



**Block 261 Waterloo Street  
Waterloo Centre #04-36  
Singapore 180261  
Tel: +65 6337 1171**

# Position Paper on the Prevention of Human Trafficking Bill

**Humanitarian Organization for  
Migration Economics**

18 April 2014

## Introduction

### About HOME

Humanitarian Organization for Migration Economics (HOME)<sup>1</sup> was established in 2004 to respond to the needs of the migrant community in Singapore. Since then, HOME has provided direct assistance to thousands of migrant workers and victims of human trafficking and forced labour.

HOME commends Mr Christopher De Souza MP and the Inter-Agency Taskforce on Trafficking in Persons (“the Taskforce”) on the proposed introduction of dedicated anti-human trafficking legislation (“the Bill”). HOME is hopeful that the Bill is a positive step towards Singapore’s ratification of the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (“the Protocol”).<sup>2</sup>

### This submission

We appreciate this opportunity to provide our feedback on what we consider to be particularly important aspects of the Bill. Our submission highlights the key points that we feel must be addressed for the Bill to serve its purpose of preventing trafficking in persons.

This submission sets out:

- HOME’s key recommendations with respect to the content of the Bill (at page 3);
- More detail about our recommendations regarding the definition of trafficking (at page 5);
- More detail about our recommendations regarding a victim-centered approach (at page 11); and
- More detail about our recommendations regarding the scope of liability under the Bill (at page 21).

The case studies provided in this submission are accounts of cases that HOME handled in the past 12 months.

### HOME welcomes partnership

HOME recognises that for the Bill to be effective, actions beyond the legal framework will be required. No single agency or organization alone can prevent trafficking in persons. With this in mind, HOME looks forward to continued partnership with the Government, our civil society colleagues, regional partners and the Singapore public in the fight against human trafficking.

If you wish to discuss this feedback, please contact:

Jolovan Wham  
Executive Director

E: [jolovan.home@gmail.com](mailto:jolovan.home@gmail.com)  
P: (65) 6337 1171

Céline Dermine  
Legal Consultant

E: [celine.dermine.home@gmail.com](mailto:celine.dermine.home@gmail.com)  
P: (65) 6337 1171

---

<sup>1</sup> [www.home.org.sg](http://www.home.org.sg)

<sup>2</sup> We note that during the Universal Periodic Review process that took place in 2011, Singapore accepted recommendations related to accession to this Protocol. These recommendations were N. 22 by Belarus, N. 23 by the Philippines, and N. 94 by Moldova.

## Key recommendations

### 1. Adopt a definition of trafficking in persons that is broad and flexible enough to protect those that the Bill seeks to protect.

In particular:

- a. Ensure that the concept of “deception” includes deception about the conditions of work, not just the nature of work;
- a. Define the terms “coercion” and abuse of “a position of vulnerability” following the United Nations Office on Drugs and Crime (UNODC) Model Law definitions;
- b. Ensure the definition of “exploitation” follows that used in the Protocol and clearly define the forms of exploitation it entails. In particular:
  - “forced labour or services” should be defined in order to criminalize all involuntary work or services extracted by the use of threats or penalties;
  - include “practices similar to slavery” and define these practices to include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents; and
  - include “servitude”; and
- c. Ensure that the legislation also applies when the exploitative purpose has not yet materialized.

### 2. Ensure that a victim-centered approach to detection, investigation, and prosecution underpins the Bill.

In particular:

- a. Legislate for the production of a transparent system of victim identification, support and protection measures;
- b. Ensure that the system of victim support and protection entitles victims of trafficking to:
  - Protection measures, including:
    - the right to be treated as victim during the identification process,
    - immediate authorization of temporary residency upon reporting to the authorities,
    - not be prosecuted for legal infractions committed while trafficked,
    - give informed consent to participation in investigations,
    - protection and privacy, and
    - legal assistance at no cost; and
  - Support measures, including:
    - the right to decent work opportunity,
    - compensation,

- a recovery period after reporting,
- access to physical and psycho-social recovery services/facilities, and
- return to country of origin; and
- Special support for victims who are minors.

**3. Ensure that the legislation criminalizes attempted trafficking, being an accomplice to trafficking or organizing others to commit trafficking.**

**4. Ensure that the Bill extends liability for human trafficking across the supply chain, and consider introducing supply chain transparency obligations for large companies doing business in Singapore.**

## Recommendation 1: Adopt a definition of trafficking in persons that is broad and flexible enough to protect those that the Bill seeks to protect

### The draft definition

HOME supports the draft definition of “trafficking in persons” included in Mr De Souza’s press release of 11 November 2013. We note that this definition follows that set out in the Protocol and constitutes three elements:

- i. an “**act**”, being recruitment, transportation, transfer, harbouring or receipt of persons;
- ii. a “**means**” by which that action is achieved, being threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person; and
- iii. a “**purpose**” of the intended action/means, being exploitation.

However, adoption of the words of the Protocol definition alone is not sufficient to ensure that the Bill can operate to protect every victim that it seeks to protect. HOME submits that the Bill must contain further definitions to clarify their meanings, in particular the terms “deception”, “coercion”, “abuse of power or a position of vulnerability” and “exploitation”. In addition, the Bill must criminalize the intent to exploit, to ensure that law enforcers do not have to wait for a victim to be exploited before a crime has occurred.

The ILO has operationalised the following indicators of trafficking and their proposed definitions (See Annexure 2 for details) should be included in the Bill in identifying and assessing whether a person has been trafficked or not.

- a) Deceptive recruitment
- b) Coercive recruitment
- c) Recruitment by abuse of vulnerability
- d) Exploitation
- e) Coercion at destination
- f) Abuse of vulnerability at destination

### Recommendation 1.a: The concept of “deception” must include deception about the conditions of work, not just the nature of work

In HOME’s view, the Bill should explicitly define “deception” to refer to the *nature* of the work or services that the trafficked person will engage in as well as to the *conditions* under which the person will be forced to perform this work or services.

#### Case study: deception about the nature of work

G, from China, wanted a job in manufacturing. G was approached by a recruiter, who told her that jobs in Singapore’s service industry were easier to get. The recruiter arranged a job for her as a waitress in a KTV lounge. G thought she would be serving drinks and food. When G arrived in Singapore, the employer told her that she was required to sing, dance and entertain clients. This soon also meant providing sexual services, as the employer forced G to earn a minimum amount every month and imposed a ‘fine’ if G did not earn that amount. Eventually, G escaped. She did not make any money for herself.

### Case study: deception about conditions of work

J, a Filipina, knew that she would be working as a domestic worker and was promised salary of \$450 per month, but once she arrived in Singapore was forced to work extremely long hours for no pay, was deprived of her travel and identity documents, was locked in her employer's house and was threatened with reprisals if she tried to escape.

A definition that encompasses deception about both the nature and conditions of work more accurately reflects the reality of employment relationships. Very often, employees are induced into entering into a contract, not simply because of the nature of the work, but also in consideration of the financial remuneration and positive work conditions promised. Indeed, Singapore courts have concluded that deception about wages can constitute (financial) exploitation.<sup>3</sup>

Accordingly, HOME recommends adoption of the UNODC Model Law expanded definition of "deception". That is:

"Deception" shall mean any deception by words or by conduct as to:

- (i) The nature of work or services to be provided;
- (ii) The conditions of work;
- (iii) The extent to which the person will be free to leave his or her place of residence; or
- (iv) Other circumstances involving exploitation of the person.

This definition should apply to both labour and sex trafficking.

### Recommendation 1.b: Define "coercion" and abuse of "a position of vulnerability" following UNODC Model Law definition

#### Coercion

HOME considers it important that the definition of "coercion" in the Bill adequately reflects the range of pressures that may coerce a person into a situation of exploitation. Accordingly, HOME recommends adoption of the UNODC Model Law definition of "coercion", which states:

"Coercion" shall mean use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to:

- (i) Threats of harm or physical restraint of any person;
- (ii) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
- (iii) Abuse or any threat linked to the legal status of a person; and
- (iv) Psychological pressure.

<sup>3</sup> *PP v. Isetty Lakshmi* [2013] SGDC 279 involved seven female Indian sex workers who were recruited for the purpose of sex work in Singapore. They were not deceived about the nature of the job. The workers were informed that their air-tickets, accommodation and food whilst in Singapore would be provided for, and were promised payment of between 20,000-30,000 Indian rupees (about SGD\$400-600) each after they had worked for one month. However, upon arrival, they were instructed to give all their earnings to the accused, and did not receive the financial remuneration promised. The district judge said (at [11]): "Notwithstanding the absence of coercion on the prostitutes, I accept that there was still some degree of exploitation in that the syndicate, including the accused, had preyed on the economic and financial vulnerabilities of these girls to entice them into this illegal trade with the lure of making easy money."

## Abuse of a position of vulnerability

In practice, the definition of “abuse of a position of vulnerability” has been problematic.<sup>4</sup> Accordingly, HOME recommends the inclusion of a clear definition in the Bill.

Certain vulnerabilities are commonly present in trafficking situations. These vulnerabilities are inherent environmental, or contextual factors that increase the susceptibility of an individual or group to being trafficked, and include human rights violations such as poverty, inequality, discrimination, and gender-based violence.<sup>5</sup> These factors are important to take into account in the Bill because they limit individual choice and make it easier for traffickers and exploiters to act.<sup>6</sup> Vulnerabilities may impact groups differently and disproportionately; for instance, there is general consensus that women, children, minority groups, migrants, refugees, and the internally displaced are at greater risk.<sup>7</sup>

HOME recommends adopting the definitions set out in the UNODC Model Law, taking into account the victim’s state of mind and the offender’s intention to take advantage of the situation of the victim:

“Abuse of a position of vulnerability” shall refer to any situation in which the person involved believes he or she has no real and acceptable alternative but to submit, and shall include taking advantage of the vulnerable position the person is placed in as a result of:

- (i) Insecurity or illegality of immigration or employment status; or
- (ii) Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance; or
- (iii) Reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical or mental disability; or
- (iv) Promises or giving sums of money or other advantages to those having authority over a person; or
- (v) Being in a precarious situation from the standpoint of social survival.

In addition, HOME recommends that the presence of such factors giving rise to vulnerability adopted as aggravating considerations in penalties.<sup>8</sup>

## Recommendation 1.c: All forms of exploitation mentioned in the Protocol must be criminalized and clearly defined

The Protocol definition of trafficking in person states that “exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. The draft definition of “exploitation” included in Mr De Souza’s press release of 11 November 2013 states that “‘exploitation’ means sexual exploitation, compulsory labour, slavery or organ trafficking”.

<sup>4</sup> UNODC Model Law article 5 “abuse of power or a position of vulnerability” commentary.

<sup>5</sup> See, for example, United Nations Global Plan of Action to Combat Trafficking in Persons, UN Doc. A/RES/64/293 (Aug 12, 2010).

<sup>6</sup> United Nations Office on Drugs and Crime, *Issue Paper: Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons*, (April, 2013), at 13, available at [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf).

<sup>7</sup> United Nations Office on Drugs and Crime, *Issue Paper: Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons*, (April, 2013), at 14, available at [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf).

<sup>8</sup> See for example *European Union Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims*, Recital ¶12.

This draft definition is much narrower than that in the Protocol. It limits exploitation to the forms listed, while the Palermo definition refers to exploitation as including, rather than being restricted to, the forms listed. In addition, the draft Bill definition uses the term “compulsory labour” rather than “forced labour or services”.

The draft Bill definition also omits the forms of “practices similar to slavery” and “servitude”.

In order to enable prosecutors to adequately enforce the law and protect humans from trafficking, HOME recommends adopting an inclusive, rather than a restrictive, definition of “exploitation” that is broad enough to cover all forms of exploitation that occur in Singapore, and to clearly define those forms of exploitation. In particular:

### Forced labour or services

HOME recommends the use of the term “forced labour or services”, rather than “compulsory labour”. The term “forced labour or services” is used in the Protocol definition of trafficking. The ILO C029 Forced Labour Convention, which Singapore has ratified, also uses the term. Accordingly, it is appropriate to adopt the internationally accepted term in the Bill.

HOME recommends that, consistent with the UNODC Model Law, “forced labour or services” should be defined to mean “all work or service that is exacted from any person under the threat of any penalty and for which the person concerned has not offered him or herself voluntarily”.

HOME recommends that the definition of “forced labour and services” in the Bill should specify that it includes, but is not limited to, the five major elements that the International Labour Organization has identified as pointing to a forced labour situation:

- restriction of movement and/or confinement to the workplace or to a limited area;
- physical or sexual violence or the threat of such violence (this may also include emotional torture like blackmail, condemnation, using abusive language and so on);
- debt bondage or bonded labour; withholding of wages or refusal of payment;
- retention of passport and identity papers so that the worker cannot leave or prove his or her identity and status; or
- threat of denunciation to the authorities.<sup>9</sup>

In HOME’s view, the Bill needs to take into account that labour can be forced by factors other than physical restraints. HOME has seen all of the above means used to exploit foreign workers in Singapore. The threat of a penalty can take many forms and we submit that the Bill should encompass the most serious of these.

There is a need for the Bill to be expressly applied to such situations, because existing protections for workers under the *Employment Act* and *Employment of Foreign Manpower Act* frameworks are insufficient. Based on our experience assisting thousands of exploited migrant workers in Singapore, HOME strongly believes that Singapore’s existing regulatory framework encourages trafficking and forced labour in some situations. In particular:

- Foreign workers’ residency is tied to a specified employer, who is entitled to repatriate the workers at will. Workers in the construction and domestic work sector are not allowed to change employers without the consent of their specified employer. Workers in all other sectors are not allowed to change employers at all. This system makes it difficult for workers to report abuses by their employer or to escape exploitation without losing their job and risking being required to leave Singapore;

---

<sup>9</sup> International Labour Organization (2005) *Human trafficking and forced labour exploitation — guidance for legislation and law enforcement*.

- The \$5000 security bond for foreign workers makes employers responsible for their workers' conduct and repatriation, possibly leading to unreasonably controlling behaviour, including forced and wrongful confinement;
- Laws prohibiting retention of passports and identity documents<sup>10</sup> are poorly enforced, which may effectively render foreign workers captive to the employers who hold their documents;
- Foreign workers have no wage protection, which can lead to exploitative patterns of salary deductions, gross underpayment and forced labour;
- Limited enforcement of rules regarding excessive working hours, days off and periods of rest enables employers to work foreign workers unreasonably hard; and
- Exclusion of domestic workers from the *Employment Act* and the live-in situation exposes the most vulnerable to slavery-like working conditions.

The Bill presents an opportunity to address existing gaps in the employment law framework in circumstances when they result in exploitation. In order to adequately protect workers from forced labour in Singapore, it is crucial that the Bill operates to criminalize all involuntary work or services extracted by the use of threats or penalties.

HOME submits that the Bill should also take into account that the seemingly "voluntary offer" of a worker/victim may have been manipulated or was not based on an informed decision. Also, the initial recruitment can be voluntary and the coercive mechanisms to keep a person in an exploitative situation may come into play later.

### Practices similar to slavery

HOME recommends that the definition of "exploitation" include "practices similar to slavery", which should be defined to include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents.

#### *Debt bondage*

HOME recommends ensuring that the Bill applies to situations of debt bondage. Debt bondage may be defined as the status or condition arising from a pledge by a debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or if the length of those services is not limited or defined.<sup>11</sup>

#### *Forced marriage*

HOME has encountered situations of servile marriage in Singapore. Marriage should not preclude a situation from being one of human trafficking. Exploitation for the purposes of forced marriage is still exploitation, and should be covered by the definition.

HOME has received anecdotal accounts that a number of forced marriage brokers shifted their operations from Taiwan to Singapore following tightening of laws that restricted their activities in Taiwan. HOME submits

<sup>10</sup> Section 47(5) of the *Passports Act 2008* makes it an offence for a person in Singapore to knowingly retain another person's foreign travel document without a reasonable excuse. In addition, the *Employment of Foreign Manpower (Work Passes) Regulations* prohibit employers from retaining employees' original work permits and visit passes (sch 4 part II para 16, sch 4 part III para 7).

<sup>11</sup> UNODC Model Law. We note that Taiwan's Human Trafficking Prevention Act expressly states that if there is improper debt bondage, the 'means' element of trafficking is satisfied. Improper debt bondage refers to the "use of unclear contracts or unreasonable payments of a debt to place people under bondage, subjecting them to sexual transactions, labour exploitation, or organ harvesting in order to fulfill or guarantee the payment of their debts."

that the Bill should address this issue, to ensure that Singapore is not implicated as a transit or destination country for servile marriages.<sup>12</sup>

The UNODC Model Law contains model definitions for “forced or servile marriages”.

### Servitude

HOME recommends that “servitude” should be included in the definition of “exploitation in the Bill. Under the UNODC Model Law, “servitude” refers to the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change.

HOME submits that it is important that the definition of “exploitation” in the Bill is broad enough to take into account forms of exploitation such as servitude. If the definition is too narrow, it may fetter the enforceability of the Bill.

### **Recommendation 1.d: The legislation must apply even when the exploitative purpose has not yet materialized.**

It is crucial for the utility of the Bill that it is clear that the definition of trafficking is also met when the exploitative purpose has not yet materialized. The crime of trafficking can be committed prior to exploitation; it is the intention to exploit, along with the other elements of the offence, that constitute trafficking. Law enforcers should not have to wait for a victim to be exploited before the “purpose” element of the offence is made out.

#### **Case study: intended exploitation**

T is a single 27 year old Vietnamese woman. In Vietnam, T was promised a job as a waitress in Singapore with a salary of SGD1000 by a Vietnamese friend named P. As P was her classmate, T trusted P and accepted the offer. Her friend arranged for her transportation to Singapore.

T arrived in Singapore on a social visit pass. At the airport, P was waiting for T and gave her SGD500. She then brought her to a house.

There, T met a pimp who told her she would have to provide sexual services to client. The pimp told T that she would have to repay SGD 3000 for the transportation fees. She searched her belongings and took the SGD500 given by her friend. T was asked to wear sexy clothes and put on makeup. She complained but the pimp used violence and told her she had to do this job.

The pimp brought her to a bar. There were customers and other Vietnamese ladies inside the bar. A few hours later, she managed to escape the bar. T lived for a few days in the streets and finally met a Chinese man who brought her to HOME.

### **HOME supports the proposed provisions regarding minors and consent**

HOME understands that the Bill will provide that when the victim is under the age of 18, proof that any of the listed “means” were used to achieve the “act” will not be required. HOME supports this aspect of the Bill, but recommends that, in line with the international standard, the drafters ensure that this aspect of the Bill applies to all persons under the age of 18.

<sup>12</sup> See for example “Commercial Marriage Trafficking: Uncovering A New Form of Transnational Human Trafficking”, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2122859](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2122859) .

The United Nations Convention on the Rights of the Child (CRC) defines “child” as “a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”.<sup>13</sup> However, under the Singapore *Children and Young Persons Act*, a “child” is “a person who is below the age of 14 years, and a “young person” is a person who is 14 years of age or above and below the age of 16 years”.<sup>14</sup> These definitions do not align with the CRC, which Singapore has ratified. As such, HOME recommends explicitly applying the Bill to all persons under the age of 18 years old.

HOME also understands that under the Bill, when the use of one or more of the “means” has been established, the consent of the victim to the “act” will not be required. HOME supports this aspect of the Bill.

---

<sup>13</sup> Convention on the Rights of the Child, article 1.

<sup>14</sup> Children and Young Persons Act (Chapter 38), Section 2.

## **Recommendation 2: Ensure that a victim-centered approach to detection, investigation, and prosecution underlies the framework created by the Bill**

### **Why victim-centered?**

The introduction of a legally mandated victim-centered approach to investigation and prosecution of trafficking offences in Singapore was a key recommendation in the United States Department of State's 2013 Trafficking in Persons Report ("2013 TIP Report"). HOME strongly supports this recommendation, and sees a victim-centered approach as central to the success of the Bill in preventing human trafficking.

As highlighted in the 2013 TIP Report, Singapore places an undue burden on victims of trafficking:

"The government did not provide incentives such as legal aid for the pursuit of civil suits or specialized protection services to foreign victims to participate voluntarily in investigations and prosecutions of trafficking offenses. Victims considered key witnesses were requested by the government to remain in Singapore and participate in court proceedings. Lengthy investigations and prosecutions—often six to 12 months— posed a disincentive for victims to participate... particularly when the victim was not granted permits to work."

The Bill presents an opportunity to alleviate this burden.

### **The importance of the victim-centered approach**

HOME understands that, while Mr De Souza and the Taskforce recognise the importance of victims rights, some reservations are held about enshrining these protections in the Bill.

HOME considers it crucial to the success of the Bill that a framework of victim protections is legislated. Legislation is necessary to ensure that the system of victim protection and entitlement is transparent, accessible and consistently and effectively implemented. A legislated framework will assist those working with victims of trafficking to give accurate and consistent advice. The alternative approach of developing "guidelines" and assessing victim entitlements on a case-by-case basis leads to inconsistency, a lack of transparency, potential discrimination and a situation in which victims are required to prove that they are "deserving" of certain protections.

The burden of proving that trafficking has occurred should not fall on the shoulders of a victim. Concerns that legislated protections and entitlements for victims of trafficking may be exploited can be addressed by the introduction of a robust victim-identification process (see page 13 for further discussion of this point).

In HOME's view, legally mandating a victim-centered approach is important for four key reasons:

#### **1. Ensure detection and prosecution of trafficking offences and other crimes**

Without guaranteeing safety, protection and a livelihood to suspected victims of trafficking, victims will have little incentive to cooperate with relevant authorities to report and prosecute traffickers. Prosecution of traffickers is essential to the success of the Bill in preventing trafficking.

Victims are the most important people in identifying human traffickers, their customers, and the larger criminal networks that operate behind them. These criminal actors depend upon weak or under-enforced victim protections to conduct their business. This is why very few mid- to high-level actors in trafficking rings are ever apprehended, and why human trafficking remains a low risk, high reward activity. Additionally, international criminal organizations are often involved in not only human trafficking, but also other crimes, such as drugs and weapons smuggling. Implementing a victim-centered approach to human trafficking increases the chances of

identifying higher-level actors and severing an income stream that can fuel additional trafficking and other crimes that threaten the security of Singapore.

In our experience, HOME has found that potential victims of trafficking are hesitant to report their cases because they see little benefit from doing so. While reporting is crucial for the Bill to have the punitive and deterrent impact that is intended, victims gain little from the process.

HOME has in the past liaised with members of the Taskforce regarding work prospects for individual potential victims of trafficking, but this system is far from ideal. Without legislatively mandated victim-support mechanisms, we are not able to give accurate and consistent advice to victims. In addition, there is the potential for discrimination against some victims due to the operation of administrative processes such as the Temporary Jobs Scheme (see further below) and for certain victims (and thus traffickers) to 'fall through the net' of ad-hoc, discretionary administrative processes.

#### **Case study: no livelihood, no justice**

Here, we re-visit the case of T, the woman from Vietnam who thought she was getting a job as a waitress but, when she arrived in Singapore, was forced to start work as a sex worker (see page 10 above).

After T escaped from the pimp, T's friend brought her to HOME, where she expressed her wish to go home. HOME explained the Taskforce's referral process but T remained unwilling to report her case. There was little that HOME could offer her, as we could not guarantee that T would be able to work during the course of investigations, as Vietnam is not an approved source country so T would not have been eligible for the Temporary Jobs Scheme.

T decided not to report her case, as she would not have been authorized to earn money during the investigation of her case. She returned home.

## **2. Align Singapore's laws with those of its neighbours**

A legislated victims' rights framework aligns with law of countries in the region, including that of Taiwan, Malaysia, Philippines, Vietnam and Australia. HOME has undertaken a comparison of victims' rights frameworks across Taiwan, Malaysia, Philippines, Vietnam and Australia, as well as the USA. This comparison is at **Annexure 1**.

The inclusion of victims' rights in the anti-trafficking legal framework is a widely-adopted international practice. Implementing victims' rights creates a common platform for cooperation among countries to address human trafficking issues. The adoption of a clear framework to protect victims of trafficking in Singapore contributes towards stronger relations with our neighbours who are the main source countries of victims trafficked through and to Singapore. Such a framework demonstrates commitment to effectively tackling the issue of human trafficking and adequately protecting those that it affects.

## **3. Comply with, and ensure ratification of, the Palermo Protocol**

Articles 6 to 8 of the Protocol mandate States Parties to assist and protect victims of human trafficking. As Singapore moves towards ratification of the Protocol, it is imperative that mechanisms to ensure compliance with these aspects of the Protocol are established.

#### 4. Protect those whose human rights are violated in Singapore

As a transit and destination country for human trafficking, Singapore has a duty to protect the dignity and human rights of victims. As victims of human rights violation in Singapore, victims should have a right to protection, assistance and redress irrespective of their interest in the criminal justice process.

A victim-centered and human rights-based approach under the Bill will help to ensure that victims have the chance to recover from their ordeal and be reintegrated into their home countries<sup>15</sup>.

#### **Victim identification process: crucial to the success of the victim-centered approach**

HOME rejects the notion that a strong victim support framework will induce or allow individuals who are not victims of trafficking to exploit the system. HOME submits that such concerns can be adequately addressed by a robust and transparent victim identification process.

HOME explicitly rejects Mr De Souza's contention in a consultation held with members of the public on 15 April 2014 that a trafficker must be found "guilty" for their victim to be a "true" victim and thus entitled to protection. The criminal justice system operates to ensure due process, and sometimes offenders of crimes are not found guilty. In addition, criminal investigations are at times unsuccessful in locating offenders. However, this does not mean that their victims do not exist.

Rather than relying on the criminal justice system to identify victims, HOME recommends the adoption of a victim-centered verification process. Front-line officers will make an initial determination that there are "reasonable grounds" for suspecting that a particular individual is a victim of trafficking. A suspected victim's immediate needs must be addressed at this point, for example by the provision of shelter and counseling. Following this, a process of further investigation should be implemented to determine within a specified timeframe (HOME recommends 30 days) that "on the balance of probabilities" the person is a victim of trafficking. Entitlements such as a right to work and to legal aid would then follow this conclusive determination.

Early identification of victims is crucial to promptly and properly protect victims of trafficking. It also enables police and prosecution authorities to better investigate and punish traffickers. However, it is important that victim identification focuses on the victim, not the trafficker. HOME submits that an individual's identification as a victim should not depend on a successful prosecution of their trafficker, and should be independent from the victim's willingness to be part of the criminal justice process.

Victim identification processes have been successfully utilized to ensure that victim support and protection services are provided to victims of trafficking in a number of other jurisdictions.<sup>16</sup> Extensive guidance exists on this topic.<sup>17</sup>

---

<sup>15</sup> See for example, "Prevent. Combat. Protect. Joint UN Commentary on the EU Directive – A Human Rights-Based Approach", <http://www.refworld.org/pdfid/4edcbf932.pdf>

<sup>16</sup> See, for example, <http://www.ecpat.org.uk/content/national-referral-mechanism> on the two-stage "reasonable grounds" and "conclusive decision" system used in the United Kingdom.

In Vietnam, the Decree 62 addresses the issue of victim identification. With Decree 62, identification of the victim is based on several factors, which include documents and evidence by the agency conducting the proceedings; information and documents issued by the rescued victims; information and documents provided by the Vietnamese representative offices abroad; documents issued by the foreign counterpart; the testimony provided by the victim; and the testimony provided by witnesses. If the factors mentioned above are not enough to determine whether the individual is a victim, other determinants are provided to help with the identification process. These factors include, if the victim was rescued with other victims; the amount of time that the victims were absent from home; signs of sexual exploitation, forced labour, mistreatment, injury, fear, panic, or depression; and other relevant information that can contribute to the identification ([http://www.no-trafficking.org/vietnam\\_action.html](http://www.no-trafficking.org/vietnam_action.html)).

In Australia under the Assessment stream, the Support Program gives victims access to the following support as needed: secure accommodation; a living allowance; an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counseling; access to

## Key aspects of the legally mandated victim-centered approach

HOME recommends that, at a minimum, the victim-centered approach entail:

- Protection measures, including the right to:
  - be treated as victim during the identification process,
  - immediate authorization of temporary residency upon reporting to the authorities;
  - not be prosecuted for legal infractions committed while trafficked;
  - give informed consent to participation in investigations;
  - protection and privacy;
  - legal aid at no cost;
- Support measures, including the right to:
  - decent work opportunity;
  - compensation;
  - a recovery period after reporting;
  - access to physical and psycho-social recovery services/facilities;
  - return to country of origin;
- Special support for under age victims.

These measures will now be addressed in more detail.

- **Decent work opportunity**

HOME considers it crucial to the success of the Bill that all victims of trafficking (regardless of their country of origin) be entitled to decent work opportunity while they stay in Singapore awaiting investigation or prosecution of the offenders.<sup>18</sup> Victims of trafficking should not bear the burden of the crime that affected them.

---

interpreters; and access to legal services. The Justice Support Stream provides victims with assistance, during the investigation and prosecution phase, regarding employment and training.

<sup>17</sup> See, for example, UNODC, *Online Toolkit to Combat Trafficking in Persons* chapter 6; European Commission, *Guidelines for the Identification of Victims of Trafficking in Human Beings*.

<sup>18</sup> For example, the Malaysian Government indicated in early March 2014 that victims of human trafficking will be issued temporary employment work passes. See <http://www.nst.com.my/business/bizbrief/human-trafficking-victims-can-have-jobs-1.498472?cache=03%2F7.30106%3Fkey%3DMalaysia%3Fkey%3DMalaysia%2F7.313650%3Fkey%3DKuala+Lumpur%2F7.448418%2F7.490557%2F7.490557%2F7.490557%2F7.576460%2F7.576460>.

Australia's Support Program offers assistance to obtain employment and training for victims holding a *Justice Support Stream* visa, until the investigation and prosecution of a people trafficking matter is finalised

In USA, a T-visa gives status to victims of "severe forms of human trafficking" on the condition that they help law enforcement officials investigate and prosecute crimes related to human trafficking. If a T-visa is granted, an employment authorization document is also granted automatically, which means that the victim can legally work during his/her stay in the United States. There is no need to apply for separate employment authorization. T-visa status may also be available for immediate family members of a T-visa applicant. Immediate family members include spouses, children, and parents of applicants under 18.

### *The failure of Singapore's current system*

Investigation processes in Singapore are typically lengthy, often lasting years. The Singapore Government requires victims who are key witnesses to remain in the country. Victims passports are held by Police and victims are expected to stay in Singapore with no financial support, no ability to support their families in their home countries and no livelihood. In HOME's experience, only some victims are eligible to receive special passes to allow them to stay in Singapore for a temporary period to work.

Under the Temporary Jobs Scheme (TJS), victims from "approved source countries" may be granted the authorization to work temporarily in Singapore. However, many victims of trafficking are from countries that are not approved source countries, such as Vietnam. Such victims are discriminated against, as the TJS does not apply to them.

In addition, the TJS does not generally allow victims to work in a sector other than that they were working in as a trafficking victim. For example, a trafficked and abused domestic worker would only have the option of working as a domestic worker. In HOME's experience, the prospect of entering a different employer's home to continue working as a domestic worker is traumatic for domestic worker victims. They must be provided a viable opportunity to earn a living in a sector that will not cause them undue additional trauma.

### *The importance of offering decent work opportunity to victims*

In Singapore, victims of trafficking who report their cases may be caught in a situation where they need money to support their family back home as well as sustain themselves during their stay assisting investigations, but are not allowed to work.

This system is unacceptable and renders the Bill unviable. It places the burden of the crime on the victims themselves. It unfairly discriminates against victims from countries that are not "approved source countries". It also undermines the effectiveness of any anti-trafficking laws, as victims are hesitant to report their cases as an investigation will effectively trap them in Singapore with no livelihood.

### **Case study: hesitant to report**

Three Vietnamese women were promised jobs as waitresses in Singapore on a cruise ship. In Vietnam, they signed both English and Vietnamese contracts. Their families borrowed from a bank to pay for each USD 2000 recruitment fees.

When they arrived, the women were charged additional costs that they had not been told about in Vietnam, effectively incurring a debt to their employers. In addition, the conditions of their work were different to those they agreed to – there was a discrepancy between the English and Vietnamese versions of the contract. The women did not speak English.

When the women complained about their work conditions, they were threatened with repatriation and told that they would have to pay compensation to the employer in order to leave.

The women left the cruise ship and came to HOME. However, they were not willing to report their case if they had to remain for investigations without the right to work. As they did not come from an approved source country for work permit holders and would not be eligible under the Temporary Job Scheme, HOME was advised that they could not be assured of a right to work.

The victims decided not to report their cases and traveled back to Vietnam.



### *Addressing concerns of exploitation*

Concerns that giving victims a right to work may lead to exploitation of the trafficking framework can be addressed by introducing a clear and transparent victim identification process. Alternatively, victims could be financially supported during their stay in Singapore and entitled to compensation. Compensation for lost earnings, as well as for damage suffered, is an important way of both vindicating victims, making the process of going through the criminal trial worth it and addressing victims' financial needs.<sup>19</sup>

Either way, what is clear is that the Bill will fail to facilitate reporting of trafficking offences and protect victims of trafficking if it does not establish a system in which all victims of trafficking can be financially supported, or entitled to support themselves.

### *Financial assistance*

If a right to work is not an option in a particular case, HOME considers it important that victims are given financial assistance from the Government that is at least equivalent to the sum that the victim could earn from work in Singapore. If a victim is required by authorities to remain in Singapore during the course of investigations and prosecution, they have a right to a livelihood while they are here.

- **Treatment as a victim**

HOME submits that the Bill should provide a presumption that an individual is a victim of trafficking as soon as they are identified by NGOs or authorities as potentially being a victim of trafficking, or identify themselves to authorities as victims of severe exploitation that could be related to trafficking. During the identification process, the presumed trafficked person must be treated as a victim and have access to immediate assistance and support, regardless of whether she or he is able or willing to testify.<sup>20</sup>

In Singapore, "authorities [are] not well trained to identify non-physical forms of coercion, which are not defined in Singaporean law, and authorities may have failed to recognize the elements of labor trafficking among workers who reportedly migrated to Singapore willingly".<sup>21</sup> There are many barriers for victims to come forward such as fear for reprisals against them or their children or families, fear for deportation, or the situation of dependency in which they find themselves. Being treated with suspicion or dismissed by authorities should not be one of these.

HOME is also concerned about the practice of "raids" on sex-workers in Singapore, which has resulted in victims of trafficking being treated as criminals, without respect for their dignity. The criminalization of sex work in Singapore alienates victims from authorities, and jeopardizes the safety and rescue prospects of trafficking victims.

HOME recognizes that identification of victims of trafficking is inherently difficult and time is needed to establish the facts of the case. Accordingly, HOME recommends that all persons claiming to be victims of severe exploitation which might be related to trafficking be given the benefit of the doubt until their status is established.

---

<sup>19</sup> Anti-Slavery International (2002) *Human Traffic, Human Rights: Redefining victim protection*.

<sup>20</sup> In Australia, potential victims are eligible for the Support Program, irrespective of whether they are willing or able to assist police.

<sup>21</sup> 2013 TIP Report.

- **Authorization of temporary residence**

HOME submits that providing residency permits to trafficked persons is of utmost importance to enable them to access their basic human rights, recover from their situation and secure prosecutions of traffickers.<sup>22</sup>

If a particular victim is not willing to return home after the conclusion of investigation and proceedings, HOME recommends that the victim should be entitled to support and assistance to facilitate them gaining employment and remaining in Singapore.

- **Immunity from prosecution**

HOME submits that it is crucial to ensuring that victims of trafficking come forward to report their cases that victims are not punished for offences they have been involved as a direct consequence of their situation as a victim of trafficking. Such offences may include immigration-related offences or those relating to possession of true and valid identity documents. A victim of trafficking must be considered a victim regardless of their immigration status or the legality of their presence in Singapore prior to identification.

- **Informed consent to participation in investigation**

HOME submits that victims of trafficking should not be forced to participate in investigations or act as prosecution witnesses. Victims of trafficking should be allowed to consent to participation in the process, and be entitled to hold their own identity documents during the process. The Singapore Police Force currently holds potential victims' documents during investigation and prosecution, trapping the victim in Singapore.

- **Protection and privacy**

HOME submits that all victims of trafficking should be entitled to witness protection which should, in severe cases, extend to cooperation with relevant authorities to provide protection to victims' families in their country of origin.

In addition, victims must be assured that their identity and privacy will be protected during investigation and proceedings. Victims should also be protected from having their details and photographs published by the media. As the 2013 TIP Report highlighted, media outlets in Singapore have in the past published the names and photos of victims of trafficking.

- **Legal aid**

HOME submits that victims of trafficking should be entitled to legal aid at no cost, in the form of access to legal information and legal representation. In Singapore, victims are not provided with legal aid for the pursuit of civil claims against their traffickers. They are also not provided with protection and advice in order to enable them to participate voluntarily in investigations and prosecutions.

Anti-Slavery International found that cases in which the victim's rights were protected, and there was a successful conviction, were predominantly cases where the trafficked person had legal representation.<sup>23</sup> Lawyers are crucial in ensuring that victims of trafficking are given accurate information about court proceedings and their role as a witness, and ensuring a trafficked person is recognised as a victim of crime. This is especially crucial in ensuring that victims have access to legal redress and compensation within established channels under Singapore law.

---

<sup>22</sup> For example, in Taiwan, following identification as a victim, the person, who would otherwise be deemed as an illegal immigrant, has a *right* to a temporary visitor permit valid for no more than 6 months. The temporary visitor permit *may* be extended based on the necessity of the investigation or trial (Articles 16, 28 Human Trafficking Prevention and Control Act).

<sup>23</sup> Anti-Slavery International (2002) *Human Traffic, Human Rights: Redefining victim protection*.

- **Compensation**

HOME believes that the victims of trafficking must have access to justice and obtain compensation for the harm they have suffered.

Victims of trafficking should be offered payment or reparation for injury, loss or harm. Such reparation helps to empower the victim, contributes to their recovery and reduces the risk of re-trafficking. At the same time it serves as punishment and deterrence of traffickers. Reparation should include restitution from the offender in the criminal court, aid from state administered victim compensation funds, and damage ordered to be paid in civil or administrative proceedings.

The Protocol obliges each State Party to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.<sup>24</sup> According to the UNODC Model Law,<sup>25</sup> compensation may include payment for or towards:

- Costs of medical, physical, psychological or psychiatric treatment;
- Costs of physical and occupational therapy or rehabilitation;
- Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- Lost income and due wages according to national law and regulations regarding wages;
- Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
- Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and
- Any other costs or losses incurred by the victim as a direct result of the crime committed against him or her.

- **Recovery period**

HOME recommends that victims should be provided with a right to a recovery period of no less than 30 days in cases where there are indications that trafficking has occurred. During this reflection delay, victims should be provided with shelter and counseling, providing them with an opportunity to reflect on their situation before deciding on their next course of action. The reflection period is important for a number of reasons: it allows the victim to start the recovery process, avoid possible reprisal from traffickers and escape their influence, to make an informed decision about his or her options such as whether to assist with criminal proceedings, to pursue compensation claims, and/or to participate in support programs.

- **Access to recovery services and facilities**

HOME submits that all victims of trafficking must be provided with Government-supported, specialist, voluntary, confidential, non-discriminatory and non-judgmental support.<sup>26</sup> This support must be adequate to assist victims in their physical and psycho-social recovery, especially in the first stage of the identification process. Support services and facilities should aim to facilitate victims' long-term social inclusion in their country of origin.

---

<sup>24</sup> Article 6.6

<sup>25</sup> UNODC, *Model Law on Trafficking in Persons*, Art. 28, para. 3.

<sup>26</sup> See, for example, the Australian Government funds the Support for Trafficked People Program, which is delivered by NGOs.

Regardless of whether services are provided by public agencies or civil society organisations, assistance must comply with basic principles derived from international human rights norms, in particular the respect for privacy, confidentiality, self-determination and freedom of movement.

- **Right to return home**

In order to ensure that victims are not re-victimised by the process of investigation and prosecution, HOME submits that victims should have a right to return to their country of origin where this is necessary for the victim's physical or psycho-social recovery. If necessary, measures can be put in place to facilitate the victim's continued participation in investigations and prosecution of traffickers, such as remote testimony delivered by video, or travelling back to Singapore for court proceedings.

In HOME's experience, the length of investigation and proceedings in Singapore has lasting detrimental effects on the health and wellbeing of trafficking victims. Police hold victims' identity documents, essentially trapping them in Singapore until lengthy court proceedings have concluded. Victims should not be forced to remain in Singapore and to bear the burden of the crime of which they are victims when this is undermining their health.

HOME recommends that a system of assisted return be established in such cases.

**Case study: the cost of justice**

A was 27 years old when she arrived in Singapore to work as a domestic worker. She left her husband and two young sons in the Philippines.

When A arrived in Singapore, she was forced to sign a new contract stating a lower salary than that in her first contract, and only one day off a month. A had 7 months' salary deduction for repayment of placement fees.

A was hired by a family to take care of three children. Every day, she woke up at seven o'clock to feed them and change their diapers. She was required to tend to them around the clock. In addition, she had to maintain the household, including cooking, cleaning the house, and hand-washing clothes. She had no rest during the day and usually did not go to sleep until 2am even after spending long night hours washing and ironing the clothes for the whole family.

During her first month employment, there was an occasion where A accidentally bumped her employer's daughter. When her employer found out, the employer threw a pan at A's forehead. From this day, A was subjected to terrible abuse. She was slapped, punched and caned with a bamboo stick everyday. When her employer got angry, her employer would throw her whatever she had in hand - chair, cooking utensils etc. In fits of anger, her employer would cut A's clothes and spit on her. Her employer even instructed her own children how to cane and kick A. Week after week, A got scars, scratches and bruises all over her body.

The abuse that A endured was not only physical but also psychological as she was constantly scolded and insulted. On several occasions, her employer made her sleep on the toilet floor as a punishment. Moreover, her employer deducted one dollar from A's monthly allowance each time she found faults in her housework. As a result, A did not receive a single dollar from her employer for her work.

Immediately after the first few incidents, A contacted her agent and asked to be transferred as soon as possible. Her agent simply advised her to stay at her employer's residence until the agent found another domestic worker to replace her.

After two months of physical and psychological abuses, and without any news from her agent regarding her replacement, A ran away in December 2011 and went to the police, who took her to HOME. A arrived at HOME's shelter with bruises and cane marks on her face and her body. She was emaciated and her top hair was chopped

off. She appeared scared and traumatized, constantly averting the gaze of people. She was sent to the hospital and treated for her injuries.

The police have investigated the matter. Finally, one year and a half after she reported the case, in June 2013, A's ex-employer was tried in court. A effectively remained at the whim of her employer, who delayed the court proceedings for medical and personal reasons. Meanwhile, it was A who was suffering.

As A was traumatized by her experience, she was not able to seek employment as a domestic worker and stayed at HOME's shelter for the entire length of investigations and proceedings. After more than a year at the HOME shelter, A was suffering from severe depression. A informed the authorities that she wanted to return home and requested the release of her passport, which had been impounded by the police. This was denied, causing A extreme angst. The accused finally pleaded guilty to some of the charges and A was informed that she was not required to stay in Singapore further.

Two years and three months after she ran away from her employer, A finally returned to the Philippines in February 2014 and was reunited with her family. A had made no money for her family in her two and a half years abroad. She returned in an extremely vulnerable and depressed state that, in HOME's opinion, was exacerbated by being forced to remain in Singapore, against her will, for such a long time.

- **Special support for minor victims**

HOME submits that victims of trafficking under the age of 18 years must be provided with specialized support services and facilities, appropriate for their age and recognising their particular vulnerability.

### **Recommendation 3: The Bill should criminalize attempted trafficking, being an accomplice to trafficking or organizing others to commit trafficking**

In addition to requiring the criminalization of trafficking, the Protocol requires criminalization of attempts to commit trafficking, participation as an accomplice in trafficking, and organizing or directing others to commit trafficking. We submit that the Bill should also criminalize these aspects of the offence.

HOME submits that the Bill should follow the Protocol in this regard.<sup>27</sup>

---

<sup>27</sup> See for example, Philippine Anti Trafficking Law:

"SEC. 4-A. *Attempted Trafficking in Persons.* – Where there are acts to initiate the commission of a trafficking offense but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons. As such, an attempt to commit any of the offenses enumerated in Section 4 of this Act shall constitute attempted trafficking in persons."

"SEC. 4-B. *Accomplice Liability.* – Whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts defined in this Act shall be punished in accordance with the provisions of Section 10(c) of this Act."

"SEC. 4-C. *Accessories.* – 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 harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions or is known to be habitually guilty of some other crime. "Acts defined in this provision shall be punished in accordance with the provision of Section 10(d) as stated thereto."

#### Recommendation 4: Ensure that the Bill extends liability for human trafficking across the supply chain, and consider introducing supply chain transparency obligations for large companies doing business in Singapore

HOME considers it important that liability under the Bill extend to both companies and individuals implicated in the trafficking of human beings in Singapore, whether directly employed by that person or by a supplier or sub-contractor of that person. This is particularly relevant to labour trafficking. In this context, HOME recommends that companies or individuals who knowingly engage suppliers or sub-contractors who are using trafficked labour should be liable under the Bill.

HOME also recommends the introduction of supply chain transparency obligations for large companies doing business in, or connected with, Singapore.<sup>28</sup> Such obligations address human trafficking within corporate structures and supply chains in a direct and tangible way; raising awareness of the harm of human trafficking and addressing it from the demand side, thus protecting potential victims of exploitation and trafficking. To that end, HOME urges Mr De Souza and the Taskforce to review existing supply chain transparency frameworks with a view to obliging large operators with a connection to Singapore to assess, make public and address the use of trafficked labour within their supply chains.

---

<sup>28</sup> An example of a framework introducing such obligations is the California Transparency in Supply Chains Act of 2010, Civil Code Section 1714.43.