

**Statement of the Hon. Jesus I. Yabes
Undersecretary for Migrant Workers' Affairs
Department of Foreign Affairs of the Philippines**

**AICHR Regional Workshop on Human Rights-based Approach to Combat
Trafficking in Persons, especially Women and Children
27 November 2013**

Good morning Ms. Moderator and colleagues. Thank you for this opportunity to share our experiences and views on trafficking in persons.

All human beings, regardless of race, gender, national origin, political or religious views, or other status, are born free with inherent dignity, and entitled to equal and inalienable rights.

This is a fundamental truth, and peremptory (*jus cogens*) norm of international law. Indeed, U.N. Member States have pledged, through the Universal Declaration of Human Rights, to promote universal respect for, and observance of human rights and fundamental freedoms.

These basic human rights include the right of every person to life, liberty and security of person, including the right of everyone to be free from all forms of slavery, or servitude.

While States have endeavored to formally abolish the traditional institutions of slavery, the present reality is that other means of slavery and servitude still continue to persist, most notably through trafficking in persons.

Under the United Nations Trafficking in Persons Protocol, one of the main elements of trafficking in persons is its purpose of exploitation of a person, which includes as a minimum sexual exploitation, forced labour, or the removal of organs.

By its very exploitative purpose, trafficking in persons dehumanizes a person, that is, a human being is reduced to an object of slavery and servitude - a mere commodity that can be used and abused. Clearly, trafficking in persons is an insidious affront to, or a grave violation of the basic human rights, and inherent dignity of a person. It behooves States, therefore, to cooperate towards the elimination of trafficking in persons in all its forms.

Indeed, through the United Nations Trafficking in Persons Protocol, States Parties committed to adopt legislations and other measures to criminalize trafficking in persons. In implementing such commitment, States Parties should, however, be mindful of, and prioritize the fundamental rationale of the Protocol and other related international instruments against trafficking in persons. And, that underlying purpose is to promote universal respect for the human rights of every person by combating an insidious crime against it, which is trafficking in persons. In this regard, it is important that States adopt a human rights based approach to addressing trafficking

in persons – an approach that prioritizes protection to persons who are vulnerable to trafficking, and assistance to trafficked victims in order to restore them to their inherent dignity, and achieve justice and relief for the violation of their fundamental human rights.

The Philippines, for one, has taken several steps, through its anti-trafficking laws, to prioritize protection to vulnerable persons, and assistance to victims. For example, our laws mandate that our Inter-agency Council against Trafficking in Persons (IACAT) should be co-chaired by the Department of Social Welfare and Development, to emphasize the need for providing aid and other social benefits to reintegrate victims as productive members of society. The laws also require that IACAT include non-governmental organizations representing vulnerable groups such as women, children, and migrant workers in order to ensure that government efforts against trafficking remain sensitive and responsive to their needs. This is in recognition of our experience that social goals are more easily achieved through constructive partnership between the government and non-government sectors. Further, our laws mandate legal protection to trafficked victims, that is, victims are immune from detention or prosecution for unlawful acts committed by them as a consequence of being trafficked. Victims are also entitled to social services such as counseling, medical services, and skills training. And, the law expressly mandates that victims who are foreigners are entitled to the same legal protection and mandatory social services.

In particular, our Department of Foreign Affairs is mandated to provide legal, and other assistance to victims of trafficking in persons found abroad. This mandate is implemented by my office, the Office of the Undersecretary for Migrant Workers Affairs, in collaboration with our Philippine Embassies and Consulates world-wide. In brief, we provide the following direct services to Filipino victims abroad:

- Make representations with the relevant authorities of the host country for the humane treatment of victims, including the protection of their basic human rights;
- Provide information on victim's rights under the laws of the Philippines; and that of the host country;
- Provide lawyers and other free legal services to victims for prosecution of traffickers, and application for social benefits, including regular immigration status, as allowed by the host country;
- Provide temporary shelter, basic necessities, and other available services for the support of the victim while abroad;
- Provide funds for plane tickets and other necessary expenses to facilitate the repatriation, or return of victims upon their consent;

In the course of providing these services to victims, we have been confronted with several challenges.

A major challenge for us is that not all States extend legal protection to victims of trafficking in persons, particularly to foreigners. Such foreigner-victims are usually treated as criminals, that is, they are prosecuted, detained or otherwise penalized for illegal entry or residence, use of fraudulent documents, prostitution, or other unlawful acts that they may have committed in the transit or destination countries in the course of, or in direct relation to being trafficked.

Indeed, we have encountered numerous cases where we were unable to extend necessary assistance to Filipino victims of trafficking in persons abroad because they were being detained in prisons, or barred from exiting the host country because of violations of local penal and immigration laws and regulations. For example, there are numerous Filipino women trafficked abroad for sexual exploitation that cannot be repatriated because they are detained by host countries and prosecuted for prostitution. In other cases, we encountered difficulty in repatriating Filipino victims of labor exploitation because the host countries insist on payment of immigration penalties, and requiring exit clearances from former employers.

In these and other such situations the victims are unjustly burdened with further physical and emotional suffering, exposed to possible retaliation from traffickers, and deprived of assistance necessary for their return, and reintegration to the countries of origin. Victims feel powerless to escape their exploitative situation since they could not rely on the law to protect them. This is obviously inimical to the protection of the human rights of the victims. The law should protect vulnerable persons, and allow victims to recover from their injuries. It should not subject them to further injustice and suffering.

Recognizing this unjust situation, the Philippines' anti-trafficking law expressly provides for the non-criminalization of victims of trafficking in persons. Victims are immune from punishment for acts directly arising from their situation as trafficked persons. And, this immunity or legal protection extends to all victims within the Philippines regardless of their nationality.

We recommend, therefore, that States also consider prioritizing the non-criminalization of victims: that is, States should enact and fully implement laws and other such measures that provide legal immunity to victims of trafficking in persons from punishment or penalty for any unlawful acts directly arising from their situation as trafficked persons. And consistent with universal and non-discriminatory respect for human rights, this immunity or legal protection should be extended to all victims, regardless of nationality, immigration status, initial consent to being trafficked, or other personal circumstances.

And, it should also be noted that every person has the fundamental human right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. This means that every person should have equal access to justice, or to judicial institutions that can

mandate protection of his rights, and provide relief for injury he may have suffered due to violations thereof.

We recognize that there are States that still have serious reservations against granting equal access to justice to foreigners. Equal access to justice is, however, important for the full realization of human rights, especially in the case of victims of trafficking in persons who are found in foreign countries. Without equal access to justice, a victim who is trafficked into a foreign country cannot effectively seek redress for violations of his right to inherent human dignity, and fundamental freedom from slavery or other forms of exploitation. Indeed, traffickers may be encouraged to further exploit their foreign victims if the victim has no access to the judicial processes of the host country.

We, thus, urge States, and international and non-governmental organizations to advocate equal access to justice in the host countries for foreigners, regardless of immigration status, including those who are victims of trafficking in persons. This will ensure that every person, especially those that are vulnerable to being trafficked, can seek protection, and rely on the judicial processes of origin, transit or destination States to enforce their fundamental human rights, including the right to be free from slavery, servitude and other forms of exploitation.

We also note that the existence of a right is rendered meaningless unless the person entitled to it knows what it is, and how to seek its enforcement. In this regard, it is vital for law enforcers and other first responders to provide information to victims, in a language understood by them, on their rights, and on the social benefits they may avail of. Further, in the case of victims who are foreigners, it is important that they be properly informed of their right to consular access in order to allow their State of origin to assist them, and contribute towards safeguarding their rights.

And, it is equally crucial that law enforcers and other first responders should be given the capacity to properly identify victims. Proper identification of victims allows them to be given protection, access to the necessary services, and remove them from the influence of traffickers. Law enforcers should also be trained to be sensitive to the particular situation and needs of victims, especially to women and children, and to those who suffered serious physical and psychological trauma.

In closing, we reiterate that the underlying rationale for the efforts of States against trafficking in persons is to ensure that every person maintains his inherent dignity, and his human right to be free from slavery, servitude and other forms of exploitation. And, this is why States and their agents should adopt a human rights based approach to trafficking in persons with emphasis on prioritizing protection to vulnerable persons and assistance to trafficked victims.

We are grateful to AICHR for this Workshop as it allows us to discuss with our ASEAN colleagues, and learn from each other's views, and experiences on addressing trafficking in persons. We recognize that each ASEAN Member State has its own unique national situation, and thus our respective experiences and views on

trafficking in persons may be divergent. We believe, however, that there is a common point of convergence that can bind the efforts of all ASEAN member states, whether country of origin, transit or destination, against trafficking in persons. And that commonality for all the ASEAN Member States is the shared commitment to enforce universal respect for human rights, particularly to ensure that every person is free from slavery, servitude and other forms of exploitation.

In pursuing this common value, we believe that the way forward is to work towards the ideal where respect for human rights and dignity becomes a fundamental norm ingrained in the hearts and mind of every individual. This will ensure that every person respects the inherent dignity and human rights of others, and no one will think that he is entitled to enslave or exploit his fellow human being. The sincere cooperation between governments, and non-state actors, in the national and international field, will surely advance this cause.

Thank you again Ms. Chairman, and we look forward to a productive Workshop.