

LEGAL CASE ANALYSIS:

THE 'AKLAN' CASE, THE PHILIPPINES PROTECTION & JUSTICE IN HUMAN TRAFFICKING OF MIGRANT FISHERS



SYNOPSIS

Fact sheet on the police investigation and criminal proceedings of the human trafficking of six (6) Filipino men onto foreign-flagged, Taiwanese-owned fishing vessels. The analysis is based on reviews of five (5) criminal cases heard in the Aklan Regional Trial Court between 2011-2020, and four (4) interviews with key informant stakeholders. Eleven individuals were accused of conspiring to recruit, transport and harbour the victims without proper authority and licence, for the purpose of forced labour and involuntary servitude, violating the Philippines' Anti-Trafficking in Persons Act of 2003. Charges included Qualified Trafficking in Persons, Acts of Trafficking in Persons, and Illegal Recruitment in Large Scale. Only one accused (the Filipino recruiter) was apprehended while the rest remain at large. The accused was acquitted of all charges in 2020.

GAPS IN PROTECTION AND JUSTICE

The assessment of gaps in protection and justice draws on a rights-based approach to Trafficking in Persons, assessed against standards laid out in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), and other relevant international standards. ACTIP's Chapter 4, 'Protection', is particularly relevant to this assessment. A rights-based approach includes the following principles: victim identification, non-criminalisation and conditionality, right to information about rights, right to legal assistance, right to remedy (ASEAN-ACT no date).^[i] The assessment below also provides relevant Chapters/ Articles in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (2015).^[ii]

I. Victim Protection (Socio-Economic Support):

1. Official Victim Status Not Granted:

Because the victims were not formally classified, they were not provided with key support as VoTs, including psycho-social/ health support and financial assistance. Not only was this contrary to the principles of a rights-based approach to victim support, it also negatively affected the case in two main ways: the victims remained financially vulnerable throughout the legal proceedings, and; were possibly subject to influence from the accused (as some of the victims retracted/ changed their original statements).

KEY RECOMMENDATIONS:

- 1) Ensure that a thorough victim identification assessment is undertaken for all potential victims of trafficking, including males/ those deployed in the offshore fishing sector, so that key protections may be available to victims throughout the legal proceedings and beyond the trial period.
- 2) Ensure there is harmonisation between different government agencies and non-government/ civil society stakeholders in standards for victim identification, and that victims identified by one agency are similarly recognised by other relevant agencies in the Philippines. This would help to deconstruct the inter-institutional silos that have arisen on the Philippines for victim identification and protection.

[i] Victim Rights - ASEAN-Australia Counter Trafficking (aseanact.org)

[ii] ACTIP.pdf (asean.org)

II. Victim Protection (Justice Processes):

Victim Testimony: In one case, the court highlighted contradictions in testimony, as two of the claimants testified that they were treated well by their captains, could sleep between 6-8 hours a day, were not forced to work and the vessel conditions were generally good.

In another case, one of the accused had arranged for the repatriation of the victim. The Court finding did not necessarily account for memory gaps that may be induced by trauma (a key aspect of victimology in TIP cases), or that witnesses may face pressures to alter their testimony. Interviewees suggested that the family of the accused may have offered victims a financial settlement to change their testimony. In one case, the central reason why the accused was acquitted was because the victim did not complete his testimony.

This highlights issues with claimants disengaging from legal processes. All these problems highlight the inadequacy of victim protection measures during the legal proceedings.

KEY RECOMMENDATION:

As in Recommendation I, above.

III. Justice System

1. Proving Conspiracy:

the conspiracy charge was difficult to prove. The Court made no pronouncements on whether overt acts occurred or not, but said the Prosecution failed to prove the guilt of the accused beyond reasonable doubt. Requiring alleged perpetrators be at one location to 'recruit, transport, harbor' seems blind to the cross-border nature of some trafficking cases where facilitators can be in different locations performing different tasks simultaneously, continuously or chronologically at any given time.

2. Flawed victimology and the pervasiveness of the 'willing victim' narrative:

the finding of the Court appeared to be based on a mistaken understanding of vulnerability. As the victims were college graduates and proficient in English, they were considered 'learned person' who could not be viewed as vulnerable or that the accused would be able to take advantage of them. The Court pointed out that the victims knew the reduced salary rate and that their salaries would be paid at the end of the contract.

3. Prosecution weaknesses:

failure to formulate sufficient criminal information, heavy reliance on victim testimony that, at times, contradicted the Prosecutors case. There was some suggestion that one of the key reasons the cases were dismissed was due to the transferring of prosecutions to various courts. Specifically, this resulted in delays and logistical difficulties, and discouraged the victim witnesses from appearing in court (and hence a lack of corroborative evidence to prove elements of TIP).

KEY RECOMMENDATION:

The need for more targeted and specific capacity-building training of justice sector actors to understand victimology in cases of 'seafood slavery' and the trafficking of men and boys internationally, more broadly.

IV. Right to Remedy

1. Lack of Victim Compensation and Restitution:

Because the accused was acquitted and other offenders could not be located and therefore charged, the victims did not receive any remedy. Further, there was no government compensation fund available for the victim witnesses to avail during or after the trial. Civil cases by VoTs to claim damages are not usually supported by the government, which leaves victim compensation and restitution claims relying solely on the success of criminal justice proceedings. In the Aklan case, one of the judges did, in fact, state that there may have been a case for violation of certain labour practices, where victims could have filed for damages; however, no support was provided the victims to pursue such a claim. The financial vulnerability of all 6 victims remained post-trial, and was possibly made worse, after the conclusion of the legal proceedings.^[iii]

KEY RECOMMENDATIONS:

1) The right to remedy should be mandatory and occur alongside criminal proceedings. The government could improve support for civil cases to claim damages. A government compensation fund should be established and made available to all VoTs, regardless of gender, education level or type of exploitation.

Compensation from this fund should be made available regardless of:

- a) the outcome of the legal proceedings;
- b) whether the victims exited the Philippines as POEA^[iv] registered overseas workers or not, and;
- c) whether the victims participate in the legal proceedings or not (for example, if they were only identified as victims by other agencies, such as DSWD).

2) Strengthening of asset forfeiture strategies as a means of improving victim access to compensation and restitution.^[v]

V. International Gaps

1. Evidence:

One of the key reasons the cases failed was the lack of evidentiary support, complicated by the cross-jurisdictional and international nature of the crime. This was expressed in two ways in this case:

1) Original documents - in some cases, receipts for payments were either lost or the victims did not ask for one, and the prosecution was unable to provide original documents because the police officers could not locate them. The defense successfully had photocopied documents excluded from the evidence presented by the public prosecutors, arguing that only original copies of documents presented as evidence were valid in the legal proceedings.

2) Corroborating testimony - seafood slavery is considered a 'hidden' crime as it takes place in international waters and it is difficult to access witnesses to corroborate victim testimony. These evidentiary issues resulted in lengthy delays in bringing forward cases. The resulting lengthy trials also led to a loss of documents.

2. Lack of International Cooperation/ Mutual Legal Assistance:

Persons of interest to the cases and all but one of the accused were located in Singapore, which negatively impacted the legal proceedings since there was no bilateral agreement to cooperate for the purpose of investigating or prosecuting the cases between the Philippines and Singapore.

3. Lack of Knowledge, Awareness and Capacity on the Use of Formal Channels:

The ASEAN Mutual Legal Assistance Treaty in Criminal Matters, of which all ASEAN Member States are signatories (the Treaty was signed in 2006).

[iii] Sallie Yea. Justice in their Own Terms: Ongoing Vulnerability for Trafficked Fishers from the Philippines. Unpublished manuscript.

[iv] Philippines Overseas Employment Administration.

[v] Sections 99 to 106 of the Revised Implementing Rules and Regulations of the Anti-Trafficking in Persons Act of 2003, as amended, mandates free legal services for victims including for securing compensation.

4. Lack of Knowledge and Awareness of Good Practice Examples in Informal Police Cooperation Mechanisms:

As an alternative to formal international cooperation mechanisms, informal police-to-police cooperation could have expedited effective cooperation during the investigation stage, as well as in the safe repatriation of victims, since requests for formal MLA can sometimes result in delays, particularly where evidence may need to be collected quickly.

5. Difficulty for Government TIP Stakeholders (Law Enforcement and Public Prosecutors in particular) to make requests for MLA:

The process of making a request for MLA is often difficult for public prosecutors and law enforcement, particularly those based in provincial areas.

KEY RECOMMENDATIONS:

- 1) Extend existing capacity-building about existing formal mechanisms (particularly MLAs) to enhance the effectiveness of investigation and prosecution of cases undertaken within relevant jurisdictions, with the aim of ensuring these mechanisms become part of the normal protocol and practice for cross-border trafficking cases.
- 2) Conduct research into and provide capacity-building training about good practice examples and protocols for informal international cooperation for cross-border trafficking cases.
- 3) Create and formalise the necessary channels for law enforcement personnel and public prosecutors to make the request for MLA, in consultation with the Department of Justice.

This fact sheet is one of a series co-produced through a joint research project by La Trobe University and ASEAN-ACT.

The research project aims to critically evaluate the gaps in justice and protection in the human trafficking and forced labour of migrant fishers from Southeast Asia.

The research involved a desk review of legal documents pertaining to the case, supplemented by semi-structured interviews with key stakeholders in justice, law enforcement and civil society and, where feasible, semi-structured interviews with trafficking survivors involved in the cases.