

The UN Special Rapporteur in Trafficking in Persons, especially Women and Children concludes her country visit to Australia

CANBERRA (30 November 2011):

“Australia has demonstrated strong leadership in combating trafficking in persons regionally and domestically, however it needs to devote greater attention to the rights and needs of victims”

Following an invitation by the Australian government I conducted a fact-finding mission to Australia from the 17 to 30 November 2011 to investigate the situation of trafficking in persons, progress made and challenges in tackling the 21st century slavery.

During this official mission, I visited Sydney, Canberra and Melbourne; I met with a large number of Federal and State government senior officials, including the Minister for Home Affairs, Members of Parliament, and various other federal and state agencies. In particular, I met and discussed with the Australian Federal Police (AFP) and State Police, the Department of Immigration and Citizenship (DIAC), the Attorney General’s Department, the Department of Foreign Affairs and Trade, AusAID, the Fair Work Ombudsman, Department of Education, Employment and Workplace Relations, Department of Families, Housing, Community Services and Indigenous Affairs. I also visited Villawood Detention Center, and dialogued with members of the judiciary as well as civil society organisations.

I would like to express my sincere appreciation to the Australian Government, including both the Commonwealth and the States of Victoria and New South Wales, and in particular the Attorney General’s department, for the indispensable support they provided in planning and coordinating the visit. I would also like to thank the civil society organizations and the staff of the United Nations Information Center (UNIC) for their support and assistance.

Australia has shown strong leadership and committed considerable resources to combating trafficking in persons. Australia has ratified seven out of the nine core human rights instruments, and in particular, is a State Party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child and the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, all of which contribute to a strong legal framework for combatting trafficking in persons.

I have also learnt of a range of important initiatives at the Federal level to combat trafficking in persons, including victim support programs, a strong and committed unit within the Australian Federal Police devoted to the issue of trafficking, who work closely with DIAC, and engagement in the broader region through aid and diplomatic initiatives including the ARTIP project and Bali Process. An important aspect of these efforts has been the establishment of the Anti-People Trafficking Interdepartmental Committee, which provides a forum for federal agencies to come together to develop government’s approach to tackle trafficking in persons.

The Australian Government should also be commended on developing a robust working relationship with civil society. I was fortunate to attend the yearly National Roundtable on People Trafficking in Canberra, which provides an important opportunity for government agencies and civil society to come together to discuss ways to collaborate to combat this heinous crime. The

Roundtable has also produced a publication: 'Guidelines for NGOs working with trafficked people' which was developed as a collaboration between government and civil society. However, I still observe that there is no national plan of action for combating trafficking with clear indicators for measuring outcome and impact. The development of such a plan would provide important structure for Australia's response to trafficking and promote both accountability and transparency.

From the legislative perspective, in 2005 amendments to the Commonwealth Criminal Code established Australia's first people trafficking offences, as well as offences for debt bondage, slavery, sexual servitude and deceptive recruiting. Various federal and state acts and regulations support, supplement, or rely on these offences. The Government has rightly acknowledged shortcomings with these provisions, which have contributed to low levels of successful prosecutions, and which have contributed to attention being focused almost exclusively on trafficking for sexual exploitation. To date, only two cases of labour trafficking have been prosecuted, despite indications from civil society organisations and government sources that labour exploitation is an issue within Australia in the agricultural, food processing and other sectors.

The lack of effective prosecutions under the current legislative framework has prompted the development of draft changes to the federal criminal law against trafficking in persons. The exposure bill setting out these changes was tabled during the course of my mission. I welcome the publication of the bill, and I am pleased to have learnt that it was developed after widespread consultation with civil society, and receives widespread bipartisan support. Importantly, the bill expands the definition of trafficking, to explicitly include labour exploitation and other forms of trafficking including forced marriage, which were difficult to prove under the former legislative framework. I urge stakeholders to provide detailed comments on the bill to ensure the final legislative amendments provide Australia with the strongest possible legal framework to investigate and prosecute trafficking in persons cases.

The legislative changes currently being considered will also address the issue of reparation for victims of trafficking. This is an important step forward. There is, at present, no comprehensive national framework for victim compensation. Remedies for trafficked persons vary from State to State, and are not tailored to the needs of this specific group. I urge the government to examine the proposed changes against international standards on the right to a remedy for victims of crime and human rights violations.

In a number of areas, a victim-centered approach is still lacking. For example, in some situations, assistance to victims are made conditional upon their cooperation with authorities and their contribution and to the criminal justice response. Also access to housing, medical and psycho-social support is not readily available to those trafficked persons whose immigration status has not been regularized. Moreover, I have learnt that due to lack of adequate shelters or housing facility for victims of trafficking, some victims identified and receiving state support are placed in motels. This form of accommodation is unsuitable for the needs of victims, especially considering their need for psycho-social support.

The People Trafficking Visa Framework, which came into effect on 1 July 2009, grants temporary and (potentially) permanent residence to victims who have come to the attention of authorities and whose contribution to the criminal prosecution of their traffickers has been established. However, these visa streams are only available to those victims identified by police, and who agree, after an initial reflection period, to contribute to a criminal investigation. The requirement for contribution to criminal justice process in order to qualify to get a temporary or

permanent residence, or access to support services should be removed as it imposes additional burden on victims of trafficking. I have also observed that the titles of the visas; Criminal Justice Stay Visa or Witness Protection (Trafficking) (Permanent) Visa prima facie identify, criminalize and stigmatize trafficked persons and will affect victims' ability to find employment and integrate into Australian community. In this area, as in all others, a human rights based approach to trafficking requires the needs of all victims to be placed at the core of any response.

I further observe that there is a need for improved understanding of the nature and scale of the problem of trafficking in persons in Australia. Australia is a destination country and its particular geographical location creates a unique opportunity to combat trafficking. Nevertheless, the scale of the problem appears to be underestimated and underreported, with most victims outside the sex industry remaining unidentified. Of course, this is at variance with growing cases of trafficking for forced labour being handled by grassroots organisations.

On a related note, I have observed that the issue of trafficking in persons in Australia is sexualized and often conflated with prostitution. As I have noted in the course of my work as Special Rapporteur, there remains no conclusive link between the legalization or criminalization of prostitution and the existence of trafficking for sexual exploitation. There is need to move away from over-sexualizing the discourse on trafficking, which invariably contributes to the common stereotype of victims of trafficking as being women and girls forced into prostitution or other forms of sexual exploitation. Furthermore, awareness is required to ensure that anti-trafficking policies do not have the unintended consequence of causing gender discrimination against women. For example, I have learnt that migrant workers from certain countries and ethnicity who are considered vulnerable to sex trafficking may be denied visas or entry to Australia as part of the Government's border enforcement regime. I wish to reiterate that vulnerability to trafficking is exacerbated by lack of equal opportunity and gender inequalities. Government policies should not be reinforcing these unhelpful stereotypes.

Thus, there is a need to place equal emphasis on all forms and manifestations of trafficking and exploitation, and address the lack of regulations and labour rights as one of the key structural factors fostering trafficking in persons, whether for sexual exploitation or forced labour or domestic servitude or other services. In this regard I welcome the research initiative of the Australian Institute of Criminology on trafficking for labour exploitation and also their pending research on forced and servile marriage in Australia.

Australia has deployed restrictive immigration control and border security measures in response to irregular migration including migration facilitated by smugglers and traffickers. However, such measures can be counterproductive and have been shown to contribute to creating a lucrative market for criminal involvement in migration and to increase migrants' vulnerability to trafficking. Australia, as a highly developed country, has an economy which places a strong reliance on migrant labour. For this reason, Australia must commit to developing and maintaining strong pathways for safe and legal migration to ensure that labour demands will be met whilst protecting those most vulnerable from exploitation. I am encouraged by the safe migration option created through the Pacific seasonal workers programme in horticulture and urge government to scale it up and also put in place adequate measures including regular inspection and monitoring to ensure that it does not become a conduit for traffickers and agents to exploit the labour of these low skilled overseas migrant workers. Such safe migration arrangements provide a good avenue to respond to the demand for cheap, low-skilled or semi-skilled labour in a wide range of industries, including agriculture, food processing, construction, manufacturing, domestic work and home health care, whilst avoiding exploitation of these potentially vulnerable workers.

Furthermore, I remain concerned about the possibility of trafficked persons including children being arrested, detained for long periods and deported for breach of migration regulations without proper identification especially given the strong migration control policy of Australian government. Moreover, although attention needs to be paid to the difference between people smuggling and trafficking in persons, there must also be awareness about the vulnerability of smuggled migrants to trafficking related deception, coercion and exploitation.

In view of the above observations and concerns I make the following as interim recommendations to the Government of Australia:

1. NATIONAL

- Take concerted action to ensure full domestic application of the United Nations Trafficking Protocol, which obliges Australia to prevent and combat trafficking in persons and importantly protect and assist the victims of such trafficking, with full respect for their human rights, including facilitating the proposed review of the law that will expand the definition of trafficking offences to include all forms of trafficking and bring it in full compliance with the Protocol.
- Create a focal agency within the Attorney-General's Department dedicated to anti-trafficking work headed, at an appropriately senior level, by a coordinator or national rapporteur. This Office should be responsible for monitoring compliance with the federal anti-trafficking law and helping to support and coordinate state responses to trafficking with Federal objectives.
- Develop, with all stakeholders, a national plan of action that clearly identifies objectives, delineates responsibilities, and sets out clear indicators to measure progress and impact.
- Undertake more collaborative research work with independent research institutions and Civil Society Organisations to enhance credible data collection on the phenomenon of human trafficking. Evidence based responses are essential for the development of strong and effective policies and responses.

2. TRAINING AND CAPACITY

- Strengthen systems and procedures for identifying victims of trafficking including through the training of law enforcement agencies especially DIAC, AFP and State Police, and workplace compliance inspectors. Such training should seek to enhance their capacity to identify trafficked persons quickly and accurately and to make referrals to appropriate services. Furthermore, in accordance with a victim centered approach, alternative methods for identification of victims through civil society and other service providers should be established and used to assist this process.
- Provide training for criminal justice officials including prosecutors and judges through continuing legal education to raise awareness about trafficking in persons, ensure effective prosecution and punishment of criminals, and protect the rights of victims.
- Establish a specialist law enforcement response to trafficking at the State and Territory level, modeled on the specialist unit operating within the AFP.

3. MIGRATION/VISAS

- Consider extending the 'reflection and recovery period' for victims of trafficking to at least 90 days and ensure that assistance in realizing their full recovery is provided to all victims on a non-conditional basis, duly taking into account individual circumstances and needs.
- Improve support services to temporary visa holders and reduce the length of time for processing of permanent residence visas for trafficked persons.

- Strengthen and increase options for safe and legal migration, acknowledging that the current approach to migration management may exacerbate the activities of smugglers and traffickers as well as heighten anti-migrant sentiments and xenophobia within the community.
- Reconsider visa titles to avoid stigmatization and to ensure confidentiality and respect for the privacy and integrity of victims of trafficking

4. SUPPORT SERVICES FOR VICTIMS OF TRAFFICKING

- Improve support services to suspected victims of trafficking and de-link government support from participation in criminal justice processes.
- Increase funding assistance to service providers and civil society to enable the provision of alternative support services including hotlines, shelters, legal aid, translation assistance and counseling services to trafficked persons including those who do not immediately wish their matter to come before the authorities.
- Establish a comprehensive national compensation scheme for victims of trafficking at the Federal level. Target criminal wealth and confiscate assets and proceeds from trafficking-related crimes, ensuring that such funds are used to compensate victims as well as for victim support and assistance.

5. CHILDREN

- Provide specialist services for trafficked children that are based on and integrate the principle of the best interests of the child and that take into account special needs of children, including appropriate housing, education and care. Trafficked children should be given information on all matters affecting their interests, including their situation, legal options, entitlements and services available to them, and processes of family reunification or repatriation.
- Ensure that a guardian is appointed for child victims of trafficking to represent their interests and protect their rights. In order to maintain impartiality and transparency this role should not be played by DIAC.

6. PREVENTION

- Increase efforts to raise awareness about all forms of trafficking in persons among the general Australian population, in order to promote understanding of what constitutes trafficking. In particular, migrant communities should be targeted, with messages translated into their languages including about the rights of migrant workers and the facilities and services available to those who have been exploited.
- Prevention work should be constantly monitored and evaluated to ensure that it is effective and non-stigmatizing and not contributing to unhelpful stereotyping of victims and their communities.

7. INTERNATIONAL

- Ratify, without delay, the Convention on the human rights of Migrant Workers and their families and the 2011 ILO Convention Concerning Decent Work for Domestic Workers.
- Continue the strong and effective regional work undertaken by AusAID through the ARTIP project and increase AusAID support to South East Asia in this area.
- Increase Australia's leadership role in the region on this issue, through, for example, providing funding assistance that will aid less developed economies in the region to tackle the root causes of human trafficking and people smuggling.

- Consider appointing an Ambassador on Trafficking in Persons to consolidate Australia's leadership position on this issue and to complement the work of the Ambassador on people smuggling within the Pacific, South East Asia and internationally.

I take this opportunity to once more thank the Australian Government for the opportunity of this visit and for the willingness and openness shown by all stakeholders to contribute to its success. The task of addressing the evil of human trafficking is a global responsibility and one that challenges us all. We must work together if we are to succeed. I am confident that Australia is on the right track and that it has the future potential to provide a model for other countries within and outside this region.

A full report of this mission will be submitted to the United Nations Human Rights Council in June 2012.

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ENDS

Joy Ngozi Ezeilo assumed her functions as Special Rapporteur on trafficking in persons, especially in women and children on 1 August 2008. Ms. Ezeilo is a human rights lawyer and professor at the University of Nigeria. She has also served in various governmental capacities, including as Honourable Commissioner for Ministry of Women Affairs & Social Development in Enugu State and as a Delegate to the National Political Reform Conference. She has consulted for various international organizations and is also involved in several NGOs, particularly working on women's rights. She has published extensively on a variety of topics, including human rights, women's rights, and Sharia law. Ms. Ezeilo was conferred with a national honour (Officer of the Order of Nigeria) in 2006 for her work as a human right defender.

Learn more about the mandate and activities of the Special Rapporteur on trafficking in persons, especially women and children: <http://www2.ohchr.org/english/issues/trafficking/index.htm>

For more information and media requests, please contact Ms. Jacqui Zalberg (jjzalberg@ohchr.org), Ms. Junko Tadaki (Tel: +41 22 917 9298 / email: jtadaki@ohchr.org) or write to srtrafficking@ohchr.org.

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