

# **The role of law enforcement in combating human and drug trafficking**

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## **The role of law enforcement in combating human and drug trafficking**

### **1. Drug and human trafficking are the worst forms of “uncivil society”**

The growth in the scope, intensity, and sophistication of crime now threatens the very foundation of civil society and hampers the social, cultural, and economic development of countries worldwide. Globalisation has brought economic and political transitions and uncivil society has exploited such opportunities. Transnational organized criminal groups have proliferated over the last decade. They are very good at taking advantage of weakening state control and free trade. They are now able to prey on movement of people. The figures are staggering:

- Representing 8 percent of the world trade, the estimated global illicit drug trade is worth \$400 billion and supplies around 200 million customers
- Approximately 27 million people around the world are subjected to slavery or live in slave like conditions. Slaves are readily available for rent, lease, or sale by credit card and are frequently used for sexual exploitation
- At the recent “Asian Regional Initiative Against Trafficking in Women and Children Meeting” held in the Philippines, it was estimated that 1 million women and children are trafficked, 250,000 are from Southeast Asia alone. The industry generates \$5 to 7 billion each year.
- Organized crime syndicates gross \$1.5 trillion a year and represent a major economic power that rivals multinational corporations.

Increasingly, the international community is now demanding action. Effective action requires more comprehensive understanding and appreciation of the dynamics behind the drug and human trafficking trade. Today, it is often necessary to address the issue of drugs and human trafficking in its broader context of failed, or failing states, where human security is at stake. It is after all no coincidence that some countries in Asia are targeted because they are among those most geographically marginalized or victims of failed governance. It is now evident that drug and human trafficking in Asia is a symptom of wider structural problems. The lack of internal regulation or the weakness of the rule of law presents many opportunities for organized criminal groups. As a result, corruption emerges and the rule of law deteriorates. Human security is further threatened. A case in point is the coup d’etat that toppled the Fijian government in May 2000. Hidden behind a fight for ethnic solidarity and Fijian supremacy, was a struggle for natural and financial resources. Illicit profit from the timber industry was an opportunity for George Speight to exploit the economy and political system of the country. Had the military not turned against him in July, Speight’s plan to use government power to gain control over Fiji’s natural resources might have succeeded. However, the rule of law had become dysfunctional and organized crime immediately exploited the opportunity to stockpile 357 kilograms of heroin on the island.

Poverty, displacement of people, internal strife, armed political conflict, and economic and political marginalization, are a great enabling environment for drugs and human trafficking to grow stronger. This is the reason why the response to such threat cannot

only target the cause of poverty. Instead the rule of law must be equally enhanced in order to break the vicious cycle between cause and effect. Law enforcement then must be seen as a powerful tool to regulate and maintain sustainable peace and development throughout the region.

## **2. This innovation requires also a fresh understanding of what law enforcement is about.**

The term 'law' is among those words that are most misunderstood because of emotional bias. The concept might be so complex to justify specialistic education but that does not mean that it cannot be understood in an easier way.

Law enforcement is basically the process of recognizing the rule, which regulates the life of a community. Therefore, the rule of law establishes:

- 1) that people should be ruled not by the whims of man but by the objective determination of general laws;
- 2) that nobody should stand above the law, and that ordinary citizens can find redress against the more powerful for any act which involves a breach of the law;
- 3) that nobody should fall outside the protection of the law.

Of course each State will make its own laws. There are similarities – they share certain core values. For example, the law should create stability and a sense of security for civil society. The law should promote good governance through accountability and transparency in decision-making and predictability in the political process. The law is the bedrock of societies, thus it is important that it is enforced.

## **3. Enforcement is even more misunderstood**

The most common bias is that law enforcement is the job of the police. In a healthy and well-governed society, it is a much broader undertaking. It is that framework that ensures citizens abide by the law and are deterred from, protected against, and punished for illegal acts. The police might be an important player and facilitator but other law enforcement bodies play much broader roles, the judiciary and most importantly, the civil society should be a protagonist. Effective law enforcement at the end is built by the ability of all members of the community to play their social, economic, and political relationship by the rule.

## **4. The response to drug trafficking is often the weakest link**

The single most important weapon in the fight against drug trafficking is international cooperation. This is because the drug trade is borderless. Anti-drug legislation and investigative and enforcement techniques will be only as good as the weakest link in the international chain. Society turns to the justice system when it feels threatened by traffickers. For this reason it is crucial that law enforcement officials, including the judiciary, fully understand the problem of drug trafficking to conduct effective searches,

obtain evidence, and prosecute offenders. Better effectiveness of law enforcement personnel will lead to a greater protection of citizens which in turn weakens the grip of organized crime on vulnerable members of society.

Countries in the region have reached a consensus on such new policy. They have stepped outside the traditional 'policing role'. They have realized that the one-two punch of arrest and prosecute are alone not efficient strikes to have a notable impact on the drug trade. Preventative strategies, education, training, and the empowerment of victims have become important ingredients in effective law enforcement recipes. However, gangsters without borders are continually changing their mischievous techniques. They are creative, they network fast, they trust each other, and they fear nobody. The only result they want to achieve is to get huge profits. Given their rapid adaptability to new conditions, often our doubts, our weaknesses, our slow process of understanding might become a soft form of complicity. "If you are not with me than you are with them" might be a gross simplification of our relationship. However, when at the end, because of our complex analysis, fragmentation, and bureaucracy, one criminal succeeds not to pay for his crime of peddling ya-baa in a high school, to me it is one too much. It is one more family who will denounce our weak insight and understanding and it is also one more call to UN bodies and international organizations for a better, more credible law enforcement.

##### **5. In the fight against trafficking of human beings prevention is better than cure and law enforcement is as right and essential as care of victims**

During the first years of action against the trafficking of human beings, the best institutions of humankind responded with a wide call to the generous care of victims. In Bangkok alone, over the past year as many as five large and well funded international programmes of the United Nations, NGOs, UK, AusAid, and the private sector have focussed on the care of victims in South East Asia. I think we will have millions more victims to care for, unless the international community decides to balance the care for victims with an equally well planned, well funded, and proactively executed policy to deal with the source.

Prevention is better than cure for most human sicknesses. Search, arrest, prosecution of snakeheads and their mischievous networks might also be better than comforting the victims of their inhuman crimes. When we put one of these global predators out of business, we have prevented him from creating thousands of victims.

In recent years, Member States have seen a huge increase in the growth of human trafficking, a trend characterised by fundamental rights' abuses. The growing involvement of organised crime and its monopoly of human trade in most illicit immigration routes are cause for the highest concern by the international community. Human trafficking is now recognised as one of the most profitable activity of transnational organised crime. Thus, human trafficking is not only a "heinous" transnational crime, a contemporary form of slavery, the most massive and unchecked violation of human rights, but also a powerful engine to generate huge illicit profits. The worst form of illicit wealth tends to consolidate their impunity by corrupting weak

judicial systems, law enforcement, and the free press by putting the very foundations of sustainable development and peace at stake.

Most countries do not have adequate policies to deal with the trafficking of humans or the smuggling of migrants. Many national legal frameworks are ill equipped to deal with the current trends in human trafficking. Some of the same countries even lack legislation and have limited law enforcement capabilities and judicial expertise in this field. This makes cooperation on an international level difficult. In countries, which do not have the capacity to address the situation adequately, little is done to prevent or suppress the problem at its roots and current laws, policies and strategies have proven inadequate to bring the perpetrators before the court. Intersectoral strategies to combat trafficking must be designed that include measures to prevent trafficking, prosecute offenders and protect the rights of trafficked persons.

Therefore, Member States have decided that the most appropriate way to deal with the problem of trafficking in human beings was to elaborate a specialised Protocol within the framework of the UN Convention against Transnational Organised Crime.

The Convention and its two supplementing Protocols – one on Trafficking in Persons, one on Smuggling of Migrants – were completed at the end of October 2000 and were opened for signatures at the high-level conference organised in Palermo, Italy, from 12 to 15 December 2000.

124 of the UN's 189 Member States signed the Convention. Close to 80 of them also signed the two Protocols.

A number of countries with significant trafficking problems did not sign the Trafficking Protocol, e.g. Australia, China, Czech Republic, Israel, Japan, Morocco, Poland, Slovakia, Slovenia, Switzerland, Tajikistan, Thailand, Ukraine, and Viet Nam. It is however important to note that some of them do have constitutional structures that prevents representatives from signing any legally binding agreement without the approval of their parliaments. It does not, by any means, suggest that those countries will not sign at some future date; in fact, the collection of signatures on UN protocols frequently span more than one year.

## **6. The Protocol against the Smuggling of Migrants by Land, Sea and Air**

Let me briefly mention some key elements of the Smuggling Protocol.

The Protocol is intended to combat smuggling by the prevention, investigation and prosecution of offences and by promoting international cooperation. State Parties are requested to criminalise the smuggling of migrants, including the procurement of illegal entry, or illegal residence in order to obtain any financial or other benefit, whether direct or indirect. The Protocol is not intended to criminalise migration itself as it states that migrants should not be liable to prosecution for a Protocol offense "... for the fact of having been smuggled...". It contemplates a variety of prevention and cooperation measures, ranging for information exchange, border cooperation, security, control of documents, training and technical cooperation, etc.

## **7. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children now represents a global consensus on what should be done**

In confronting trafficking and in preventing and controlling smuggling of people, the fundamental concern adopted by Member States in negotiating the Protocols was to maintain a carefully crafted balance between law enforcement and the protection of victims.

The Trafficking Protocol aims:

1. to prevent and combat trafficking in persons, particularly women and children;
2. to protect and assist the victims, including the protection of their internationally recognised human rights;
3. to promote cooperation among States parties in order to meet those objectives.

Overall the Protocol:

1. Provides the first internationally agreed definition of trafficking
2. Obliges to criminalise trafficking with appropriate penalties
3. Offers tools for law enforcement and border control
4. Strengthens the response of the judiciary
5. Expands the scope of protection and support to victims and witnesses
6. Establishes prevention policies.

Let's take a look at some concrete situations, which the Protocol addresses:

1. *Noi was trafficked from Asia to Europe in 1981 to work in the sex sector. In 1988, after years of struggling to bring her trafficker to trial, he was sentenced to 2 ½ years imprisonment in the destination country. Her trafficker, however, was then acquitted in his home country because of Noi's alleged "immoral character and manifest inclination to lying".*

Trafficked persons who have been apprehended working in the sex industry are likely to be subject to discrimination. The aim of the Trafficking Protocol is to prosecute the perpetrators of trafficking and not the victims.

2. *In 1997, during criminal investigations, Maew – a witness and victim of trafficking – stayed at a secret shelter. Even though the shelter was secret, the traffickers found her; she received threats that her two-year old daughter will be killed if she dared pursue the case. Her mother also received threats but when they went to the police, they were told that they would do nothing and that it was Maew's own fault for having left her home.*

Pressing charges and acting as a witness can have long term effects, including jeopardising a trafficked person's own safety and that of the family. Successful prosecution depends on encouraging victims to report crimes committed against them and to act as a witness. According to the Protocol, all trafficked persons must be able to rely on the fact that their safety will be ensured.

3. *In 1998 in an Asian country, 27 young women from two neighboring countries were rescued when police raided a factory. They had been trafficked and forced to work 12 hours a day with no freedom to leave and no wage. Following their rescue, the women were detained and charged with working without a permit and for staying illegally in the country. The employer was only charged for non-payment of wages. Its trial started after the women's deportation so that they were not able to testify.*

Many trafficked persons will not come forward to report crimes committed against them if they are at risk of prosecution for illegal entry/work. According to the Protocol, each State shall adopt appropriate measures that permit victims of trafficking to remain in its territory and provide victims of trafficking with the possibility of compensation for damage suffered.

Nowadays, victims lose more than they gain when they cooperate with the judicial system. Witness protection programmes are inadequate as victims are often considered in violation of immigration laws.

Under the Protocol, the main goal is to catch and prosecute the traffickers while at the same time protect the victims. Victim assistance is crucial in law enforcement, as she/he can provide the necessary evidence to prosecute traffickers.

This is why the Protocol provides for assistance to and protection of victims:

1. Privacy
2. Information on proceedings
3. Physical and psychological recovery
4. Special requirements for children
5. Safety for victims.
6. Measures to avoid victims deportation
7. Safe repatriation

**8. The Protocols have been an important success in building consensus but the success of the impact depends on us.**

The Trafficking Protocol and the achievement of a strong and principled definition of trafficking represent a groundbreaking accomplishment in the fight against trafficking in human beings.

It states that force, coercion or slavery-like conditions are insufficient to characterize the means of trafficking. It helps ensure that victims of trafficking will not bear the burden of proof, provide for assistance to and protection of victims, and disallows a consent defense for traffickers. It also reverses the trend in recent years to separate prostitution from trafficking.

The Protocol combines traditional crime control measures for investigating and punishing offenders with measures for protecting trafficked people. It is an instrument that will serve as a model for national legislation, detailing provisions on conduct that should be sanctioned, the severity of punishment, and effective measures to combat and prevent trafficking.

Previous attempts to deal with the issue from a one-sided perspective have not been successful. Human rights measures aim to protect victims, but they lack effective law enforcement mechanisms in order to apprehend and prosecute traffickers, the source of such victims.

However, effective implementation of the Protocols is the only hope that the situation will change in reality. If we want to avoid that our global village becomes millions of stories of bloody global pillage, we must agree and act on both sides of the coin. Jointly work together for a better freedom from want for all peoples of the world but not forget that freedom from fear is equally essential.

## **9. We can do it, we must do it.**

I hope to have convinced you that international cooperation in law enforcement can provide valuable tools to face “mobsters without borders”. In the framework of the new UN Convention against Transnational Organised Crime, Member Countries can optimise their efforts to effectively control trafficking of drugs and humans and so contribute to the enhancement of human security in Asia/Pacific and the rest of the world.

At the birth of Roman civilisation three thousands years ago, when there was an urgent need to increase the population, the strength of an army, and accelerated economic development and enrichment, my ancestors – the great and brave Romans – organized an aggression to their neighbours, they enriched through pillage and stole all women of their neighbours. In Latin language it was called *populatio* because *populus*, the poplar, was the fastest growing tree in the Mediterranean. Let us not give ground again to such form of uncivilized savage international relations. The challenge is so important that any doubts, lack of clear policy-making and of strategic, effective and fast execution, would equal to complicity with the criminal gangs. There are respected policy-makers who twist their mouth when it comes to enhance the rule of law. Let us not be among them, let us convince and lead by example, let us prove that human rights are protected first and foremost by the law. It can be done, it must be done.

## ANNEX

### *Annotated definition of Trafficking in Person*

#### **Art. 3**

Para 1. “Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a (1) *position of vulnerability* or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of *sexual exploitation* (2), forced labour or services, slavery or *practices similar to slavery* (3), servitude or the removal of organs. (4)”

1. *position of vulnerability*: refers to those situations in which the person involved has no real and acceptable alternative but to submit to the abuse involved.
2. *sexual exploitation*: the Protocol addresses the exploitation of prostitution and other forms of sexual exploitation only in the context of trafficking in persons. The term “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the protocol. The Protocol is therefore without prejudice to how State parties address prostitution in their domestic laws.
3. *Practices similar to slavery*: illegal adoptions amount to slavery-like practices, they also fall within the scope of this paragraph.
4. *Removal of organs*: The removal of organs from children with the consent of a parent or of a guardian for legitimate medical or therapeutic reasons should not be considered exploitation

Para. B. “The consent (5) of a victim of trafficking in persons to the intended exploitation set forth in subpara. A of this article shall be irrelevant where any of the means set forth in subpara. A have been used”

5. *Consent*: This subpara. Should not be interpreted as restricting the application of mutual legal assistance or on imposing a restriction on the right of the accused person to a full defense and to the presumption of innocence.  
It should neither be interpreted as laying upon the victim the burden of proof, as in any criminal proceedings, it is incumbent upon the public prosecutor to prove the elements of the offence in accordance with domestic law.

Para. C. “The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if it does not involve any of the means set forth in subpara. A.

Para D. “Child shall mean any person under eighteen years of age”.

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**UN Representative for drug control and crime  
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## **Drug and human trafficking are the worst forms of uncivil society**

- **Global illicit drug trade is estimated to be worth \$400 billion;**
- **Approx. 27 million people over the world are subject to slavery or slavery-like conditions;**
- **It is estimated that 1 million women and children are trafficked every year, 250.000 from Southeast Asia;**
- **Organised crime syndicates gross \$ 1.5 trillion a year**

## **The Rule of Law is based on three basic notions:**

- **That people should be ruled not by the whims of man but by the objective determination of general laws;**
- **That nobody should stand above the law, and ordinary citizens can find a redress against the more powerful for any act which involves a breach of the law;**
- **Nobody should fall outside the protection of the law**

**The common bias is that law enforcement is the dirty job of the police ...IT IS NOT!**

**Enforcement is a broad concept that involves many components:**

**prevention, protection, awareness, training...**

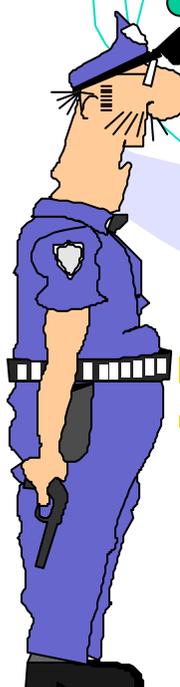
**Execution of law enforcement is a task of:**

**judiciary, police, customs, immigration and mainly civil society**

They really know nothing about drugs...

Your Honour, I agree with the Prosecutor. 41 kg of Cannabis is a very little quantity!

Can the defendant tell the Court how he injects the Cannabis?



**Society turns to the Justice system!**

## **The response to drug trafficking is often the weakest link**

- **Drug trade is borderless**
- **Gangsters are creative, they network fast, they trust each other, they fear nobody**
- **Preventative strategies, education, training are important ingredients of effective law enforcement strategies**
- **Decisiveness and international cooperation remains the most powerful weapon in fighting drug trafficking**

# **In fighting human trafficking prevention is better than cure and law enforcement is as right and essential as care of victims**

- **Need to balance care of victims with well planned, funded and executed policy to address the sources**
- **Human trafficking a powerful engine to generate illicit profits and illicit wealth consolidate their impunity**
- **Most countries lack adequate policies, national legal frameworks are ill-equipped, judicial expertise is often missing**
- **Little is done to prevent and suppress the roots of the problem**

# **The UN Convention against Transnational Organised Crime is supplemented by three Protocols**

- **The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children.**
- **The Protocol against the Smuggling of Migrants by Land, Sea and Air.**
- **The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunitions. (will be finalized in Jan. 2001)**

## **The Protocol against Smuggling of Migrants by Land, Sea and Air**

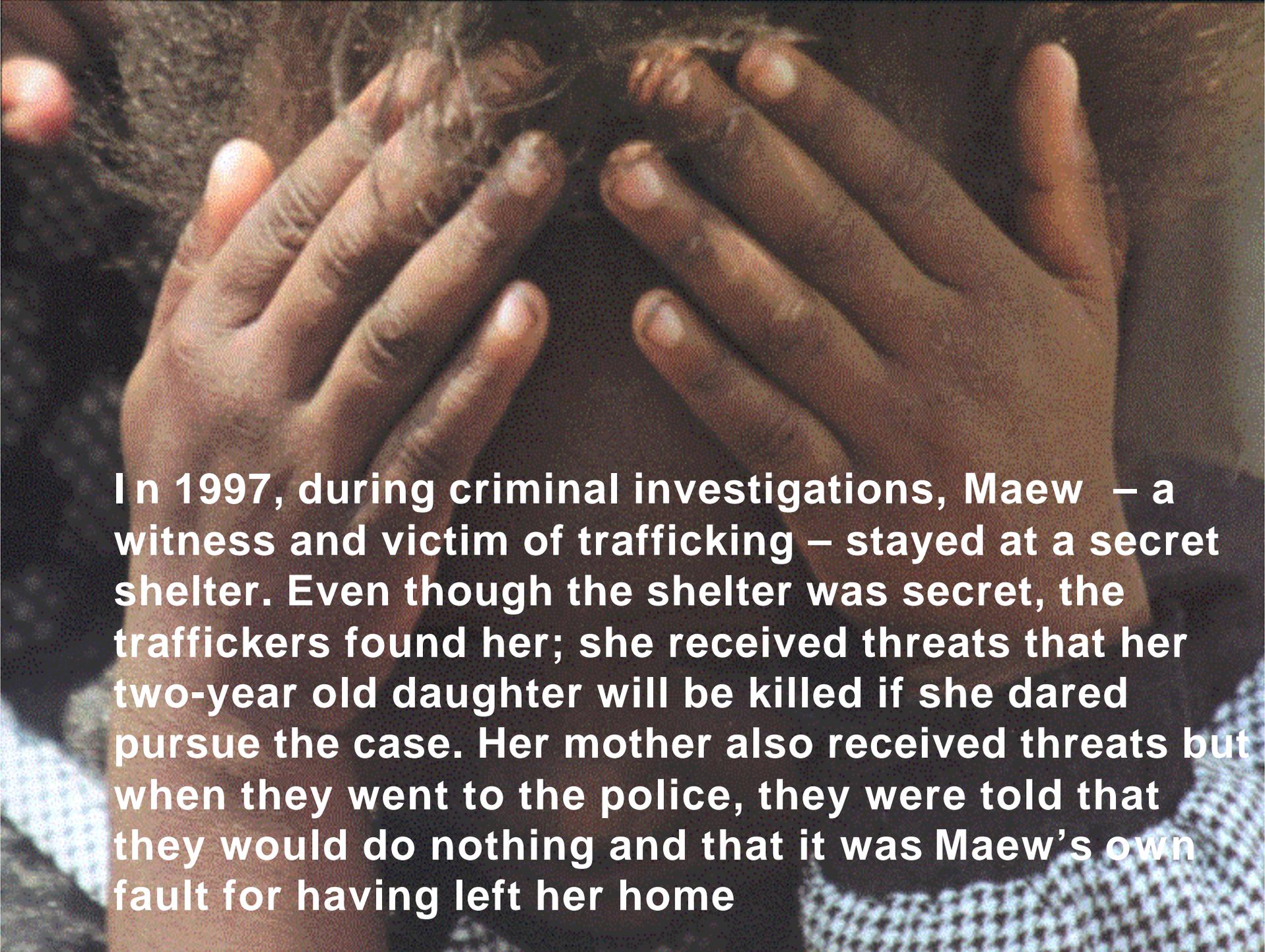
- **to combat smuggling by the prevention, investigation and prosecution of offences and by promoting international cooperation**
- **not intended to criminalise migration itself as it states that migrants should not be liable to prosecution for a Protocol offense “... for the fact of having been smuggled...”.**

**The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children now represents a global consensus on what should be done**

- To prevent and combat trafficking in persons, particularly women and children;
- to protect and assist the victims, including the protection of their internationally recognized human rights;
- to promote cooperation among States parties in order to meet those objectives.

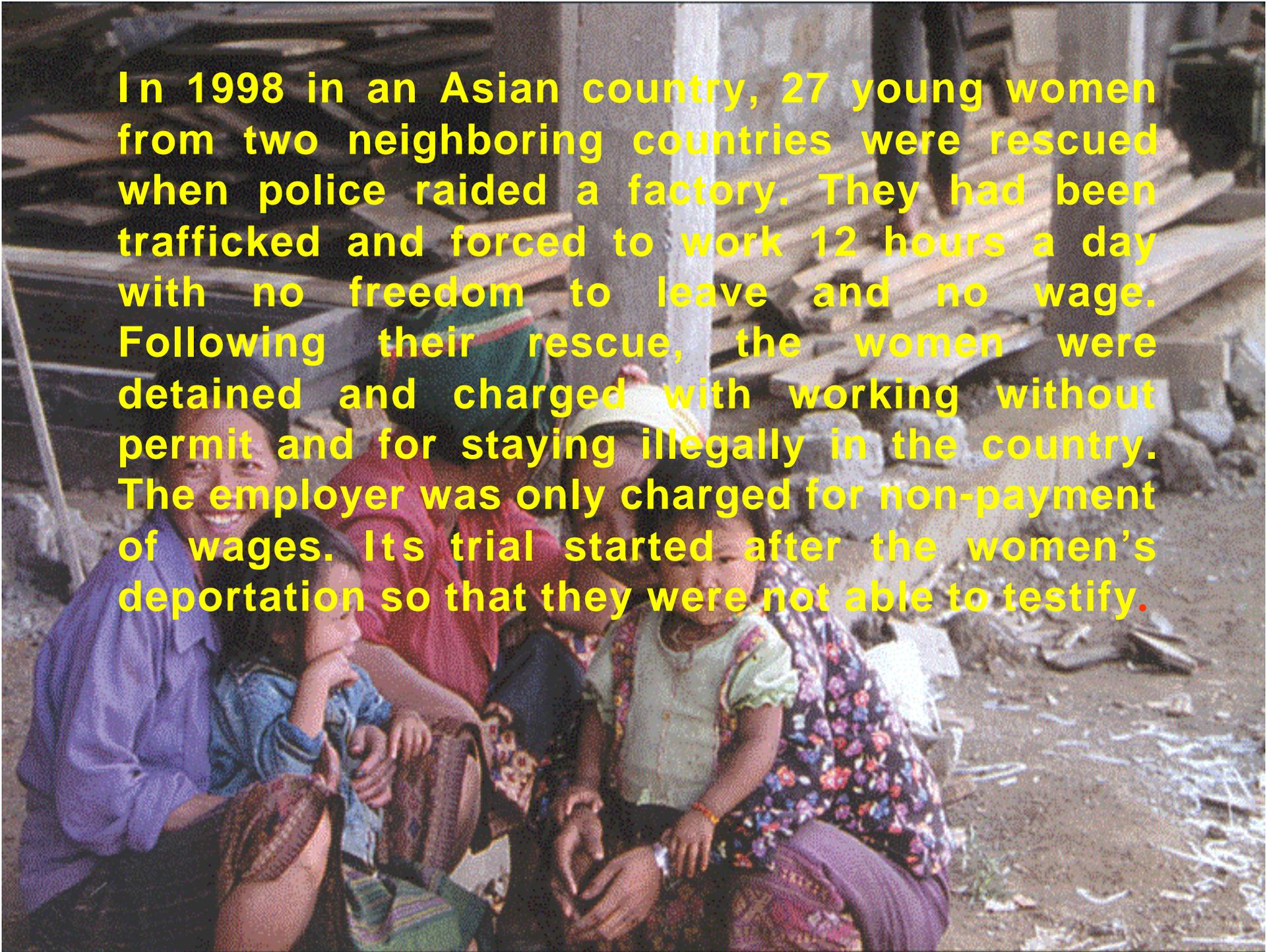


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**The Protocol have been an important success in building consensus but the success of the impact depends on us.**

- **First internationally agreed definition of trafficking**
- **Oblige to criminalise trafficking**
- **Offer tools for law enforcement**
- **Strengthen the response of judiciary**
- **Expand protection and support to victims and witness**
- **Establish prevention policies**

**We can do it,  
we must do it**

**Thank you**