

Chapter two

Criminal Legal Action

Agencies working with trafficked women may assist with criminal legal action. Some legal action may be considered "positive", such as where a woman seeks prosecution of the person who has wronged her. Other action is "negative," that is, criminal legal actions filed against the woman.

Laws and practices vary widely between countries. The information here is general and does not take into account national differences. The success of legal action will rely on your research in advance of the laws and legal practices of your country.

Be aware of laws to use against traffickers, agents, or employers. For example, if a young woman had an employment contract for doing domestic work, but was not paid or was physically abused this could be a breach of the labour law, child protection laws (if she is a minor), and criminal laws prohibiting assault.

Contact lawyers who can advise you and help plan your strategies. Try to develop a working relationship with people in the legal system, such as human rights lawyers, investigators, prosecutors, translators, judges, social workers, defence lawyers, and law professors.

System and principles

Types of legal systems

What legal system exists in your country: a civil or common law system? There are different roles for police, prosecutors and defence lawyers. In some countries religious and tribal or traditional law has a role to play alongside the civil or common law system.

In a civil law system, the prosecutor's office and prosecutorial police may be very active in investigations and in questioning witnesses. In a common law system, the defence lawyer will be involved in investigation and will be provided with information about witnesses who may be called upon to testify against the defendant, and can investigate witnesses.

The easiest way to learn about your legal system may be to contact law societies, legal associations or law departments of local universities.

In legal action consider the following:

- ? What actions make up the crime? What are the elements of the crime?
- How are cases initiated?
- What are the guidelines for beginning investigations? Who is responsible for carrying out the investigation and ensuring a prosecution?

- What evidence is necessary to substantiate the crime?
- Who collects the evidence?
- Who reviews it to see if it is sufficient to file a formal criminal charge? * Who can give evidence? How is the evidence collected?
- How can evidence or testimony be challenged?
- How are cases appealed?

Common problems

You could face the following problems:

- Bribery of the woman, witnesses, or legal authorities by the traffickers.
- Threats and intimidation against the woman, her family or witnesses.
- Loss of witnesses if the trial takes a long time.
- Use of highly qualified, but unscrupulous, lawyers by traffickers.
- Lack of compassion by the authorities who see the woman as being a criminal or illegal immigrant.
- Cultural, racial and sexual prejudices of the authorities.

Preparation

A woman involved in any legal action should be given information about the legal procedures and actions which are likely to take place, the possible outcomes of the legal action, and any risks.

Help her prepare a written statement about what happened. Writing down detailed information as soon as possible will help to clarify elements of the crime and help her remember details of the case later.

The statement should be organised in chronological order (by date) and should contain details of dates, names and descriptions of persons involved and witnesses, descriptions of transactions she may have seen, and descriptions of specific events. The statement should include information about why and how certain opinions or conclusions were formed. For example, if the woman states, "He was a Turkish man," she should explain how it is she came to this conclusion. Was it his language? Did she see his passport? Was it his physical appearance? If she reports that the police were being paid by the brothel owner she should describe transactions she saw.

Give a copy of the statement to her lawyer. Where the woman is taking legal action against another person, a condensed version which focuses on the relevant events could be helpful to the authorities. Do not submit the complete statement if legal charges have been filed against her.

Give her information about how long the trial is likely to last, the procedures and protocol, and the possible outcomes.

In testifying, she should not sound as if she has memorised her story but you should help her to prepare by asking questions, including very difficult and personal ones, which she may be asked.

She should be taken to the courtroom before the trial and given information about where the different parties will be seated, their roles in the case and the protocol of the courtroom. For instance, when the judge enters the room, everyone stands and you cannot speak when another witness is testifying, even if the witness is lying. She can let her lawyer know if someone is lying.

Principles

Legal systems follow certain basic principles and most are governed by international standards in the *Universal Declaration of Human Rights*.

International instruments establish basic rights for the administration of justice anywhere in the world. According to the *International Covenant on Civil and Political Rights (ICCPR)*, any person being tried in any legal case has certain rights. A country which has not yet ratified the ICCPR will still be obligated to protect human rights in legal situations under the *Universal Declaration of human Rights*. These rights apply to all defendants, regardless of whether or not they are citizens of the country.

The rights in the ICCPR include:

- Any person is to be recognised in the Covenant "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." [Part 11, Article 2]
- "... any person whose rights or freedoms as herein recognised are violated shall have an effective remedy..." [Part 11, Article 2(3 a)] It, other words, if a woman's rights written in the ICCPR are violated, she can take action against the State.
- "The State Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." [Part 11, Article 3]
- "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." [Part III, Article 7]
- No one shall be held in slavery ... [Part III, Article 8(1)]
- "No one shall be held in servitude ..." [Part III, Article 8(2)]
- "No one shall be required to perform forced or compulsory labour." [Part III, Article 8(3a)]
- "No one shall be subjected to arbitrary arrest or detention." [Part IV, Article 9(1)]
- "Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." [Part IV, Article 9(2)]
- "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer ... and shall be entitled to trial with a reasonable period of time or to release. It shall not be the general rule that persons awaiting trial shall be detained in

custody, but release may be subject to guarantees to appear for trial ..."[Part IV, Article 9(3)]

- "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." [Part IV, Article 9(4)]
- "Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation." [Part IV, Article 9(5)]
- "All persons deprived of their liberty shall be treated with humanity and respect " [Part IV, Article 10(1)]
- "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons " [Part IV, Article 10(2a)]
- "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication." [Part IV, Article 10(2b)]
- "No one shall be imprisoned merely on the ground of inability to fulfill a contractual agreement." [Part IV, Article 11]
- "All persons shall be equal before the courts and tribunals ... everyone shall be entitled to a fair and public hearing ... The Press and the public may be excluded from all or part of a trial ... when the interest of the private lives of the Parties so requires ...but any judgment rendered ... shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children." [Part IV, Article 14(1)]
- "Everyone ... shall have the right to be presumed innocent until proven guilty according to law." [Part IV, Article 14(2)]
- Everyone shall be entitled "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him." [Part IV, Article 14(3a)]
- Everyone shall be entitled to "have adequate time and facilities for the preparation of his defence and to communicate
- Everyone shall be entitled to "be tried in his presence and to defend himself in person or through legal assistance ... to have legal assistance assigned to him ... without payment by him if he does not have sufficient means to pay for it." [Part IV, Article 14 (3d)]
- Everyone shall be entitled to "examine, or have examined, the witnesses against him and to ... obtain witnesses on his own behalf [Part IV, Article 14 (3e)]
- Everyone shall be entitled to "have free assistance of an interpreter if he cannot understand or speak the language used in court." [Part IV, Article 14 (3f)]
- No one shall be "compelled to testify against himself or to confess guilt." [Part IV, Article 14 (3g)]
- Everyone shall have "the right to his conviction and sentence being reviewed by a higher tribunal according to law." [Part IV, Article 14(5)]

- If a conviction is overturned and it's proven that there has been a "miscarriage of justice, the person ... shall be compensated according to the law ..." [Part IV, Article 14 (6)]
- "No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence, nor to unlawful attacks on his honor and reputation." [Part IV, Article 17]

Case study: Thai workers in the US

On 2 August 1995, a raid on a garment factory in El Monte, California, by the California Department of Industrial Relations, the United States Department of Labor, the Los Angeles City Attorney's Office, City of El Monte Police and the Employment Development Department of California resulted in the release of 67 Thai women and five Thai men who had *been trafficked* to the US. Government officers were accompanied by interpreters and staff from the Thai Community Development Center, a social service agency for immigrants.

The workers had been confined within a barbed-wire fence in a residential neighbourhood, and were made to work up to 17-20 hours per day for US\$1.40 to \$1.60, per hour. The minimum wage is US\$4.25 per hour. They were told that family members in Thailand would be harmed if they tried to escape. Their mail was censored and all telephone calls were monitored. The workers were only allowed to leave the garment factory to celebrate New Year at another facility owned by the employer. They were required to pay debts, including US\$5,000 for their airfare, well above the-market price. Food and other necessities were purchased from the company store at highly inflated prices. Most had worked in the factory for a number of years, one for seven years. The garments were sold in high class department stores in the eastern states.

The eight people arrested were held without bail. The workers were taken to an immigration detention facility.

Criminal charges

The initial charges against the employers were for federal crimes of harbouring and transporting illegal immigrants.

By the end, the defendants agreed to a guilty plea for all charges including criminal civil rights violations, conspiracy, harbouring illegal aliens, and holding workers in involuntary servitude. The head of the family was sentenced to seven years imprisonment. Two of her sons were sentenced to six years and a guard was sentenced to four years. Perhaps due to public interest in the case, the sentences were nearly double those typical of such cases. The family was also ordered to pay US\$4.5 million in damages within five years. It is doubtful that the family will be able to pay full damages. However, the workers had already received US\$1 million from seizure of the company's assets.

Two other sons, who walked away during the raid, were not caught and are believed to have returned to Thailand.

The workers

During the raid the workers were arrested and then taken to an immigration detention facility. Bail was set at US\$5,000. Negotiations on their behalf were made by the Thai Community Development Center, the Asian- American Legal Center, and other social

service and religious groups. Bail was reduced to \$500. These organisations raised the bail and the workers were released nine days after their arrest.

The Federal Immigration and Nationalization Service said that deportation hearings would be heard on a case-by-case basis. Sweatshop Watch, an organisation formed following the raid, alleged that the Thai consulate in Los Angeles encouraged the workers to forget their deportation hearings and return to Thailand with as little publicity as possible.

The workers were granted temporary residence permits and six month work permits to allow them to remain in the US for the duration of the trials. The workers feared returning to Thailand because threats had been made against them and their families by others in the employer's family. The government had the option of giving them permanent residence permits in recognition of their assistance in the criminal proceedings.

Assistance

Assistance to the workers by local agencies included:

- Accompanying government officers during the raid to interpret and explain to the workers what was happening.
- Negotiating with immigration officials for lowered bail, release from the immigration detention facility, and temporary residence and work permits.
- Raising bail and donations of money, food, clothing and toiletries, and finding housing.
- Publicising the plight of the workers and conditions in other sweatshops in Los Angeles.
- Screening companies who offered to hire the workers after they had received their temporary work permits.
- Providing English language classes and instruction in daily living skills, such as opening bank accounts and using public transport.
- Participating in meetings of workers and retailers about reform and accountability in the garment industry.
- Assisting the workers in filing civil law suits.

Civil suit

With the assistance of lawyers and community groups assembled by the Asian-Pacific Legal Center, the workers filed a civil suit against the employer, retailers and contractors who had benefited from their years of labour. The suit was filed on International Labour Day.

The suit called for compensatory and punitive damages of more than US\$100,000 from the employer and manufacturers who bought products from the employer. Retailers, including well-known US department stores Mervyn's and Montgomery Ward, claimed they had no knowledge of the working conditions at the factory. The workers cited physical problems resulting from their enslavement including tuberculosis, blurred vision, headaches, back pain and ulcers. One company filed for bankruptcy to avoid paying restitution.

Immigration

The Immigration and Naturalization Service (INS) had received a tip about the garment factory three years before the raid but had taken no action. A neighbour of the sweatshop had suspected the presence of illegal immigrants and had attempted to report it to the INS, but the agency's telephone lines were always busy or unanswered. An INS officer reported that investigations in 1991 into reports of five similar sweat shops owned by a Los Angeles Police Department officer had been blocked by supervisors. No action was taken by the federal government on the El Monte case until they were asked to help by state departments.

An official of the INS said that while it did not excuse the employer from their actions, "... some responsibility lies with [the employees] for being willing to engage in this. These people are victims, but they are victims because they were willing to make false representations to consulate officials. It doesn't justify slavery, but they have to take some responsibility." (*Los Angeles Times*, 26 October 1995)

While in detention, workers received adequate food and medical treatment but were forced to wear shackles during the journey from the detention centre to meet with investigators. The workers also claim that \$6,000 went missing during their nine days of detention.

Action against Traffickers

There are two types of legal action which can be used to compensate trafficked women and bring traffickers to justice.

Civil legal action is where one person sues another. The plaintiff (person making the complaint) has the right to make decisions about the case and, in some jurisdictions, accept offers to settle "out of court".

In some countries, it may be more productive to file a civil suit for breach of contract rather than pursue a criminal case for abuse. It is often difficult to prove abuse. In domestic work, women may have a contract which spells out the conditions of employment and can be used as evidence against the employer.

In some countries, foreigners are not permitted to remain in the country on the grounds of waiting for a civil suit to be decided. Most civil cases can be settled out of court with payment of overdue wages and some additional compensation.

Women who have been working as prostitutes may find it difficult to bring civil suits against pimps or brothel owners because prostitution is usually not recognised as labour.

Criminal legal action is where the state charges a person for a violation of the criminal law. The state is the plaintiff. The victim does not have any rights in making decisions about the case. However, she may be able to influence the outcome of the case by helping in the investigation and by acting as a witness.

Trafficked women who are witnesses may be given temporary residence permits for the duration of the trial.

If a defendant is not convicted of a crime, the woman may still be able to seek compensation for unpaid wages, injuries, health care expenses, pain and suffering by filing a civil suit.

Illegal immigrants

Women who have been trafficked without valid travel documents or those whose visas have expired, may find it more difficult to file legal cases against traffickers or others. In many cases, trafficked women who file a legal complaint are placed in detention because of their illegal immigrant status. Many are simply deported and are unable to pursue the legal action.

Governments and police should understand the role trafficked women can have in fighting organised crime and make use of their first-hand knowledge.

Women who are willing to testify in criminal legal actions should be allowed to remain in the receiving country until the case is complete. In Belgium, Germany, the Netherlands, and the US, laws now allow trafficked women to remain in the country during criminal trials. In the US, permanent residence permits may be granted when the life of the witness is endangered as a result of her testimony.

Fears about taking legal action

Trafficked women may not trust the police. They may have seen corruption and abuse by police. Illegal immigrants typically have no money or connections with important people who could help to make the laws work in their favour.

If deported, she returns home with no income and may have debts for her migration costs. Her family may have become dependent on her for their income. She may fear social alienation if she has worked in prostitution.

The traffickers may have made threats to her safety or that of her children or other family members. The woman may fear that the traffickers will find her again if she returns home.

She knows the power of international networks. She knows that information about her can easily be relayed to her home community and family, and that threats made against her family can be carried out.

Traffickers of women are sometimes also involved with arms and drugs trade. This makes them especially dangerous. Women may have witnessed violence against other women or other gang members. Trafficking networks are able to monitor the women's activities.

Marjan Wijers, in *Combating Traffic in Persons*, says that "It is essential to be aware of the fact that you deal with women who have many good reasons to be scared and who are under massive pressure." (Wijers 1995:158)

Assistance

Anyone involved in legal action should be told about the proceedings, laws which can be used, and legal protection available to witnesses.

The service agency should work closely with the courts and with the media to ensure that the woman is safe from public exposure.

Explain that her testimony and action may prevent traffickers from exploiting other girls and women in her community.

Taking action against those who have wronged her can be a significant step in her recovery.

Talk about successful and unsuccessful cases which show the steps other women have taken, obstacles they faced and the results of their actions.

Residence permits Trafficked women who are victims or witnesses to crime may be able to obtain temporary residence permits. In some cases, permanent residence permits may be granted to victims of crimes.

Expenses Costs of travel and interpreters should be paid by the court. If the defendant is found guilty, a request should be made to the court that the convicted person be required to pay for medical care and treatment related to the crime.

Translation Be sure that the interpretation provided is adequate. Qualified interpreters should be found well in advance and employed during the investigation.

Time The woman and witnesses need to be told the probable length of the investigation and trial. Fight unnecessary delays. The longer it takes, the more likely it is that witnesses will become unavailable.

Problems

The traffickers may threaten the woman, legal authorities or other witnesses. They may also promise money or marriage or another benefit if the woman refuses to testify.

Bribes may be paid to judges, prosecutors or others to dismiss or sabotage a case.

Delays have a negative impact. Defendants in a criminal case have the right to hear the evidence and testimony of witnesses against them. Failure of a witness to appear in court is one of the primary reasons for criminal cases being dropped. Defendants may request postponements in the hope that witnesses will become unavailable. After a long delay witnesses may no longer have clear memories of the events. There is also ample opportunity for the traffickers to intimidate witnesses, the trafficked women and their families.

Women may be discriminated against, especially those who have been in prostitution. Women who chose to work as a prostitute face even greater prejudice than those who were forced.

Often the women have been told different stories. They make contradictory statements which can lead to cases being dismissed.

They may have been dependent on the traffickers for survival and hesitate to press charges against those who have "helped" them.

Steps

Prepare a written statement of the events. (See chapter one)

File a police report. Be sure she understands any risk to herself, because of her immigration status or employment history, in reporting the crimes against her. If she speaks another language take a qualified translator with you.

If the police feel that the report is credible and that enough evidence exists to file formal charges, it is likely that a sworn statement will be taken. Again, the woman should report the main facts of the case in chronological order with specific information about dates and the identity of any persons involved such as perpetrators, accomplices or witnesses. An advocate from the service agency and a qualified translator should be with her.

Take steps to guarantee her safety during the investigation and trial. She may also need protection afterwards. Protection may be provided by the authorities. You may need to find her shelter in a secret location. Threats against the woman and her family must be taken seriously. With the woman's permission, you may wish to notify authorities in the woman's country that a case is underway and that friends or family may be in danger.

The woman should be prepared to tell her story over and over to the authorities. This is required to ensure that the legal system functions properly and it in no way reflects on whether or not the authorities believe her. As well as giving details which have direct legal bearing on the case, the woman should also discuss her perceptions of the crime and her feelings of harm. Not all of the woman's complaints will be acted on. Some events, such as a Muslim woman forced to drink alcohol against her religious beliefs, may be ignored by the authorities unless they are considered criminal by law. You can help by listening to her concerns and feelings.

Find out how long the investigation is expected to last, when the trial is expected to begin, and the expected duration of the trial. If the woman leaves the country, it is possible that the action will be terminated. Once she has left the country, it may be difficult for her to return. There should be few limitations on travel within the country. Ensure that she can be contacted easily or advise her to contact you on a regular basis.

Contact the court about where notices about trial dates should be sent. In most cases, it will be best for notices to be sent to your agency. Make regular contact with witnesses to be sure they are available for the scheduled trial dates.

Make arrangements for a qualified translator.

Prepare the woman for her testimony and help her to practise her answers to difficult questions. Be careful about "over-rehearsing."

Witnesses should also be prepared for the trial. In most cases, witnesses in a criminal trial are not allowed to sit in the courtroom except during their own testimony. Be sure someone stays with them while waiting to testify.

If the defendant is found guilty ask the court that the convicted person pay for any medical care or treatment.

If the defendant is found guilty, an appeal may be filed by them. Usually the decisions in an appeal are based on the records of the trial rather than on additional testimony or evidence. However, if the woman intends to leave the country, check first to see if an appeal has been filed and, if so, find out if she needs to be present for the appeal hearings.

On 5 May 1996, authorities arrested two Japanese men, Shuitsu Sato and Isamo Fujii, in Guadalajara, Mexico. They were charged with operating an illegal network for trafficking women from Mexico to Japan and for the use of "phantom businesses" In press reports, close to 3,000 women were trafficked. As a strategy to keep their families quiet, they used intermediaries to occasionally pay them some dollars. The men used phantom businesses, like a dentist surgery, to recruit women to work as hostesses. They also had a network to bring illegal migrants to Mexico from neighbouring countries and then send them to Japan.

This operation had started ten years ago. The decision was that this was not a grave crime, so they were asked to pay a fine and "repair the moral damage" inflicted. *GAATW*

Sokha, 18, lived with her mother in Phnom Penh. In January 1996, she was invited by her aunt to go to Sihanoukville for a holiday. Her aunt sold her to a brothel for Bt450 (US\$18). She was locked in a room. Each time she tried to escape she was caught and beaten. She serviced three to nine clients a day. Her mother reported Sokba missing to the police. On 20 March 1996, the police found Sokha in a brothel in Battambang province, around 600 kilometres from Sihanoukville. The police arrested her aunt, who admitted she sold Sokha to the brothel. The case went to trial on 27 May 1996. The accused was charged with illegal confinement and sentenced to two years imprisonment. *Cambodian Women k Development Association*

Action against trafficked women

A trafficked woman charged with a crime will probably face problems of language, unfamiliarity with the legal system, racism and discrimination. If convicted, she may have a serious criminal record and may be imprisoned for a long time.

Developing good relationships with police and legal authorities before attempting to assist a woman who has been charged with a crime is critical. Your knowledge of the system and it's personnel will help you to negotiate on her behalf.

Be sure the authorities are complying with the International Covenant on Civil and Political Rights (ICCPR). (See chapter one.) The woman should be clearly informed about the charges and the processes. Assist the courts in complying with the Covenant by ensuring that a

translator is provided, monitoring the length of time the courts take in processing the case, and making sure the woman is provided with a competent lawyer.

Defence strategies

One defence strategy can focus on the woman as being a victim of crime herself. She may have acted in self-defence or forced to break the law by another person. However, such a strategy confirms that the woman did commit the acts of which she has been accused.

Other strategies might include proving that the evidence against the woman is insufficient, that witnesses for the prosecution are lying or unreliable, or that the laws are being used against her in a discriminatory manner.

Steps

Notify her embassy or consulate that she has been charged with a crime and is in need of assistance. They may be able to provide funding for her defence and should take steps to protect her rights. Legal advisors may also be available.

Do all that you can to get her released from jail while waiting for the court case. As long as she is held in jail, she will be vulnerable to abuse and prevented from preparing herself emotionally and mentally for the upcoming trial.

You may be able to arrange bail, a payment to the court which guarantees that she will return for the trial. The bail money will be returned once the trial has been completed or dismissed. If the woman does not appear the money will not be returned. In the case of non-citizens, it can be very difficult to make bail arrangements. Personal guarantees of local citizens may be needed.

If you cannot get the woman released from detention, you and the woman's friends or family should visit her regularly. Ensure that she is allowed to receive mail. Anyone who writes should be careful not to write anything that can be used against her in court. If the woman agrees, letters could be sent to her via your office so that you can review them.

Children being held in jail may be eligible for release while awaiting trial. They should also be separated from adult prisoners. If separate detention from adults is not possible, you may be able to negotiate for their release.

Assist her in preparing a written report. It will help her to remember the details of the events and will help her lawyer. Authorities may interview the woman repeatedly during the trial preparation and the trial. Review the written statement with her on a regular basis to make sure she does not forget any of the facts of the case.

Ensure that the woman's lawyer, a translator, and an advocate from your agency are present whenever she talks to authorities.

Watch for interference by the traffickers. The traffickers will be aware of the legal case taken against her and may be fearful that she will identify them as criminals.

Provide support throughout her detention, preparations for trial and during the trial itself

Find out how long the investigation is expected to last, when the trial is expected to begin and the expected duration of the trial. Be sure that other witnesses for her are informed of these matters and are available for pre-trial and trial activities. If a postponement in the trial is requested by the prosecutor, be sure to find out why. If it is because the prosecutor has been unable to develop a case based on lack of evidence or witnesses, ask that the case be dismissed.

Contact the court about where notices about trial dates will be sent. In most cases, it will be best for notices to be sent to your agency so you can monitor the actions and notify the woman and witnesses.

Be sure that arrangements have been made for a qualified translator to be present during the trial. Expenses for the translator should be paid by the court.

Prepare the woman for her testimony in court. Be sure that she understands the processes and protocol of the court, and help her rehearse her answers to difficult questions she may be asked while testifying. Be careful, however, about "over-rehearsing." When the woman testifies, she should not sound as if she has memorised her testimony or she will be less effective.

Witnesses should be prepared for the trial in the same manner. In most cases, witnesses in a criminal trial are not allowed to sit in the courtroom except during their own testimony. Usually witnesses are asked to remain near the courtroom in a hallway or nearby room.

In 1991, three Thai women in Japan escaped by killing the madam of the brothel where they were held. The women also took some cash and valuables, and their own passports. In 1994, the women were convicted of robbery and murder. The prosecutor requested a sentence of life imprisonment. An international campaign was launched on the women's behalf and the judge subsequently sentenced them to ten years imprisonment. An appeal was heard in July 1996 and the sentence reduced to eight years. The judge recognised the women's desire to escape sexual slavery. However, the judge denied the defendants' contention that translation services during the original proceedings were inadequate. He also declined to reduce the charges to murder only. The women stated that they had taken the cash and valuables to compensate for the unpaid labour in the brothel. *Yuriko Saito, Japan*

Conviction

If she is convicted of a crime, a lesser sentence may be given if she is willing to testify against the trafficker, employer, brothel owner or authorities who have also broken the law.

Appeals can be lodged when a conviction is made. According to the ICCPR, everyone has "... the right to his conviction and sentence being reviewed by a higher tribunal according to law."

A commutation or pardon can sometimes be granted by the executive branch of the government. The court is the judicial branch. Granting a commutation means that the

woman's sentence will be reduced. Granting a pardon means that even though the woman has been found guilty, she will not be forced to serve her sentence.

Requests for lesser sentences, appeals, commutations and pardons are filed by the woman's lawyer.

Nationl and local authorities

Although nearly all countries have laws on assault, deceit, prostitution, non-payment of wages, and crimes relating to trafficking, the laws are not always enforced or are applied to only some people. For example, prostitution law may make the actions of brothel owners, customers and prostitutes all illegal, but only prostitutes are charged.

lack of knowledge

Unless police, immigration officers and other authorities are informed about the laws of their countries, they cannot be expected to enforce those laws. It may be necessary for service agencies to provide that education.

Frustration

Where trafficking occurs on a large scale, authorities may be overwhelmed and have lost motivation to fight a battle they feel they cannot win. They may feel the power of the traffickers is greater than their own. Authorities may also be frustrated by the low numbers of convictions. Women who have been trafficked are often deported as illegal immigrants and cannot testify. Women who have been trafficked do not always tell the truth about their situation. Trafficked women are not seen as reliable witnesses. The authorities may feel that their time is better spent working on cases which are more likely to lead to convictions.

Finally she decided to go to the police. Bozena did not tell them the truth. She didn't even know the name of the "friend" or the addresses of the clubs. She was also afraid of vengeance. The bosses had told her many times what would happen if she was "uncooperative". Bozena told the police she had arrived a short time ago to find work, and her money and passport had been stolen. She did not tell them of having been trafficked.

Obtaining the full story from the women proved difficult: some of the other girls had been promised Dutch husbands if they kept their mouths shut.(Atlink 1995:129)

Attitudes

Authorities may have prejudices against women, especially those who have been working in the sex industry. Authorities are often hesitant to involve themselves in "domestic affairs" such as protecting women who are being abused by their husbands or domestic workers being abused by their employers. Authorities may give more weight to complaints by men.

Corruption

There are often reports of corrupt police, immigration officers or others in authority. These officers may work directly or indirectly with traffickers. They may receive money or other benefits from the traffickers for assisting them or overlooking their crimes. Corruption can be expected to be especially prevalent in countries where police and other civil servants receive low wages.

A Bangladesh woman trafficked to India and sold into prostitution said, "I earn Rp2,500 to 3,000 per month. Most of this goes to my pimp, on rent, and to the police. When the police raid the brothel, I often have to pay Rp2,000 to 3,000 to avoid arrest."

A Thai woman working in Japan, who had been beaten and was held through debt bondage said, "The bar owner knew every policeman on duty near the bar." A Burmese woman, trafficked to Thailand to work in a coffee shop, reported that out of the money she earned, her employer took half. Of the remaining 50 per cent, the employer takes a further cut to pay for food, electricity and water bills, laundry, and the police. An NGO worker reported that traffickers are able to get Bangladesh women into Pakistan border because officials get the first choice among the women.
(A~C 1994:26)

Trafficking and prostitution laws

Trafficking

Most countries have laws which prohibit trafficking. However, the laws sometimes make the situation more difficult for trafficked women. In general, laws prohibit recruiting or taking an undocumented worker into another country through the use of force, deceit or threats. They may also penalise people who abuse trafficked persons. More severe penalties apply for trafficking children.

The Swedish Penal Code, for example, prohibits physical assaults, kidnapping of children, depriving someone of their liberty, placing someone in a position "where he may be in danger of being ... exploited for casual sexual relations", using force or threats to force another to do something, or using, or threatening to use, a weapon. It also prohibits opening another person's mail.

The Code prohibits using violence or threats to force another person to have sexual intercourse or inducing another to engage in a sexual act by "gross abuse of his or her dependency". The Code prohibits planning or organising illegal entry into the country or assisting an illegal immigrant to enter.

In Bangladesh, the *1995 Oppression Against Women and Children Act* prohibits trafficking for prostitution or unlawful or immoral purposes. Kidnapping of women for prostitution, marriage without the woman's consent or forcing or deceiving her to engage in sexual intercourse is also prohibited. Kidnapping of children can result in life imprisonment or death. Accomplices in trafficking are subject to the same penalties.

In many countries trafficking laws are not enforced consistently and only minimal penalties are imposed. The Austrian Penal Code, for example, prohibits recruiting someone outside of Austria for prostitution in Austria or taking another person to another country using violence, threats or

deceit. There has been an increase in convictions for trafficking over the past few years but the number remains small compared to the number of reported cases. Sentences for imprisonment are generally suspended. (IOM 1996)

In Cambodia, the police are reluctant to prosecute influential people. Frequently, cases are settled out of court. Compensation may be paid to the victims. As a consequence, information about the cases is not recorded making it difficult to measure the extent of trafficking.

Laws may be specific to trafficking for prostitution and not to other situations. India's 1980 *Immoral Traffic Prevention Act (ITPA)* limits trafficking to trafficking for prostitution. It forbids commercial vice and soliciting, and harsher penalties are imposed on women prostitutes than on male prostitutes. Searches and interrogations of women must be completed in the presence of a woman police officer.

In Japan, the Penal Code prohibits trafficking of Japanese women out of Japan. It does not apply to crimes which did not originate in Japan. In Taiwan, there is no specific trafficking law. Trafficked women are simply arrested and charged with illegal entry under the *Disruption of Social Order Act* and criminal law.

There may be laws in countries of origin to protect those who emigrate for employment. In the Philippines, the *Republic Act 8042* intends to "establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress." The law fails to address problems of undocumented migrants or trafficked women. The Act does penalise illegal recruiters, with specific penalties for those who recruit three or more persons. The *Republic Act 6955* is "an act to declare unlawful the practice of matching Filipino women to foreign nationals on a mail-order basis and other similar practices." Batis Center for Women in Manila reports that violations are rampant but nobody has been convicted.

Government policies may result in an increase of trafficking. Women living in Burma, for example, face problems of poverty, civil unrest, forced labour and oppression by the State Law and Order Restoration Council (SLORC). SLORC requires all women applying for passports to state which countries they intend to visit. If they intend to travel to Thailand, Singapore or Malaysia, their applications are routinely denied. This encourages migration through illegal channels. Most women do not wish to return to Burma once they have left.

Women may also face special difficulty in using existing laws because of their low status. Zimbabwe, for example, as a former British colony, has both customary law (the law of the indigenous people of Zimbabwe) and common law. When women want to start legal proceedings, they usually find themselves in the primary courts because they are poor. As a result most women have their rights determined by customary law which may be prejudicial to them. The constitution does not forbid discrimination on the grounds of sex. (Kerr 1994:42)

In countries where laws are based on the national religion, the courts may be especially discriminatory against women. In Pakistan, for example:

...rape is treated under Islamic law as extramarital sex (*Zina-biljabr*). If a woman, who is the victim of rape, wants to bring her case to court, four male witnesses are required to testify in court. If one of the four witnesses does not fully testify in her

favour, the victim herself risks conviction. She will then be severely punished for the crime of extramarital sex. (Kerr 1994:12)

A major problem with using existing laws is that countries tend to deport women who have been trafficked rather than using them as witnesses in court cases against their traffickers. However, Germany, the Netherlands, Belgium, and the US have provisions which permit trafficked women, technically considered "illegal immigrants", to remain in the country to participate in investigations or court cases against traffickers or abusers.

In Australia, an amendment made to the Crimes Act allows witnesses to testify via video link if they are outside Australia and are not themselves defendants in the case.

Prostitution laws

There are different approaches to prostitution. Laws may be **prohibitionist**, that is, all prostitution is illegal. In general, the primary targets for enforcement of these laws are prostitutes. Prostitutes are likely to hesitate in approaching the police for assistance because they may be arrested themselves. Illegal prostitution makes prostitutes more dependent on pimps and procurers, and thus more vulnerable to abuse by them.

In Japan, the *1956 Prostitution Prevention Law* prohibits prostitution and clients may be charged as well as prostitutes. Public solicitation is prohibited as is the use of deceit, threat or use of force in procuring women. Rehabilitation of prostitutes means placing them in a "guidance home" for up to six months. There are also protection and rehabilitation measures for "a woman whom it is feared will commit prostitution" or a "woman needing protection".

In a **regulatory** system, prostitution is not illegal but is regulated by the country through registration, health, and zoning controls. Prostitutes may hesitate to register for fear of being identified and stigmatised for their work. Women who have been trafficked often cannot register because of their illegal immigration status. In Austria, sex workers must be registered. Immigrants should have both residence and work permits to register for sex work. Registered sex workers are required to undergo weekly check-ups for sexually transmitted diseases. (IOM 1996)

In an **abolitionist** system, "prostitution is seen as a moral evil [and] prostitutes as passive victims ." There is no differentiation made between forced and voluntary prostitution. While working as a prostitute may not be punishable, "any involvement of a third party is illegal." (Wijers 1995: 1 55) Abolitionist systems can be found in many European countries. The Netherlands' Penal Code [Articles 250 bis and 250 ter] makes it an offence to encourage prostitution, be involved in trafficking, or to be a brothel owner or pimp. An interpretation of 250 ter states "the sole fact of finding a prostitute in an exploitative situation is sufficient to give reasonable assumption of guilt." This suggests that it is irrelevant whether or not a woman had knowledge that she would be working as a prostitute. The conditions under which she works determines whether or not she is considered to be trafficked.

With **decriminalisation**, prostitution is not prohibited nor is registration necessarily required. Violence and exploitation of sex workers can be addressed through existing labour regulations and criminal laws.

Most countries will have laws prohibiting the prostitution of children or other people who are incapable of protecting themselves because of physical or mental limitations. For example, in Sweden selling sex is not illegal but those who obtain such services from under 18 year olds will be prosecuted. It is also illegal to obtain sexual services from someone who is in "a helpless condition."

In Victoria, Australia, the *Prostitution Control Act* prohibits "offensive behavior towards prostitutes." It states that persons must not behave in an indecent, offensive or insulting manner or use threatening, abusive or insulting words in or near a public place in order to intimidate, harass or insult a prostitute. Advertising services and job Vacancies are controlled by this law. It is illegal to permit a prostitute to work when it is known that he or she is infected with a sexually transmitted disease or for a prostitute to work knowing he or she is infected.

International law

When national courts do not comply with the *International Covenant on Civil and Political Rights* (ICCPR) and human rights have been violated, it may be necessary to file complaints at the international level. Nations who have ratified international conventions are obligated to uphold them. Nations who have not ratified these conventions should be encouraged to do so.

Problems with enforcement

Enforcing international law is complicated and requires the help of some-one who specialises in international law. Most service agencies will be unable to file cases on behalf of trafficked women with international courts without the assistance of an expert. You can, however, lobby your own government to comply with international law.

Working at the international level is a long, slow process and only a few of the conventions allow for individual complaints. To use the other conventions and treaties, you must be able to show that massive and systematic violations are taking place. Presentation of cases must be in a form acceptable to the UN. Review by the UN is time-consuming.

Authorities in your country may lack knowledge of problems in other countries. There is no international database or network established to assist governments in sharing information. However, there are international networks of NGOs working on human rights issues and documenting violations.

If a country has not signed or ratified the relevant international instrument, they are generally not obligated to comply. Check all international instruments signed or ratified by your country to see if they can be used. (See Appendix 111) Some conventions have become so established in the international community that they are considered to be "customary law". Customary law condemns acts that are considered so wrong that every government must prohibit them, such as slavery and torture. It should be noted that customary law is binding on all nations, regardless of whether or not they ratified a specific treaty.

Cross-border trafficking involves more than one country and governments tend to deflect responsibility onto others rather than accept responsibility themselves.

In April 1985, a newspaper from the Dominican Republic published a report on the deaths of 28 women found in a ship container on the island of St. Thomas. The ship had arrived from another Caribbean island, St. Maarten, and was carrying game machines from the US called "Caribbean Amusement." Investigation was minimal but newspaper reports linked the deaths to traffickers.

The container was locked from the outside and was poorly ventilated. The women were unable to breathe or escape. The Dutch and French governments denied allegations that government officers had collaborated in the trafficking. The Dominican Republic government, after a short investigation, concluded that allegations of trafficking as the cause of the deaths were false. They said it was a problem of illegal migration.

International Report Project on Trafficking in Women: Latin American and Caribbean Region, 1996

Rights of the child

The 1989 *UN Convention on the Rights of the Child* says, among other things, that children are to be protected from performing work which threatens their health, education or development. It requires the country to protect children from sexual exploitation and abuse, including prostitution and pornography. It obligates the state to prevent the sale, trafficking and abduction of children. Child victims should receive treatment for recovery and social integration. The Convention includes measures to combat illicit transfer and non-return of children abroad.

(See Appendix 111 for the list of countries who have ratified this and other conventions.)

Traffic and prostitution

The 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* recommends punishment for procurement, enticement or leading away another person for prostitution, even with the person's consent. It says those who exploit the prostitution of others, even with the person's consent, and those who manage or finance a brothel should be punished. Countries are required to adopt preventative measures, including supervision of employment agencies, and to provide temporary care for trafficked persons and assistance with repatriation costs if no funds are available to the trafficked person.

The Convention requires states to abolish laws, regulations or provisions which require prostitutes to register or possess special documents.

Discrimination against women

The 1979 *UN Convention on the Elimination of All Forms of Discrimination Against Women* is the minimum universal standard guaranteeing the rights of women to equal status with men. It requires states to abolish discriminatory laws, customs, regulations and practices. Article 6 specifically requires that "state parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women."

Civil and political rights

The 1966 *International Covenant on Civil and Political Rights* recognises the right of self-determination and countries are required to treat women and men equally. It prohibits torture, degrading treatment, slavery and compulsory labour. People have the right to liberty of movement. No marriage should be entered into without the free and full consent of the spouses.

Migrant workers

The *UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, which is not yet in force because only a few countries have ratified it, addresses the civil, political, economic, social and cultural rights of all migrant workers, including illegal immigrants. This does not include refugees or stateless persons.

Among other things, it says that migrant workers shall enjoy treatment no less favourable than nationals with regard to wages, working conditions, and the right to join trade unions. It says that children have the right to a name, registration of birth, a nationality and education and that all migrant workers and their family members should be eligible for employment, vocational training, social and health services.

The convention is a comprehensive one and receiving countries, in particular, are hesitant to obligate themselves to the responsibilities.