENT:</p> <ul style="list-style-type: none"> • The State is failing to protect children from neglect, abuse, cruelty and exploitation. • How? Failing to provide employment opportunities for families or a robust economy.
<p>UK Modern Slavery Act 2015:</p>	
<p>S 54 Transparency in supply chains (1) A commercial organisation within subsection (2) must prepare a slavery and human trafficking statement for each financial year of the organisation.¹¹⁹</p>	<p>CONSIDERATIONS:</p> <p>Similar to that of Australia, large UK commercial entities face mandatory reporting requirements regarding the monitoring of supply chains.</p> <p>Similar considerations as above.</p>
<p>G20 Countries</p>	<p>G20 countries will face increasing pressure to pass their own modern slavery legislation, potentially requiring similar monitoring and reporting as Australia and the UK.¹²⁰</p>

¹¹⁹ *Modern Slavery Act 2015* (UK) s54 < <http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>>.

¹²⁰ ‘G20 Countries’ *Global Slavery Index* <https://www.globalslaveryindex.org/2018/findings/importing-risk/g20-countries/>

	This will place businesses operating in the Philippines under greater scrutiny and may lead to increased risk aversion by international parent corporations.
Other Considerations: the role of foreign nationals in human trafficking in the Philippines	
International Relations/International Human Rights Violations	
Treaty	Risk of Breach
Vienna Convention on Consular Relations	Applying the death penalty to cases involving foreign nationals (particularly after the reprieve afforded Maria Jane Veloso) may raise concerns about reciprocity: If Philippines fails to comply with obligations under the Vienne convention on Consular Relations, will Filipino citizens be able to effectively invoke their Vienna Convention protections when arrested overseas?

SOURCE: ARTICLE III, XIII of the Philippines Constitution¹²¹

Constitutional Provision	Protected class	Considerations	Profiles of Human traffickers
ARTICLE III Bill of Rights Protections			
SECTION 12 (2) “No torture, force, violence, threat, intimidation, or any other means which vitiate the	Anyone bringing forward claims of torture, force, violence, threat or intimidation or people held in secret detention, in solitary,	- International courts have increasingly held held that the death penalty, both as a general practice and through	This does not go towards the profile of human traffickers rather the conditions and treatment under

¹²¹ Article XIII *The Constitution of the Republic of the Philippines* <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

<p>free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.”</p>	<p>incommunicado or other similar forms of detention.</p>	<p>the specific methods of implementation and other surrounding circumstances, can amount to CIDT or even torture.¹²²</p> <ul style="list-style-type: none"> - Proposed legislation may be at risk of breaching citizens’ constitutional right to freedom from torture. 	<p>which those charged with human trafficking are kept.</p>
<p>SECTION 19 (1) “Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.”</p>		<ul style="list-style-type: none"> - Death penalty is increasingly held to be a form of cruel, degrading or inhuman treatment by international courts.¹²³ - Proposed legislation may be at risk of breaching Section 19 (1). 	
<p>SECTION 19 (2) “The employment of physical, psychological, or degrading</p>		<ul style="list-style-type: none"> - Abolitionist groups and international NGO’s have asserted that death row 	

¹²² Juan E Mendez ‘The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment,’ quote adapted from his writings about the United States, stating, “Regional and domestic courts have increasingly held that the death penalty, both as a general practice and through the specific methods of implementation and other surrounding circumstances, can amount to CIDT or even torture.” Human Rights Brief 20, no. 1 (2012) 1 <<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1849&context=hrbrief>>.

¹²³ Méndez, Juan E. "The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment." Human Rights Brief 20, no. 1 (2012): 2-6. [Juan E. Méndez was appointed UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment on October 6, 2010, and started his three-year mandate on November 1, 2010.]

<p>punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.”</p>		<p>constitutes a form of psychological punishment.</p> <ul style="list-style-type: none"> - Proposed legislation may be at risk of breaching Section 19 (2). 	
ARTICLE XII National Economy and Patrimony			
<p>SECTION 1 “The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.</p> <p>The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and</p>		<ul style="list-style-type: none"> - Research suggests poverty and other economic concerns may drive demand for the trafficking of persons, both for traffickers and those trafficked.¹²⁴ - The gov’t may be at risk of failing to provide industrialization and full employment to its citizens, driving the expansion of human trafficking. 	

¹²⁴ ‘Poverty and Trafficking in Human Beings: A strategy for combating trafficking in human beings through Swedish international development cooperation’ *Department for Global Development* < <https://www.government.se/contentassets/326c82b44c784d67860d51420086cbe9/poverty-and-trafficking-in-human-beings>> 15-16.

<p>natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.”</p>			
ARTICLE XIII Social Justice and Human Rights			
<p>SECTION 14 “The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”</p>	<p>Women</p>	<ul style="list-style-type: none"> - Proposed legislation may be at risk of breaching constitutional protections for working women 	<p>Women as traffickers for child sexual exploitation and the exploitation of adult women in both domestic and commercial sex environments (see references above).</p>
<p>SECTION 18 (1) “No person shall be detained solely by reason of his political beliefs and aspirations.”</p>	<p>Those with political beliefs</p>	<ul style="list-style-type: none"> - Proposed legislation may be at risk of breaching s18(1). 	<p>Armed groups operating in the Philippines, including the New People’s Army, Maute Group, the Moro National Liberation Front, the Abu Sayyaf Group, and the Bangsamoro Islamic Freedom Fighters, recruit and use children,</p>

			at times through force, for combat and noncombat roles. ¹²⁵
SECTION 2 “The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.”	There is an implied commitment to protect citizens based on economic class	<ul style="list-style-type: none"> - May be interpreted as gov’t failing to fulfil its Constitutional obligations to protect citizens based on economic class. - Human trafficking is well-known to be driven by economic issues.¹²⁶ 	
ARTICLE XV The Family			
SECTION 3 The State shall defend: (3) The right of the family to a family living wage and income; and (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.	Could be interpreted as families as a whole and/or may be extended to individual family members	The government has committed to defending the right to a family’s living wage and income: by failing to do so, families living in poverty have turned to trafficking/exploiting their children - Possible breach of s3	Traffickers of children for sexual exploitation are more likely to be parents and family members

¹²⁵ Ibid.

¹²⁶ Poverty and Trafficking in Human Beings: A strategy for combating trafficking in human beings through Swedish international development cooperation’ *Department for Global Development* < <https://www.government.se/contentassets/326c82b44c784d67860d51420086cbe9/poverty-and-trafficking-in-human-beings>> 15-16.

