

Assisting Victims of Human Trafficking in the Indonesian Legal Process

A Manual for Service Providers

By



**American Center for International
Labor Solidarity (Solidarity Center)**



**International Catholic
Migration Commission (ICMC)**

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TABLE OF CONTENTS

CHAPTER 1.....	1
1.1. Background.....	1
1.2. Who should use this manual	1
1.3. How can NGOs assist victims of trafficking?.....	2
Protection of Indonesia Citizens Abroad.....	3
1.4. How to use this manual.....	3
CHAPTER 2.....	5
2.1. Definition of trafficking.....	5
2.2. Where does trafficking take place?.....	7
2.3. Who are the traffickers? Who should be held responsible?.....	8
CHAPTER 3.....	10
3.1. Different types of courts.....	10
3.2. A comparison of criminal and civil cases.....	10
3.3. Specialty courts.....	12
Using the Administrative Court to challenge trafficking.....	13
CHAPTER 4.....	14
4.1. Help the victim to be aware of these challenges.....	14
4.2. Some of the challenges in the legal system.....	14
The challenges facing one trafficking case.....	16
Challenges faced in court hearings.....	16
4.3. How to face these challenges.....	16
CHAPTER 5.....	18
5.1. Social and emotional effects of trafficking.....	18
5.2. Things to remember when working with trafficking victims	19
CHAPTER 6.....	22
6.1. Why trafficking victims need support to learn about the legal options they have	22
6.2. What are the legal options available to a victim?.....	22
Some of the possible options for a victim.....	22
6.3. A process to help victims	23
CHAPTER 7.....	26
7.1. The definition of “child”.....	26
7.2. What is child trafficking?.....	26
7.3. What kind of abuses do children suffer when they are trafficked? What is the impact on them?.....	26
7.4. Special considerations for children involved in legal processes	27
7.5. How to talk with children who have been trafficked.....	30
CHAPTER 8.....	32
8.1. What are criminal cases?.....	32
8.2. What abuses or violations could be subject to criminal charges?.....	32
8.3. What are the possible outcomes of criminal cases?	32
8.4. Who is involved in a criminal case? What are their roles?	33
8.5. The stages in the criminal process.....	37
8.6. Making the police aware of a crime	39
8.7. Gathering evidence about a crime – examination & investigation.....	40
Defendants’ Rights During Investigations.....	40
Methods of Examination	41

8.8. Complete and submit a case file.....	46
8.9. Arrest.....	46
8.10. Prosecutor reviews the case.....	46
8.11. Filing the indictment.....	47
8.12. Schedule for the trial.....	48
8.13. The trial process.....	49
8.14. The verdict.....	51
8.15. Sentencing.....	53
8.16. Appeal process.....	53
8.17. Positive & negative aspects of the criminal process.....	54
8.18. Examples of Criminal Cases.....	54
CHAPTER 9.....	58
9.1. What are civil cases?.....	58
9.2. What abuses or violations can be handled through civil court?.....	58
9.3. What are the possible outcomes of civil cases?.....	58
9.4. Who is involved in a civil case? What are their roles?.....	59
9.5. The civil court process and who is involved.....	61
9.6. The civil court process – its procedures.....	62
REGISTERING OF COMPLAINT IN STATE COURT, PAYMENT OF FEES AND ASSIGNMENT OF CASE NUMBER.....	62
TRIAL BEGINS.....	62
AGREEMENT REACHED.....	62
NO AGREEMENT REACHED.....	62
APPEAL.....	63
NO APPEAL.....	63
EXECUTION OF VERDICT.....	63
9.7. Gathering evidence for the case.....	64
9.8. Drafting the complaint.....	65
9.9. Filing of the complaint.....	66
9.10. Schedule for trial.....	68
9.11. Presentation of evidence in court.....	68
9.12. Definition of settlement.....	69
9.13. Verdict.....	70
9.14. Issues regarding amending, dismissing or ending civil cases.....	72
9.15. Appeals.....	72
9.16. Positive & negative aspects of civil court processes.....	74
CHAPTER 10.....	75
10.1. Appeal to the Supreme Court – Cassation request.....	75
10.2. Request to review the final court decision – judicial review	75
10.3. Prorogation.....	76
CHAPTER 11.....	77
11.1. What involvement could government offices have in trafficking cases?	77
11.2. What abuses or violations could be handled through government departments?	77
11.3. What are the possible outcomes?	77
11.4. Who is involved? What are their roles?.....	78
11.5. What is the process?.....	79
11.6. Challenges	81
11.7. Positive & negative aspects of involving government departments in trafficking cases	81

CHAPTER 12	82
12.1. What is Alternative Dispute Resolution (ADR)?.....	82
12.2. What kind of abuses can be dealt with through ADR?	83
12.3. What are the potential outcomes of ADR?.....	83
12.4. Who is involved in the process? What are their roles?.....	83
12.5. The ADR process.....	85
12.6. How much does ADR cost?.....	86
12.7. Positive & negative aspects of ADR.....	86
APPENDIX 1	88
A.1.a. Important notes.....	88
A.1.b. Summary of the different legal responses which are possible.....	88
A.1.c. Index of abuses and possible legal responses.....	89
APPENDIX 2	92
A.2.a. Example Intake Form.....	92
A.2.b. Matrix to guide discussion and consultation regarding the victim’s options...96	
A.2.c. Example Case Tracking Form.....	97
A.2.d. Case management within your organization.....	98
A.2.e. Consent for release of information.....	99
A.2.f. Checklist for Reviewing Legal Options with Victims.....	100
APPENDIX 3	102
A.3.a. Example of complaint letter regarding unpaid salary.....	102
A.3.b. Example Letter of Attorney to pursue unpaid insurance.....	104
A.3.c. Example of letter to Labor Suppliers concerning the cancellation of deployment due to delay.....	105
A.3.d. Example of Police Complaint for Document of Falsification.....	108
A.3.e. Example of Civil Case Complaint -- Demands for Compensation through District Court.....	110
APPENDIX 4	113
APPENDIX 5	114
APPENDIX 6	120
A.6.a. State Organs.....	120
A.6.b. Cabinet, Key Departments & Department-level Agencies.....	120
A.6.c. Law Links.....	120
A.6.d. Information about Trafficking.....	120
A.6.e. Email List Serves.....	122
A.6.f. Selected Publications Available On-Line.....	123

CHAPTER 1

THE PURPOSE OF THIS MANUAL

1.1. Background

Trafficking of women and children in Indonesia is a significant problem. There are various organizations that provide assistance such as shelter or medical support to victims of trafficking. It is more difficult for victims to find support to deal with issues such as unpaid wages or to push for criminal charges against people who have abused them.

Victims of trafficking deserve to be compensated for any money or benefits they have been denied and for the suffering that they have experienced. The people who are involved in the trafficking of people must be held responsible for the abuses that they have committed.

The Government of Indonesia has undertaken some efforts to address the problem of trafficking through the passage of a new anti-trafficking criminal bill, training of the police, and implementation of a five-year Indonesian National Plan of Action on the Elimination of Trafficking in Women and Children. NGOs have been involved in advocating for the government to take these steps and need to continue to be involved as these plans are implemented.

Victims need help in order to seek justice. Victims have the right to be accompanied throughout the legal process by people who are supportive to them. NGOs, trade unions, and other civil society institutions providing victim services in Indonesia have a significant role to play in assisting victims seek justice for the abuses they have experienced. The legal process is often daunting, bureaucratic and difficult to understand. It is important for victims of trafficking to have a compassionate advocate to speak for them and assist them through the legal process, to encourage them and to follow-up on their cases. NGOs can also advocate for fair and sensitive treatment of victims of trafficking.

1.2. Who should use this manual

The purpose of this manual is to assist NGOs and similar organizations¹ already working on trafficking issues to provide additional support to victims when they become involved in the legal system. It will help NGO service providers to better understand their role within legal processes.

The manual is intended for use by laypersons, not legal practitioners. It is designed to provide non-lawyers with an overview of the Indonesian legal system so that they can help victims to understand what legal responses are available to them and how to pursue these options.

This manual does not give enough information to handle a legal case on your own. For this, you will need someone with legal training such as an Attorney.

¹ This manual can be used by any institution providing services to victims – both non-governmental and governmental. However, the manual will refer to NGOs throughout the text as it is assumed that most users will be non-governmental service providers.

This manual is not designed to be used by victims alone. Victims may find the information in the manual overwhelming without the assistance of an activist or legal representative.

The manual covers the legal process in Indonesia only. While many trafficking victims may have viable legal claims in other countries (for example, violations suffered by Indonesian migrant workers overseas), the manual does not discuss the legal process abroad. It is important, however, to know that it is also possible to take legal action in the country where the abuse took place.

1.3. How can NGOs assist victims of trafficking?

Assistance provided to victims of trafficking by NGOs may include:

- ✓ Providing information to the trafficking victim about the legal process. This includes discussing all of the options available to the trafficking victim and assisting her to decide what action to take.
- ✓ Assisting the victim to access the legal system, for example, taking her to the court to file papers for her case or accompanying her to speak with the Police.
- ✓ Advocating on behalf of victims to actors in the legal process such as police and prosecutors. This includes ensuring that the legal system is sensitive and accommodating to the needs of the victim. Unfortunately, victims of trafficking are often treated as criminals and they need advocates to ensure that they are protected, rather than punished. As well, actors in the legal process may need to be reminded that a victim of trafficking has had traumatic experiences and should be treated with sensitivity, for example during interviews.
- ✓ Providing emotional support and encouragement. This might include providing counseling to her or helping her to meet other victims so that she can see that she is not alone and share experiences with other victims. Please see Chapter 5 for more information about this.
- ✓ Accompanying victims to meetings related to their case and to court hearings to provide encouragement, ensure sensitive treatment and to assist the victim to understand the processes.
- ✓ Recording data and collecting information about the victim's case.
- ✓ Assisting the victim to gather the paperwork or evidence she needs to prove her case.
- ✓ Assisting the victim to prepare letters and other documents to present to the court or to the individuals or organizations who violated her rights.
- ✓ If the victim is not literate, you will need to assist her to both read and write information regarding her case.
- ✓ Serving as a source for referrals to other services such as lawyers, medical and psychological care, shelter, job training and education.
- ✓ Assisting the victim to access facilities needed to prepare her case such as transportation, computers, telephones, fax machines and photocopiers.

- ✓ Providing material support to victims such as accommodation, funds for court fees, lawyer fees, transportation and meals (for example if she must travel from her hometown to testify in court).

Protection of Indonesia Citizens Abroad

For cases that occur abroad, Indonesian Law cannot be applied. The law that applies is the law of country where the abuse took place. There should also be reference to the Ministerial Decree of Manpower, which states that the labor supplier that deployed the migrant workers has the obligation to take care of problems those workers.

Labor suppliers may collaborate in taking care of Indonesian migrant workers' problems abroad with the following organizations:

- NGOs abroad
- Embassies, Consulates General and Chambers of Commerce of Indonesia abroad
- Appointed Attorneys of agencies or labor suppliers abroad

The representatives of Government of Republic of Indonesia abroad (see above) have an obligation to take care of Indonesian citizens' problems. This assistance should be extended to workers abroad whether they are there legally or not. Unfortunately, many workers abroad find that there is little assistance available to them.

1.4. How to use this manual

This manual has been organized to try to make the information inside as easy to access as possible. NGO staff reading this manual may not have time to read the whole document and instead will just refer to portions of it. The following explains how the information in the manual is arranged:

- **Table of contents:** can be used to find information on a certain subject. Information is listed by chapters and subject headings. Earlier chapters are about the issue of trafficking and how to assist victims; later chapters are about legal processes.
- **Index of abuses:** will help you to identify what legal options are possible for the abuses which a victim has suffered. Look down the list of abuses to find the relevant one and then across the row to see what legal options may be possible.
- **Diagrams to explain processes:** diagrams of how the legal processes work and how courtrooms are arranged will help you to explain these to a victim. In particular, these diagrams could be useful in preparing a victim to appear in court. The diagrams can also be used to familiarize yourself with the legal processes. You may want to copy these pages and give to a victim for her to keep so she can refer to them later.
- **Boxes with examples:** case studies (both real and hypothetical) are provided to give more of a picture of how legal processes operate and what the outcomes may be.
- **“How you can help”:** these sections are included throughout the manual to remind you of your role as a NGO service provider. These can serve as reminders as you work through a case with a victim.
- **Example forms and letters:** you can use these to help save time on the paperwork related to a trafficking case. Much of the information has been taken from NGOs with experience in assisting victims of trafficking.

- **Background information:** additional information regarding legal terms and laws related to trafficking is included in the Appendix.
- **Contact information for other organizations:** this information can assist you to connect with other NGOs who are working on trafficking and may have information and experiences to share. The information can also be used for referring victims to other supports and services.

CHAPTER 2

WHAT IS TRAFFICKING?

2.1. Definition of trafficking

In the past, people usually thought of trafficking as moving women across borders, against their will, and forcing them into prostitution. Over time, people have come to understand more about the complex issue of trafficking and now see that it in fact includes many different kinds of situations. For example, a broader definition of trafficking is the “movement of persons (especially woman and children), with or without their consent, within a country or internationally, for all forms of exploitative labor, not only prostitution and servile marriage”.²

This broader definition means that more Indonesians have experienced trafficking-related abuses than was previously thought. In fact, many situations which might be considered acceptable within Indonesia are actually acts of trafficking.

The United Nations has defined trafficking as:

The recruitment, transportation, transfer, harboring or receipt of persons, by means of:

- *the threat or use of force or other forms of coercion*
- *abduction*
- *fraud*
- *deception*
- *the abuse of power or of a position of vulnerability or*
- *the giving or receiving of payments of benefits to achieve the consent of a person having control over another person*

for the purpose of exploitation.

Exploitation includes, at a minimum:

- *the exploitation of prostitution of others or other forms of sexual exploitation*
- *forced labor or services*
- *slavery or practices similar to slavery*
- *servitude*
- *the removal of organs.*

The consent of a victim ... to the intended exploitation ... shall be irrelevant where any of the means [listed above] have been used.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means [listed above].³

A broader definition is necessary because it recognizes the numerous abuses faced by people who experience trafficking. Some issues which are important to remember about trafficking are:

² Wijers, M. & Lap-Chew, L. (1999). *Trafficking in Women Forced Labour and Slavery-like Practices in Marriage, Domestic Labour, and Prostitution*. The Netherlands: Foundation Against Trafficking in Women. Quoted in ICMC & ACILS, Rosenberg, Ruth (ed) (2003). *Trafficking of Women and Children in Indonesia*. Indonesia: ICMC & ACILS.

³ 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplement to the United Nations Convention against Transnational Organized Crime.

- Abuses take place not only after a person has arrived at their place of work, but also take place during the process of recruitment for jobs (such as women not being told honestly by recruiters about the financial arrangements which will actually leave them indebted).
- A person may not be forced or coerced in an obvious way, and may in fact agree to take a job, but if she is not aware of the bad working conditions in the job intended for her, she is a victim of trafficking.
- A victim of trafficking may know that she is being transported across borders illegally or employed illegally (for example with forged documents making them appear older than they are) in order to find work, but if she is not aware of the exploitative conditions she will face in her work, she is a victim of trafficking.
- Silence often surrounds violence and abuse, especially if they take place in the privacy of people’s homes or if victims are already in a vulnerable position, such as when they have illegal visa documents. All violence is a crime and an abuse of human rights, regardless of where it takes place and who the victim is.
- The people who are involved in the process of trafficking must be held responsible. For example, often the focus and blame is put on women who are trafficked to work in the sex industry, not on the people who contributed to the women becoming part of the sex industry.

ACILS and the International Catholic Migration Commission (ICMC) have developed the following framework to describe the process of trafficking. If one condition from each of the three categories below is met, the result is trafficking. The consent of the victim is irrelevant if one of the “Means” above is used. For children, consent is irrelevant with or without the above means.

Human Trafficking is:

Process	+	Way/Means	+	Goal
Recruitment or Transportation or Transferring or Harboring or Receiving	A N D	Threat or Coercion or Abduction or Fraud or Deceit or Deception or The abuse of Power	A N D	Prostitution or Pornography or Violence/Sexual Exploitation or Force Labor/with unfair wages or Slavery/Similar practices
1	+	1	+	1*

Consent of the Victim is irrelevant

* If one condition from each of the three categories above is met, the result is trafficking. Consent of the victim is irrelevant if one of the means above is employed. For children, consent is irrelevant with or without the above means.

When this manual was written, the Government of Indonesia did not yet have a definition of trafficking, but a bill on anti-trafficking was being developed which will include a definition of trafficking. Hopefully, this will make it easier to hold accountable those who are responsible for trafficking and for victims of trafficking to seek justice for the abuses they have suffered.

2.2. Where does trafficking take place?

2.2.a. Migrant Work

These are people who travel outside of Indonesia to seek work in other countries. The number of migrant workers has increased substantially in recent years. Migrant workers find work in other countries through both formal and informal processes. Some of the abuses they face are:

- They are given falsified documents by recruiters either to speed up the process or to make children appear old enough to work. This puts the worker at risk in the country to which they are sent to work.
- Most workers become indebted to middlemen or recruiting agents because they are unable to pay in advance for fees illegally and legally charged to them. Agents charge workers fees for things such as immigration paperwork, medical exams and accommodation while waiting deployment to another country. Some workers never receive their salary, and are told that it is all being used to repay their debts.
- Working conditions are poor and often violate local labor laws. For example, workers may have to work long hours with no days off, have unsafe and unsanitary working conditions, no private space for themselves and face sexual harassment or abuse from their employers.
- Employers or agents may keep a worker's passport and other documents, making it impossible for her to leave or have freedom of movement.

2.2.b. Domestic Work:

These workers are particularly at risk because they work in private homes and their abuses may not be seen by anyone else. It is also difficult for the government to regulate this kind of work. Poor treatment of domestic workers may be seen as acceptable or at least not something which is an abuse of human rights.

Many domestic workers are under 15 years old (the legal minimum age for working) and are considered under international law as children and therefore have special rights. For example, requiring a child to work long hours which prevents her from going to school and from resting is a violation of her rights.

2.2.c. Sex Work:

Often women are recruited for sex work in the same ways as other workers and expect to find other work such as domestic work or in restaurants. It is only later that they find out they will be expected to work in the sex industry.

2.2.d. Mail-Order Brides:

It is a human right to marry with free and full consent. This right is violated when a woman's family decides on her behalf whom she should marry. A woman's rights are also violated if she experiences servile or exploitative conditions in the home of her husband. Sometimes a woman's citizenship can be changed without her knowledge, making it more difficult for her to return back home to Indonesia.

2.2.e. Child Labor:

Children experience abuses similar to adults when they are trafficked. But, children also have special rights which are violated during the experience of trafficking. For example, children have a right to education and rest. Work which prevents children from attending school or interferes with their development (for example forcing them to work in unsanitary conditions or without adequate rest or nutrition) is also trafficking. Any involvement of children in pornography or the sex industry is trafficking regardless of whether the child may consent.

2.3. Who are the traffickers? Who should be held responsible?

A number of people can be involved in trafficking an individual person. Some of them may be aware that they are playing a role in trafficking, but others may not. Sometimes traffickers are part of an organized network of people, but they may also be acting alone. Some people involved in trafficking are actively involved in other criminal activities, while others are respected members of their community.

There are two important issues to remember:

- The responsibility for trafficking and any punishments should not be placed on the victim – those who trafficked her should be held responsible.
- When a victim of trafficking is seeking justice, she has the option (and the obligation in a criminal case) to accuse a number of different people if they were all involved in the process of trafficking her and thereby committing abuses

These are the main actors who are involved in trafficking in Indonesia:

- ◆ **Recruiting agencies (PJTKI)** – They are involved in trafficking by actions such as forcing a woman to continue working even after she has asked to stop or return home (debt bondage), sending a woman to a different kind of work than she was promised, preventing a woman from seeing her family while she is waiting in a holding center.
- ◆ **Agents** – They are involved in trafficking when they make arrangements for falsifying documents or when they lie about the work women are being recruited for.
- ◆ **Government** – They are involved in trafficking when officials are involved in the falsification of documents, or when they ignore labor violations such as in holding centers.
- ◆ **Employers** – They are involved in trafficking if they force people to work under exploitative conditions.

- ◆ **Marriage Brokers** – They are involved in trafficking when women experience exploitative conditions in the marriages they have arranged. They are responsible even if they are not aware of the exploitative nature of the arranged marriage.
- ◆ **Parents and Relatives** – They are involved in trafficking when they knowingly “sell” their children or family members to agents, recruiters or employers. They are also involved if they accept payments in advance on the earnings of their relatives, thus putting the person into a form of debt bondage.
- ◆ **Husbands** – They are involved in trafficking when they marry and transport their wives with the intention of subjecting them to exploitative conditions.

CHAPTER 3

AN INTRODUCTION TO THE COURT SYSTEM

3.1. Different types of courts

Indonesia has three levels of courts:

- State Court (*Pengadilan Negeri*) – located at the district level
- High Court (*Pengadilan Tinggi*) – located at the provincial level
- Supreme Court (*Mahkamah Agung*) – located in Jakarta

Most cases appear first in the State Court. There are about 250 State Courts throughout Indonesia. One court is usually responsible for one district. State courts handle both civil and criminal cases. A case must be filed in the State Court with jurisdiction in the district where the trafficking victim lives, the trafficking occurred, or the trafficker lives.

Criminal cases in the State Court deal with crimes or violations in the area within the jurisdiction of the State Court in accordance with the Criminal Penal Code (KUHP). The State, through Public Prosecutors, files criminal cases on behalf of its citizens. Sentencing or punishment in criminal cases in State Court is based on the criminal code, and includes incarceration, the death penalty, fines, supplementary criminal punishment such as the revocation of certain rights, and the confiscation of certain properties (Article 10 of the KUHP).

Civil cases in the State Court deal with relations between two or more parties. Such cases include non-payment of wages, non-payment of insurance, sexual harassment, and violating the terms of a labor contract. In civil cases, an individual (Plaintiff) files a complaint with the State Court and sues for compensation from the Defendant. The public prosecutor does not participate in the case, because civil cases are between two or more private parties. In civil cases, there are no penalties such as incarceration. Examples of the available remedies are financial compensation such as the payment of wages or payment of damages for suffering, return of property or sanctions such as ordering that a business be shut down as a result of abuses.

3.2. A comparison of criminal and civil cases

	Criminal Cases	Civil Cases
Remedy / Potential Outcome	The penalty is time in prison, the death penalty, fines, revocation of certain rights, or confiscation of properties.	The Plaintiff seeks financial compensation from the Defendant or sanctions against the Defendant. There is no prison term for the Defendant in a civil case.

Initiative	<ul style="list-style-type: none"> The initiative to bring the charges (file the indictment) comes from the Public Prosecutor after investigation by the Police. 	<ul style="list-style-type: none"> The initiative to bring the charges (file the complaint in court) comes from the injured party (the Plaintiff).
Lead Actor	<p>Public Prosecutor</p> <ul style="list-style-type: none"> A Prosecutor is a representative of the State who accuses a criminal defendant in court of a criminal offence. In a criminal proceeding a Prosecutor is always present. 	<p>Plaintiff</p> <ul style="list-style-type: none"> The plaintiff faces the Defendant in court with their own legal representation. The State is not involved in the case.
Role of the victim	<ul style="list-style-type: none"> Provides evidence and information (i.e. having a medical exam to document her injuries) to the Police during the Investigation and Examination. Serves as a witness during the court hearing to provide evidence of the crime which has taken place. 	<ul style="list-style-type: none"> Gathers information and evidence to prove that she has experienced abuses/damages and should be awarded some kind of compensation. Testifies in court.
Role of the NGO	<ul style="list-style-type: none"> No official role in the court case. Provides legal information and support to the victim Assists the victim to file a complaint with the Police Supports and accompanies the victim to meetings, medical appointments, court hearings, etc. Advocacy on behalf of the victim to ensure that she is treated with sensitivity. 	<ul style="list-style-type: none"> May serve as the legal representative for the victim Assist the victim to file a case with the court Provides legal information and support to the victim Assists the victim to file a complaint with the Police Supports and accompanies the victim to meetings, medical appointments, court hearings, etc. Advocacy on behalf of the victim to ensure that she is treated with sensitivity.
Investigation and evidence	<ul style="list-style-type: none"> Gathered by the Police. It is also important, though, for the victim to provide any evidence which she has to the Police, which will strengthen the case against the person who abused her. 	<ul style="list-style-type: none"> Gathered by the Plaintiff/victim and her legal representative. The Defendant/trafficker may also present other evidence to defend himself against the case.
Role of Judge	<ul style="list-style-type: none"> The Judge(s) is the decision-maker. Proactive during the trial through questioning witnesses. 	<ul style="list-style-type: none"> The Judge is the decision maker in the case. Less proactive than in a criminal case because he/she does not question witnesses.

<p>Costs</p>	<ul style="list-style-type: none"> ▪ Government covers the costs of investigation and running the court case. ▪ The victim may have costs for accommodation and travel to appear as a witness in court. If the victim wants support from a legal professional must hire someone she will have to pay the costs for this. ▪ The Defendant has to pay for his legal representation. 	<ul style="list-style-type: none"> ▪ The Plaintiff/Victim must pay all of the costs related to her case – court fees, legal representation and investigation of the case.
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3.3. Specialty courts

There are also several types of "specialty courts". There are two courts which have relevance for cases of trafficking.

3.3.a. Military Court

The jurisdiction of the court includes criminal offenses committed by any person who at the time of the alleged crime was armed forces personnel or equivalent. Armed forces personnel who commit a crime may be tried either in Military Court or State Court.

The decision regarding which court should try armed forces personnel is based on the results of a consultation between the Public Prosecutor and the military *oditur* (KUHAP, Article 90). If the investigation findings indicate that the nature of the charged crimes has a significant effect on the public interest, the case should be tried within the State Court. Based on this regulation, any armed forces personnel officer who is involved in trafficking crimes is more likely to be tried in the State Court, unless the trafficking crimes were committed within an area that is legally under the military's control, such as any areas where martial law has been applied.

3.3.b. State Administrative Court (*Pengadilan Tata Usaha Negara*)

This court hears administrative disputes filed against the government. An administrative dispute is a dispute that occurs in state administrative affairs between a person or corporate body and a state administrative officer or body. If a corporate body or officer of a state administrative body refuses to comply with an administrative court decision, then the execution of the court order will depend on his/her superior.

3.3.c. The High Court and Supreme Court

Appeals from the State Court for both criminal and civil cases are heard before the High Court (*Pengadilan Tinggi*). More information about appeals is included later in the manual in Chapters 8 and 9.

There are about 20 High Courts in Indonesia, located in provincial capitals. Appeals from the High Court and some appeals from the State Court can be made to the Supreme Court (*Mahkamah Agung*) which is in Jakarta. The Supreme Court can hear final appeals from lower courts and can also conduct a case review (*peninjauan kembali*) if, for example, new

evidence is found which justifies a re-hearing. The Supreme Court is the highest court in Indonesia.

Using the Administrative Court to challenge trafficking

While there is currently no precedent for such an action, it may be possible to file a case against an officer or department of the government in Administrative Court. The remedy in an administrative court case would be to force the government department or ministry to act or refrain from acting.

For example, if a migrant worker feels that the Ministry of Manpower, which is tasked with inspecting, monitoring, and regulating the recruitment process, including recruiting agencies (PJTKI), failed to take administrative action such as revoking a license of a PJTKI that has violated the law, she may be able to bring a suit against the Ministry of Manpower (or the Disnaker Inspector charged with monitoring the PJTKI in that area) in Administrative Court. Other potential cases could be government involvement in issuing fake or false documents. If it is an entire office or section of the government involved, it may be possible to bring the case to Administrative Court. If an individual government actor is involved in corruption or falsification of documents, it would probably be handled as a criminal case.

CHAPTER 4

CHALLENGES IN USING THE LEGAL SYSTEM

4.1. Help the victim to be aware of these challenges

The Indonesian legal system poses many challenges. Its processes may be difficult to understand and to explain to a victim.

It is important to ensure that the victim client is aware of the challenges that face her in the legal system. This is not to say, though, that victims of trafficking should not try to seek justice through the legal system. But, they must be given a realistic idea of what they will face in this process. Part of your role is to prepare them for this and to understand and support the victim when she becomes frustrated and discouraged.

4.2. Some of the challenges in the legal system

4.2.a. No standards for verdicts

Judges in Indonesia are not bound to follow decisions of other judges or courts in similar cases, so it may be difficult to predict the outcome of a particular case.

4.2.b. The process takes too long

The legal process in Indonesia is notorious for being extremely lengthy. An initial court case can take anywhere from a few months to several years, but there is no average and it is hard to predict how long a case will take. If an appeal is filed, the resolution of the case can take several more years. The length of the process depends on a number of factors such as the location where the case is being heard. There is also anecdotal evidence that if a defendant in a case is wealthy, powerful, or politically connected, he may be able to prolong the legal process indefinitely, or at least until the plaintiff or victim no longer has money to pursue the case.

4.2.c. Taking legal action may lead to threats against the victim and her supporters

When traffickers are exposed and held accountable for their actions, they often become angry. This may lead them to make threats against the victim, her family and people who are supporting her such as NGOs.

4.2.d. It is difficult to enforce court decisions

Law enforcement officials are often not consistent in enforcing laws, decisions, and penalties. As well, there are few consequences for those who fail to abide by court orders in civil cases.

4.2.e. The costs are high

While the official court fees to file a case are not too high, the associated costs may be much higher, particularly in civil cases. Victims may have to pay lawyers fees and for transportation, accommodation and related costs if the trial is far from their homes.

4.2.f. Bureaucracy

The complexity and large size of the bureaucracy often makes it difficult to maneuver through the legal process. This can also take a great deal of time and energy. The huge bureaucracy also creates many opportunities for corruption, as victims must go through many levels and offices in order to move their case through the legal process.

4.2.g. Lack of coordination

The Police may not want to pursue traffickers who live outside of their jurisdiction, though these people may be responsible for organizing the trafficking

4.2.h. Discrimination & gender insensitivity

Women in Indonesia are given gender equity under the law. The Constitution guarantees equal rights for men and women. Indonesia has also ratified several UN conventions that guarantee equal rights for women.

In spite of this, there are still many Indonesian laws and policies which are gender biased. Government officials and officials in the legal system may reinforce stereotypes of women and thereby minimize the seriousness of abuses faced by women.

For example, beliefs that women have an obligation to do domestic work contribute to this work not being regulated and to abuses against domestic workers being overlooked by officials. Gender bias is also obvious when women who were sexually assaulted are asked by the Police or in court about their behavior or their clothing. This is gender bias because it presents the idea that women are somehow responsible for the sexual violence which they experience, rather than placing the responsibility on the male perpetrators.

4.2.i. Insufficient knowledge of the responsibility to protect victims of trafficking

Often, police and other law enforcement officers (such as labor inspectors) lack an understanding of their role in protecting trafficking victims and their responsibility to take action when abuses take place. They may also not be aware of how to use special laws to protect victims, such as local anti-trafficking laws or laws regarding the protection of children. The state has a responsibility to protect the rights of its citizens. The personal bias of officials regarding trafficking may also play a role.

Challenges in protecting victims of trafficking

Anecdotal evidence suggest that the police may be reluctant to raid PJTKI holding centers or remove underage girls as they may believe that since the girls are poor exploitative labor is better than no employment at all. In addition, law enforcement officials often may treat trafficking victims as criminals, for example if the victim is working in the sex trade, rather than as victims, looking more closely at their case to examine the exploitation or abuse they were facing.

4.2.j. Corruption⁴

Corruption plays a major role in the Indonesian legal system. Commentators have noted that there are effectively two systems of law, one for the rich and politically connected, and one for the poor and marginalized.

⁴ Excerpted and adapted from Chapter IV on Corruption, by Anis Hamim in *Trafficking of Women and Children in Indonesia*, ACILS and ICMC, 2003.

As a result of corruption, many regulations are not implemented as intended. Processes in many state-run institutions and public services open opportunities for corruption. Corruption can also interfere with the investigation and prosecution of trafficking cases. Research conducted by ICW indicates that judicial corruption involves most, if not all, actors in the legal process.⁵

There are several categories of corrupt practices in the investigation and prosecution processes which have been documented by NGOs working with victims:

- *Reducing charges:* Prosecutors or judges have been known to change serious violations with high sanctions into lesser charges carrying lower sanctions.
- *Manipulating the investigation report:* Information from witnesses is sometimes manipulated to reduce the charges against the suspect so that there will not be enough evidence to charge him with a higher offense.
- *Police charge fees in order to investigate criminal allegations:* When a victim reports a crime to the police, the police may not investigate unless they are paid to do so.⁶

4.2.k. Bribing judges to ensure outcomes

In many courts, the judge's verdict can be arranged for a fee by the defendant or his or her lawyer.⁷

4.3. How to face these challenges

Because of these challenges, it may seem pointless for a victim to use the legal system to seek justice for the abuses which she has suffered. But victims have the right to seek justice. We hope that as more people take cases of trafficking to the legal system, there will be more motivation for change. By making efforts to hold traffickers responsible for their abuses, there may be fewer violations in the future. Taking cases to the legal system can serve as a warning to traffickers, letting them know that their treatment of workers is abusive and that others are aware of these abuses. As more people take cases to the legal system, this will encourage others to take action. It will also build the experience of NGOs regarding how to handle these cases.

The challenges facing one trafficking case

A Medan-based NGO, PKPA, which assists trafficking victims through the legal process began handling a case when the parents in Medan Province learned that their daughter had been sent to a district in Riau Province and forced to work in a brothel. They reported their daughter's case to the sub-district police authority and requested them to rescue her and bring her home. The police not only did not respond appropriately, but also even accused the parents of lying, and refused to follow up on the report. Having been refused, the parents brought the case to a higher level, the district police, who said they were willing to rescue the girl on condition that the parents pay Rp. 800,000 for transportation expenses.

Challenges faced in court hearings

In a state court in Medan, where some trafficking cases have been adjudicated, there is a practice known as an "invisible trial". In these cases, the trial is held at 08.00 in the morning when the court is still quiet. A verdict is imposed and the judge, prosecutor, clerk and lawyer directly sign the trial notes. The trial is held without an audience; at times the Defendant does not even come to court because all matters have been decided in advance and delegated to the lawyer.

⁵ ICW, 2002

⁶ ICW, 2002

⁷ ICW, 2002

By becoming more active in assisting victims of trafficking, NGOs and other civil society actors may be able to change perceptions about victims of trafficking. Advocacy can result in increased victim sensitivity in legal processes. Your involvement in a victim's case may mean that she is treated better by the police, the Prosecutor and other actors in the legal system.

Providing support to victims in the legal process also helps to improve law enforcement against traffickers, as victims feel more comfortable and willing to bring charges against those who abused them. As more cases are brought to the courts or to the attention of government, this will encourage more people to take action and will send a message to traffickers.

As NGOs support victims through the legal system, they will observe where corruption is taking place and where changes are needed. This can contribute to the process of reform in Indonesia.

As you support victims through legal processes, it is important to have contact with other groups doing similar work. This can provide you and your organization with support and encouragement. You can learn from the experience of other NGO service providers. Contact information for other organizations is included at the back of the book.

CHAPTER 5

SENSITIVITY IN WORKING WITH VICTIMS OF TRAFFICKING

Trafficking has a different effect on each person. It is a difficult experience for most people. While someone has contacted your organization to seek help related to this difficult experience, don't assume that it is easy for her to talk to you about it.

5.1. Social and emotional effects of trafficking

Some of the feelings that a trafficked person might experience are:

5.1.a. Feelings of Loss of Control and Lack of Safety

Traumatic events rob the individual of a sense of control, which can often lead to feelings of insecurity and lack safety. These feelings can be intensified if the person feels that the legal processes in which they are involved are out of their control.

Trafficked persons have been forcefully separated from the people, places and activities that make them feel secure and happy. They may have been threatened by their trafficker to not report their experiences. Because of this, it may be difficult for trafficked individuals to trust and to speak of their experiences.

5.1.b. Feelings of Mistrust

Trafficking often involves being victimized and betrayed by persons whom the victim trusted. This may make it more difficult for a victim to trust others and to build new relationships. Patience and compassion are essential.

5.1.c. Social Stigma and Shame

Trafficking victims may feel shame for a number of reasons:

- because of the experiences they have undergone in the trafficking process (i.e. rape, abuse, sexual harassment)
- because they have not succeeded in earning money for their families
- because they feel they have caused the violations that they experienced

5.1.d. Low Self-Esteem/Self-Worth

It is common for persons who have been victims of violence and abuse to suffer from low self-esteem. This might be manifested in a range of behavior including depression, shyness, lethargy, strong emotional responses and emotional numbness.

5.1.e. Strong Emotional Responses

Trafficking trauma can result in a wide range of emotional responses including anger, hysteria, crying easily, obsessive behavior, silence, bad dreams or flashbacks (strong

memories of past events). These responses may be confusing to other people. For example, if a person starts to laugh while relating the story of their sexual assault, this does not mean that they think it is funny.

5.1.f. Exhibiting Sexual Behavior

Victims of sexual violence may have the tendency to exhibit sexual behavior. This might be shown through behaviors such as flirting and touching. This may be the case if the victim is a sex worker and conceptualize her identity in sexual terms. It is through sexual interaction that this person has received attention in the past, and she may feel it is the only way that she can express control or earn attention and respect.

This type of behavior is more likely to happen in situations where the victim feels insecure and wishes to express some control, such as in a formal interview process or in the process of discussing traumatic events.

5.2. Things to remember when working with trafficking victims

5.2.a. General issues

When working with people who have been victims of trafficking, you will be exploring very sensitive, personal and difficult topics. You will be asking the client to share with you intimate information about her personal life and about experiences she may feel ashamed about. Your discussions with the client may include inquiries about sensitive issues such as sexual history, family life, experiences of violence and money.

In retelling their story, victims may relive some of their traumatic feelings. Experiences of post-traumatic stress (i.e. nightmares, flashbacks, feelings of helplessness) can take place while a victim is talking about her experiences and also some time after.

Victims may have difficulty trusting you or other people trying to assist them. During the experience of trafficking, a victim's trust is violated in many different ways and it may take some time for her to learn how to trust others again. Victims may also become frustrated if they feel like they are not being believed or that the process is moving too slowly or becoming too difficult.

HOW YOU CAN HELP

- ✓ Consider how you would feel if you were asked questions about such personal and intimate aspects of your life.
- ✓ Approach any meetings with a victim in a thoughtful and sensitive manner. You need to think about what information the victim will need, how best to provide her with this information, and how to make her feel comfortable so that she can provide the necessary information to you.
- ✓ Assist the victim to deal with her frustration by explaining the potential challenges of legal processes to her and giving her opportunities to speak about her frustrations. Give her as much control as possible over the process. Advocate on the victim's behalf if officials are not dealing with her case in a timely way.

5.2.b. Providing emotional support and protecting the victim

- Ensure and protect the anonymity and confidentiality of the victim
 - *Anonymity* means that any reference to a case should not include the victim's name unless she gives you permission to do this. Ensure that any case files are kept in a secure location
 - *Confidentiality* means that the victim should receive services privately and without anyone else knowing what kind of assistance she is receiving. The identity of victims and particularly those who have worked in the sex industry should be kept secret. If you need to talk to someone else about a case, get the victim's consent to do this
- Meet in a quiet, private, safe location without distraction.
- Be respectful.
- Pay attention and be a good listener. Make sure that your body language and tone of voice also indicates that you are listening.
- Inform the victim that she can end the discussion at any time
- Be aware of and sensitive to issues of trauma and stress and that talking with you may bring up these feelings in a victim. Discussing traumatic events may have a detrimental effect on some traumatized individuals. If they feel that they need to avoid reminders of the trauma or talk in a way that makes them feel more distant from the traumatic experience, you should respect this. Find out from the victim what will make her feel most comfortable (for example, would she like a friend to be with her during meetings). Help her to see how her feelings and reactions are related to the experience of trafficking. Think about how you will handle it if a victim has strong emotional reactions during an interview.
- Consider how you might support kindness and sensitivity to the victim during your interviews and meetings. When appropriate, you might want to hold a victim's hand or touch their arm, use soothing words, take a break from talking, offer her a tissue or glass of water, suggest stopping the interview if they would prefer, etc.
- Consider also what you should *not* do when expressing kindness. For example, a male staff should not hug a woman and victims of sexual assault should be asked for permission before they are touched.
- Help the victim to heal from the shame that she may feel by providing her reassurance that the abuses she has suffered weren't her fault.
- Help the victim to recognize her own strengths and courage. Commend her bravery in speaking out about her experience.
- Be aware of your own biases and ensure that your words or actions do not stigmatize the client or make her feel more ashamed. Issues of class, culture, ethnicity, gender assumptions, beliefs and behaviors can influence our views, assumptions, and perceptions. For example, what do you believe about women who have worked in the sex trade? How would this affect you if you were meeting with a woman who had worked as a prostitute?

5.2.c. Things you should NOT do when working with trafficking victims

- Ask personal questions outside the scope of the legal case
- Express personal opinions or feelings
- Be overly inquisitive or overbearing
- Take photographs for evidence without permission
- Offer unrealistic or unrealizable assistance
- Accept money or gifts from clients

5.2.d. Providing services to victims

It is not enough to simply be sensitive to victims. We also have a responsibility as service providers to ensure that the services we provide them are as complete and professional as possible.

The following are some of the important considerations when providing services to victims of trafficking:

- Be aware of the victim's expectations and fulfill your promises. Do not raise expectations or make promises which cannot be fulfilled. Be clear about what you can and cannot provide in terms of assistance. For example, you might be able to refer the client to a lawyer but cannot pay for the legal fees. A victim has already had her trust broken through the experience of trafficking and you must try to maintain her trust.
- At all times you should be aware of the other services in the area which would be appropriate for the victim you are assisting. Trafficking victims may be in need of a range of services including counseling, medical services, legal assistance, employment options, education and shelter. Consider services from government organizations, NGOs, trade unions, International Organizations, hospitals, community groups, religious groups, etc. You should be prepared to facilitate the first contact and visit.
- Assess whether security is an issue. It is better to be cautious. You should talk to the victim about the potential of threats if she undertakes legal action and how to plan for her safety. Do not pressure clients to meet with you or pursue a case if they are afraid. You should also assess the safety risks for your organization and the victim's family. Take precautions regarding the safety and well-being of victims, witnesses and contacts. When security is an issue, develop a strategy for protecting the safety of the victim and NGO staff. For example, if a victim feels that she will be threatened you should help her to develop a plan for temporary shelter which is safer.

CHAPTER 6

HELPING A TRAFFICKING VICTIM LEARN ABOUT HER LEGAL OPTIONS

6.1. Why trafficking victims need support to learn about the legal options they have

Trafficking victims often feel that they can do nothing about the abuse they have suffered. They may not know that they can take legal action. They may blame themselves or feel ashamed about what happened to them. The feelings of isolation created during the experience of trafficking may make them feel that no one will take their case seriously. They think they have no right to speak out about their abuses or to seek justice. Understanding that they actually have legal options can help to empower trafficking victims.

6.2. What are the legal options available to a victim?

This manual outlines the various legal options available to a victim. These options are focused on punishing those who have abused the victims' rights or seeking restoration of her rights. In summary, these options are:

- Reporting a crime to the police and requesting a criminal case be started
- Filing a civil suit in the courts
- Seeking intervention through governmental administrative procedures
- Pursuing alternative dispute resolution, including negotiation with the individuals who committed the abuses

The decision regarding the type of legal action to take depends on many factors, including:

- The type and extent of abuses experienced by the victim
- The outcome that the trafficking victim seeks
- The role the trafficking victim is willing or able to play in the legal process
- The amount of evidence the trafficking victim has to prove her case
- The amount of time and money the trafficking victim has to spend or the amount of financial and staff support which can be provided by third parties such as your NGO
- The positive and negative aspects of each legal action
- The experience others have had when they have undertaken the same legal action

Some of the possible options for a victim

If the trafficking victim would like to see the person who trafficked her punished, she may wish to cooperate with the police and Public Prosecutor to pursue criminal charges. If she wants to be compensated for unpaid wages, she may wish to pursue administrative intervention through the Ministry of Manpower, or pursue a civil suit in court to receive compensation.

6.3. A process to help victims

Before discussing legal action with a victim, it is important that you first listen to her story and understand the abuses, exploitation, or violations that she has faced. Counseling a trafficking victim about the legal process should be done in several steps:

Step One: Listen to the Victim's Story

Step Two: Analyze the Victim's Case

Step Three: Review Options with the Victim

Step Four: Accompany the victim through the process

6.3.a. Step One: Listen to the Victim's Story

- Introduce yourself, your organization and explain the interview process to the victim. All NGOs should have a standard introduction that explains the mission of the NGO and the process or procedures in the NGO.
- Listen to the victim's story and her experiences. While it is essential for a victim to provide information about her experiences in order to seek assistance, you must try to ensure that the victim is not re-traumatized through this process. Be sure to be aware of victim sensitivity issues. Use the guidelines for working with victims that are provided in Chapter 5 of this manual.
- Ask the victim why she has come to your NGO for assistance. What is the outcome that she is looking for? It is critical at this stage that the victim be empowered as the decision-maker and the NGO staff see their role as assisting rather than directing this process.
- During your discussion with the victim, you will need to gather critical information in order to determine what options are available to her and how she could proceed with her case. It is the role of a NGO to make sure you have adequate information to assist the victim in making informed decisions. After the victim relates her story, you should ask clarifying questions. You may need to meet with a victim several times in order to get a complete understanding of her situation.
- Take notes on the types of abuses and exploitation that the victim faced and the evidence she has of these abuses. This information will determine the type of legal action best suited for the case. Many service providers use standardized intake forms in order to take notes. Such forms ensure that you do not forget to ask or take note of critical information. A sample Intake Form is included in the Appendix.
- Inform the victim about the next steps in the process. Explain that you will take some time to analyze her case, and then meet with her again to discuss her options for legal recourse. If you are planning to consult with others regarding her case, tell her this and get her consent to share information with other people. If she does not want you to share information about her case with anyone else, you should respect her wishes. The victim should know, though, that it may limit her options since you will not have access to the advice of others.
- At this stage, you may want to give the victim some general information about legal options to respond to trafficking. You will not yet be confirming what options are

available to her, but providing her with background information. You can use some of the charts and diagrams included in this manual.

- From this stage, you will take steps based on her articulated needs and interests.

6.3.b. Step Two: Analyzing the Victim's Case

- You should meet with other NGO staff or legal advisors to discuss the victim's case and develop ideas regarding how to assist her.
- Ensure that the victim's privacy, anonymity, and confidentiality are respected. Ensure that those with whom you are consulting understand principles of confidentiality and will use this information in a professional manner. Do not use the name of the victim unless you have her permission. Share only the most important information about the case.
- Review the abuses and exploitation suffered by the victim.
- Discuss the options the victim has articulated. Remember that her wishes should be central to the case.
- Analyze and discuss the various types of legal action that may be relevant for the case. Consider factors such as the length of time for the case to be resolved, the costs of the case and the likelihood of success.
- Discuss potential difficulties in the legal process in order that you can inform the victim of all potential obstacles or challenges.
- Discuss the role of the victim in the legal process, so that you can let her know what will be expected of her.
- Discuss the amount and type of assistance that your NGO can provide the victim or what assistance is available elsewhere.
- Consider and discuss possible referrals needed by the victim and how the NGO can facilitate these.
- It is recommended that NGOs use a standardized form during the process to make sure that all issues are analyzed. Such a form may be similar to the one included in the Appendix.

6.3.c. Step Three: Review of Options

- Discuss with the victim the various options that are possible given the facts of her case and her wishes. Discuss all legal options available and not just the ones based on her desired outcome, because she may not have realized that there are other options. Use the charts and diagrams included in this manual to help explain the processes to her.
- Remember to discuss these important issues with the victim:
 - The potential outcomes for each option.
 - The role of the victim in the process.
 - The positive and negative aspects of each type of legal action.
 - The estimated length of time involved in resolving each type of legal action.

- The costs of each type of legal action.
 - The steps or processes that are involved in seeking justice through the various options.
 - The role of your NGO in the process including what assistance you can and cannot provide. Also discuss what other supports are available through other organizations.
 - Ensure that she understands that her access to services does not depend upon her taking legal action for the trafficking abuses she has suffered. For example, a victim may feel that she cannot stay in a shelter if she does not choose to pursue a criminal case against the recruiter who arranged for her work placement.
- You may need to review the options with the victim several times in order to ensure that she really understands the options available to her. She will likely need some time to think about what steps to take next. You may want to give the victim some written information to take home with her and read. If she is not literate or has limited education, you may need to make special effort to assist her to understand all of the important information related to her case.
 - You must try to remain professional and don't let your own opinion of her case influence her actions. Remember that you have a certain amount of power in the eyes of the victim because you work with an organization and are seen as an expert. It is up to the victim to decide what to do. For example, if a NGO staff is too forceful, a victim may feel like she must pursue a criminal case, when all she wants is her unpaid wages returned.

6.3.d. Step Four: Accompany the victim through the process

- The process does not end with reviewing the options with the victim. If a trafficking victim decides to pursue legal recourse, your NGO must determine how to provide support to the victim throughout the legal process. She should not have to go through the process alone. The support may be provided by your organization or you may assist the victim to access supports from other organizations.
- Examples of supports an NGO can give a trafficking victim are listed on page 2.

CHAPTER 7

SPECIAL ISSUES AND CONSIDERATIONS REGARDING PEOPLE UNDER 18 YEARS OLD

7.1. The definition of “child”

In Indonesia, according to the Child Protection Act of 2002, a child is anyone under the age of 18 years. Children have special rights both under international law and Indonesian law. Governments have an obligation to protect children from exploitation.⁸

7.2. What is child trafficking?

Child trafficking is the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation either within or outside a country. Consent of the child victim to the intended exploitation is irrelevant – even if the child seems to agree or accept the exploitative conditions, they are still an abuse of her rights and the child should be helped and protected.

7.3. What kind of abuses do children suffer when they are trafficked? What is the impact on them?

Children who are victims of trafficking suffer many of the same abuses which adults suffer (please see the Index of Abuses on page 89 for a list of abuses). Because of their age and vulnerability, children experience the abuse of trafficking differently than adults and may be particularly traumatized by trafficking and exploitative experiences. In particular, children may experience trauma as a result of the following experiences which are common during trafficking:

- The generalized violence or stress of their environment
- The act of leaving home
- Leaving behind family, friends and all things familiar
- The assumption of adult responsibilities and experiences (decision making, sexual experiences, etc.)
- Interruption of their education
- Lack of time and place to play
- Poor and unhygienic living conditions
- Inadequate or unhealthy food
- Sexual and physical violence
- Neglect
- Isolation

⁸ Various international instruments such as the *Convention on the Rights of the Child* (United Nations General Assembly 1989) and the *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power* (United Nations General Assembly 1985) set forth principles and requirements in terms of children’s rights and victims’ rights.

7.4. Special considerations for children involved in legal processes

7.4.a. Important things to remember

It is important to recognize that “children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs.”⁹ Moreover, “improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process”¹⁰

Whether a child is a victim of trafficking, a witness to a crime, or the perpetrator of a crime, her case must be handled differently than that of an adult. There are numerous international agreements as well as Indonesian legislation which outline these considerations. In providing assistance to children victims of trafficking, there are several important things to remember:

- The involvement of a child victim in criminal activities should not undermine her rights to special protection.
- Child victims are entitled to receive immediate care and protection including security, food, and accommodation in a safe place, access to health-care, psychosocial support, legal assistance, social services and education.
- Child victims should be cared for by adequately trained professionals who are aware of the special rights and needs of child victims and of gender issues.
- Assistance to a child victim of trafficking should not, under any circumstances, be conditional on the child’s willingness to act as a witness in a court case.
- Child victims have the right to file civil suits for compensation and rehabilitation (these suits may have to be filed on their behalf because of their age but they should receive the benefits of compensation)

7.4.b. Children’s rights

The following are some fundamental principles and rights which should be at the center of work with all victims of trafficking, and especially work with child victims:

- Ensure that all decisions taken are in the child victim’s best interest
- Ensure that the child victim has appropriate care, accommodation, health care, psycho-social support, education and, language support
- Ensure that the child victim is protected, especially from people who might threaten her once she speaks out about the abuses she has suffered while she was trafficked
- Ensure that the child victim has access to legal and other representation where necessary
- Consult with, advise and keep the child victim informed of his/her rights and ensure that she has information about the processes and decisions that will effect her
- Ensure that the child victim can express her views, opinions and beliefs
- Contribute to identification of a realistic and long term solution in the child’s best interest

⁹ International Bureau for Children’s Rights, Guidelines on Justice for Child Victims and Witnesses of Crime, March 2003.

¹⁰ Id.

- Provide a link between the child victim and various organizations which may provide services to the child
- Assist the child victim in finding her family if they have been separated. If repatriation or family reunification is carried out, ensure that it is done in the best interest of the child victim.

7.4.c. Protecting children's rights during legal processes

Ideally, as soon as a child victim is identified, a guardian should be appointed to assist the child throughout the entire legal process until more permanent arrangements for the child have been found. The role of this person should be to advocate for the best interests of the child and ensure that the child's rights are respected.

It is best for children victims if they work with the same people consistently, so that they can build a trusting relationship with them. It is also better for children to be assisted by people who are sensitive to the special issues of children and who have received training in this area.

7.4.d. How actors in legal processes should deal with child victims

Based on the principles discussed above, there are more specific approaches which actors in legal processes should fulfill in order to protect children's rights and ensure that the deal with children in a sensitive manner.

The Police:

- Children should be examined in a place that is comfortable and safe. They should be protected from any threats or intimidation from traffickers.
- Children should be examined by officers with special training to deal with children's issues and gender issues.
- Examination should be conducted in clear and simple language that the child can understand.
- Children have a right to be accompanied by legal advisors, or qualified and competent psychologists.
- Questions during the examination should not make the child feel threatened or that they must answer in a certain way.

The Prosecutor's Office:

- Any further examination should be conducted with the same sensitivity which the Police should use.
- Prosecutors should consult with experts on children when preparing the prosecution and should summon at least one expert witness to explain the impacts of trafficking on children

The Courts:

- Child victims of trafficking should have a special room to wait so that they do not have to see the person who abused them and cannot be intimidated by the trafficker or his associates.
- Children can be accompanied by supports such as legal advisers, psychologists or representatives of agencies supporting children.
- Alternative ways of the child presenting testimony should be explored such a videotaped testimony and presentation of testimony to a closed courtroom.

- Public access is closed at times when a court is deliberating a case involving a child victim except when the verdict is announced.

7.4.e. Children as witnesses (and complainants) in legal proceedings

Testifying in court will be difficult and frightening for all trafficking victims, but it will be particularly difficult and upsetting for children. Special provisions must be considered and implemented to ensure that minors are protected while serving as witness in legal proceedings.

In KUHAP there are various articles related to children in court. For example, KUHAP states that:

- Children have a right to be examined within closed courtroom (closed to the public) (KUHP 153 (3)).
- Children have a right to testify without swearing an oath (KUHP 171a).

There are additional ways that children can be assisted to serve as witnesses in court:

- The child witness should not be examined in front of the Defendant (person who abused them).
- In more serious cases of abuse such as rape, a child should be allowed to give testimony through video so that they do not have to tell their story in the courtroom.
- If it is necessary, the possibility of examination of a child outside of trial should be examined.

7.4.f. Regulation of Children as Criminal Defendants

Child victims of trafficking who commit crimes should not be treated the same as other criminals. Crimes committed during an experience of trafficking are usually the result of the coercion, intimidation and abuse of the trafficking experience. Children in this situation should not be placed in prisons, arrest, quarantine or other forms of detainment. Laws and protocols regarding Child Protection should be used even when children are accused of a crime.

Indonesian Law No 3 of 1997 establishes provisions for Child Courts and regulations on the ways to prosecute child criminal defendants in the court system. For example, judges and other court officers are prohibited from wearing official uniforms, and are expected to be friendlier to children. It is also required that all trials involving children are closed to the public, except during the decision stage.

Under this law, the judges' decision may take one of three different forms, namely:

- Sending a child back to his/her parents
- Handing a child over to the state for education (*panti sosial*/juvenile detention center), or
- Sentencing a child to a maximum of 1/2 of the potential punishment imposed on adults for the same crime.

For a child in conflict with the law, there should be assistance provided by BAPAS (a special section of the Ministry of Justice that deals with the issues of children) that offers considerations before the judges make decisions about the case.

7.5. How to talk with children who have been trafficked

Talking with children is different from talking with adults. Adjustments will need to be made in terms of the wording of the questions, the format of interviews and how information is gathered. You still need to explain the legal processes to children so that they understand what is happening to them, but to do this you must use language and ideas which are appropriate for them.

You will need to think about the child's age and development. You also need to remember that children may feel very vulnerable and scared to answer questions. They may try to answer questions in a way that will please you. Make them feel safe so that they can answer as they really feel and tell the truth, rather than just giving the answers they think you want.

As much as possible, you should involve other service providers who have experience with children. If you are referring a child to another service provider, make sure that you explain this to the child and help the child to build a relationship with this new person. A child who has been the victim of trafficking has already had his/her trust violated, so changes must be handled carefully so that they are not too disruptive to the child.

The following are some specific approaches you should use when talking to child victims:

- Consider your tone and body language when talking to children. Be calm and non-threatening. Do not be impatient or abrupt when the child is slow to answer or does not understand your questions.
- Use words that children will understand. When a child uses their own words for things (i.e. for body parts, behaviors, places), use these same words.
- Adapt forms and question formats so that they are more appropriate for children.
- Avoid leading questions as they may effect how the child answers the questions. In a legal case, it is very important not to influence what a child says about the crime that has taken place.
- Consider alternative ways of asking questions. For example, in cases of abuse or violence, you could use dolls to re-enact what took place or have the child conduct a role-play.

Helpful resources for working with children victims of trafficking

The International Bureau for Children's Rights has developed a document entitled, *Guidelines on Justice for Child Victims and Witnesses of Crime*. This document provides useful principles for legal professionals, law enforcement, and others responsible for the well being of children in order to ensure justice for child victims and witnesses of crime.

Lembaga Advokasi Hak Anak (LAHA), an NGO from West Java, has developed a document for law enforcement personnel entitled, "Guidelines for Handling Cases of Child Victims of Trafficking in Persons". Contact information for LAHA can be found at the back of this book.

- Develop mechanisms to provide comfort and feelings of security for the child. In some cases, this might be offering them a treat (i.e. candy, toy, etc.) or providing physical comfort, like a pat on the arm or a hug. However, physical contact should not occur between different sexes and in situations where sexual abuse has occurred as physical contact may frighten or re-traumatize a child.

- Conduct the interview in an informal setting, which is quiet, private and safe. The child should have some say over where the interview takes place.

CHAPTER 8

CRIMINAL JUSTICE PROCESSES

8.1. What are criminal cases?

A criminal case can be launched when someone has committed a crime as defined in the Indonesian Criminal Code (KUHP). A criminal case is first investigated by the Police. Then the Prosecutor indicts or charges the suspect with the alleged crime on behalf of the State. The Prosecutor may bring criminal charges in a trafficking in persons case against anyone who committed a criminal violation against the victim. This could mean that several people are charged with trafficking one victim.

In a criminal case, the trafficking victim is a witness to the case and provides evidence to prove that the Defendant committed the crime of which they are accused. The trafficking victim is only a witness, and not a party to the case. This means that she has little or no control regarding how the case is managed because it is the Public Prosecutor who manages the case.

Please see page 54 for examples of trafficking cases which were handled through criminal justice processes.

Some of the people who could be charged of criminal offenses in trafficking cases are:

- Recruiters
- Employers
- Agents
- Pimps
- Brothel owners
- People who use prostitutes
- Government employees complicit in trafficking (for example providing fake immigration documents)

Article 56 of the Criminal Code says that not only people who planned or committed crimes can be prosecuted but also people who give opportunity, facility or information to those who committed crimes can be prosecuted.

8.2. What abuses or violations could be subject to criminal charges?

Please see the *Index of Abuses* which is included on page 89.

8.3. What are the possible outcomes of criminal cases?

At the end of a criminal case in court, the judges make a decision finding the defendant guilty or not guilty of the criminal charges against him. The judges will decide that the Defendant is guilty if the Prosecutor proves through the evidence that the defendant committed the violations of criminal law that he is charged with. If the judges find that the Prosecutor did not prove that the defendant violated the criminal law, they will decide that the Defendant is not guilty.

If the judges find the Defendant guilty, they will order punishment for the Defendant. Usually this is a prison term (or in severe cases the death penalty). Some criminal charges also involve a fine, confiscation of properties, revoking of rights and announcement of the

judges' verdict (KUHP, article 10). If the Judge finds the defendant not guilty, the Defendant is free to go.

HOW YOU CAN HELP

Service providers should inform the trafficking victim that it is difficult to predict the outcome of a criminal case so that the victim should be prepared for any outcome. In addition, if the defendant is found guilty, he may appeal the case to a higher court, which will lengthen the process in the court.

8.4. Who is involved in a criminal case? What are their roles?

The roles of the different players in the criminal process are outlined in the Diagram of the Courtroom on page 36. Please also see Chapter 1 for more information about the role of NGOs in assisting victims of trafficking.

The roles of the Police, Prosecutor, Defendant and Defense Attorney are described in more detail below.

8.4.a. Police

- The State police are the only institution involved in investigations for ordinary crimes. The police have the authority to receive reports or complaints regarding crimes.
- Conduct *examination* and the *investigation*. *Examination* is any research conducted to seek preliminary evidence in order to assist further criminal investigation and determine whether it is necessary to conduct an investigation. *Investigation* is a series of Investigator's actions according to prevailing law to search and gather evidence that will be used in investigating the case and finding a suspect.
- An *examination* can be performed by any police officer or government official that has been given a special authority by the law. An *investigation* can be performed only by a police officer who is at least a Second Lieutenant (Government Regulation No. 27/1983). In case there is no police officer who has such a grade in a sub-district office, the Commander in Charge of the office by his/her position is allowed to serve as an investigator.
- In the course of an investigation, a police investigator should pay attention and protect the human rights of suspects, victims, and witnesses by not publicizing their identity or the results of examinations based on the presumption of innocence principle.
- In the course of the an investigation, a police investigator should pay attention and protect the human rights of suspects, victims, and witnesses by not publicizing their identity or the results of examinations based on the presumption of innocence principle.

8.4.b. Public Prosecutor

- A government attorney who on behalf of the State presses criminal charges (issues an indictment) against a suspect of a crime and executes the decision of a judge (article 13 of KUHP). General prosecutor is a prosecutor authorized by the laws to prosecute and execute judge's decision (article 13 of KUHP).

- Supported by the Police who provide her with all the evidence collected from the investigation.
- Decides whether or not to issue an indictment based on the evidence collected by the police during their investigation.
- The role of the public prosecutor is stipulated in detail in Article 14 and 15 of the KUHAP:
 - Receiving and examining case files of investigations from the police who conducted the investigation
 - Reviewing preliminary charges
 - Approving extended detention, arresting, or further detaining and or changing the status of detainees after their cases are transferred by the investigators to the public prosecutors office
 - Writing the indictment
 - Filing the case (the indictment) in the court
 - Trying the case in court
 - Executing the judge's decision (for example takes the defendant to jail; enforces any compensatory judgment)
- Does not investigate any cases directly. The Police conduct the examination/interrogation of the suspect.

8.4.c. Defendant

- Also referred to as the *suspect*, the *accused* or the *convict* at various stages of the investigation and prosecution process.
 - *Suspect*: a person who due to his or her actions or based on preliminary circumstantial evidence allegedly is presumed to have committed a crime (Article. 1 sec. 14 KUHAP). The police and the public prosecutor use this term to refer to the alleged perpetrator during the investigation stage of a case.
 - *Defendant or the Accused*: Terms used for the suspect during the trial process or in court. The suspect of a crime who is being prosecuted, examined, and tried in a court, or a person who is being charged, cross-examined and judged in a court proceeding (Article 1, sec 15 KUHAP).
 - *Convict*: Someone who has been accused of a crime and found guilty in the trial process. This term is used after the judges have made a decision regarding the case.
- The appearance of defendants or suspects in a court proceeding against them is mandatory.
- A suspect/defendant is entitled to have a legal representative.
- A suspect/defendant is entitled to equal procedures and positions in the eye of the law, including a public trial, the right to defend himself, the right to go through a prosecution process without unnecessary delay, the right to present witnesses and the right to an appeal.

8.4.d. Defense Attorney/Legal Consultant

- Accompanies and represents the suspect or the defendant during all stages of the legal process. Article 54 to 57 of KUHAP stipulates the rights of the suspect or the accused to have legal representation.
- Defendants or suspects have a right to be accompanied by an attorney or several attorneys during interrogation by police and questioning in court. A legal consultant is permitted to have contact with suspects/ defendants once he/she is under arrest.

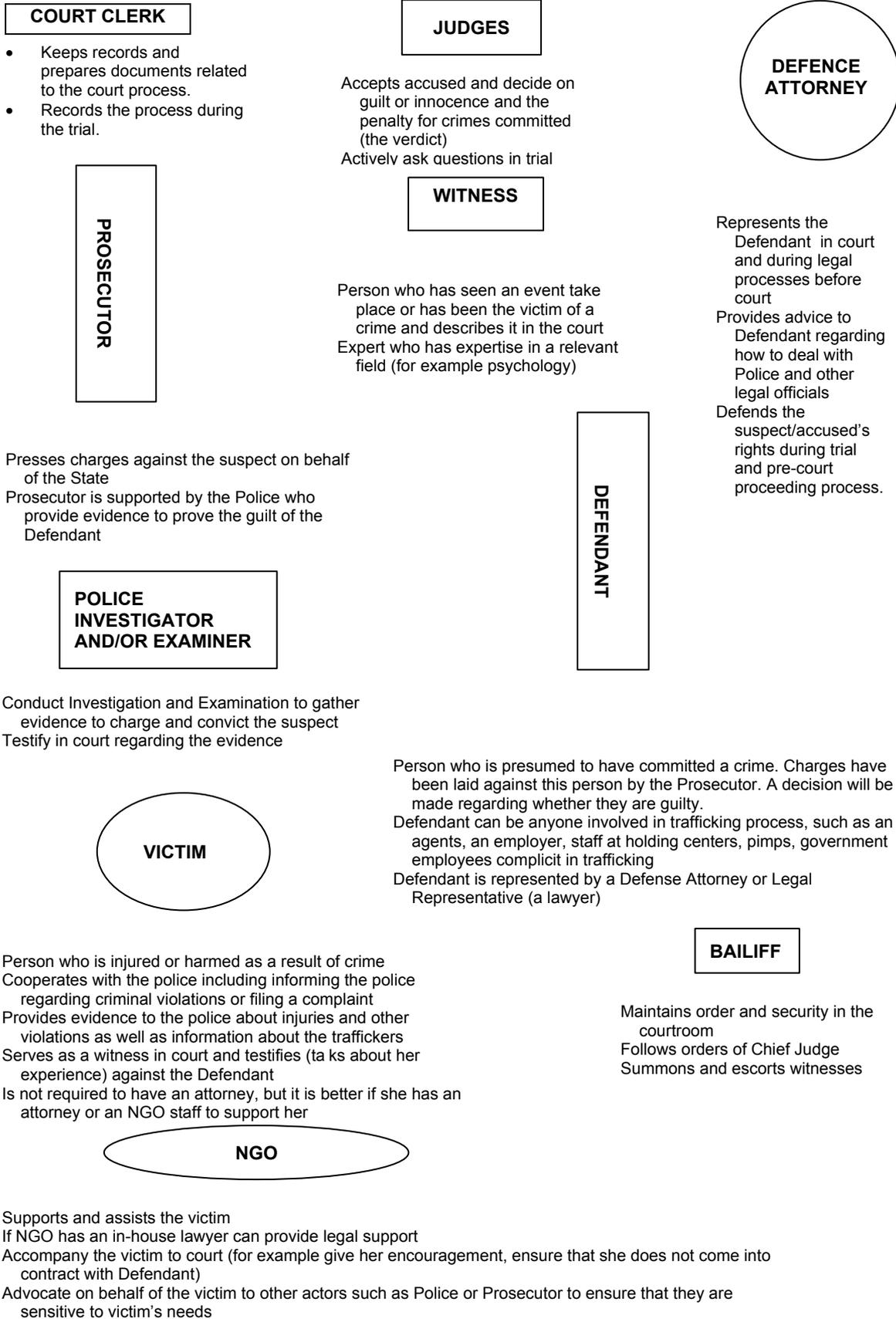
Attorneys in performing their duty are not permitted to discriminate against their client based on sex, religion, politics, ethnic or social cultural background.

- Has the right to collect information, data and other documents, either from government institutions or other parties to the interests of defending the client according to existing regulations.
- Information that an Attorney receives from her client in her capacity as the client's Attorney is protected by attorney-client privilege and the attorney cannot divulge this information to any outside party, including law enforcement officials, prosecutors, the public, etc. Furthermore, attorneys have the right to secrecy in their relationship with their client, including protection from confiscation or investigation of the attorney's files or documents, and protection from wire-tapping the attorney's electronic communication.

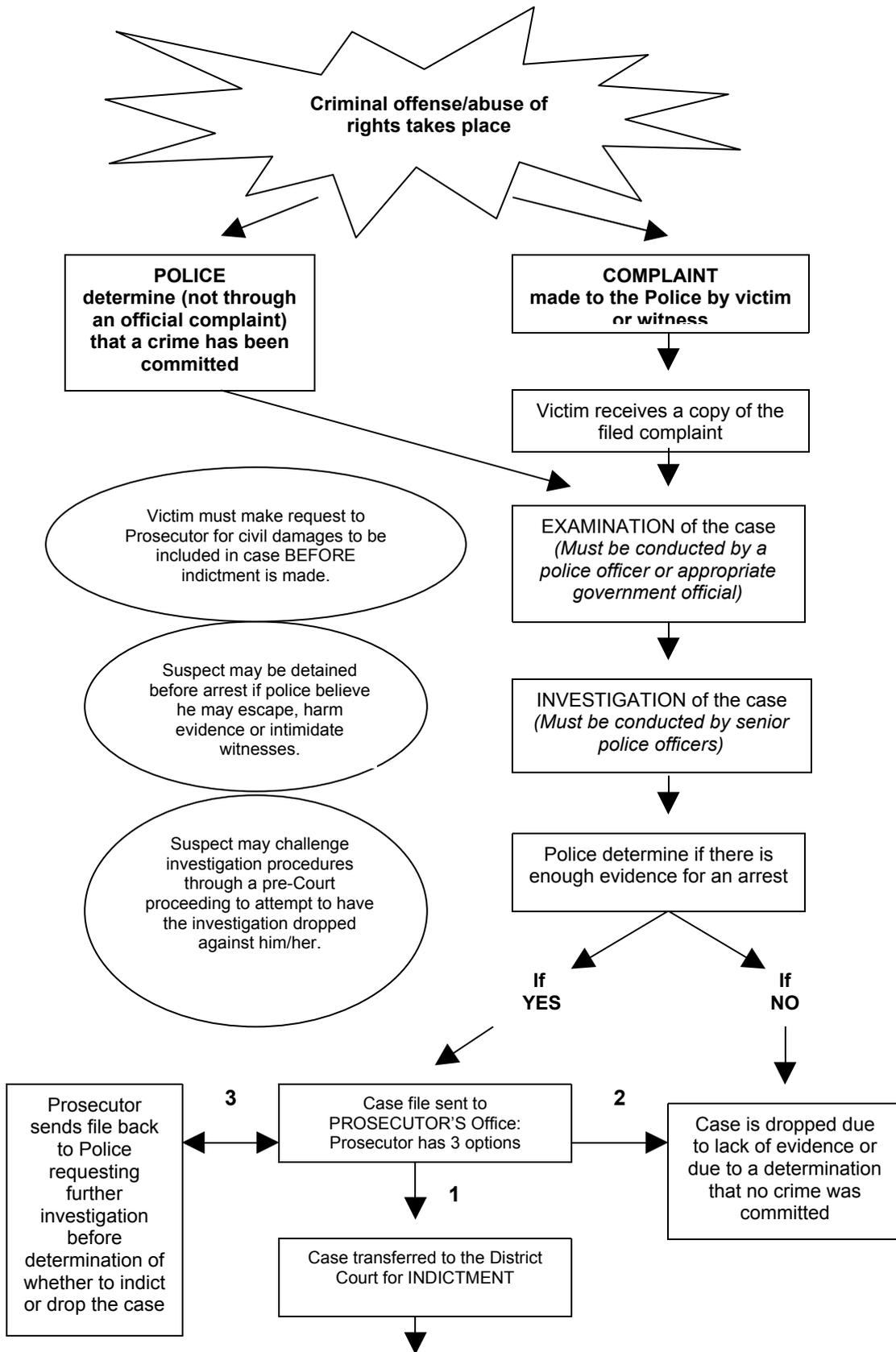
8.4.e. Judge

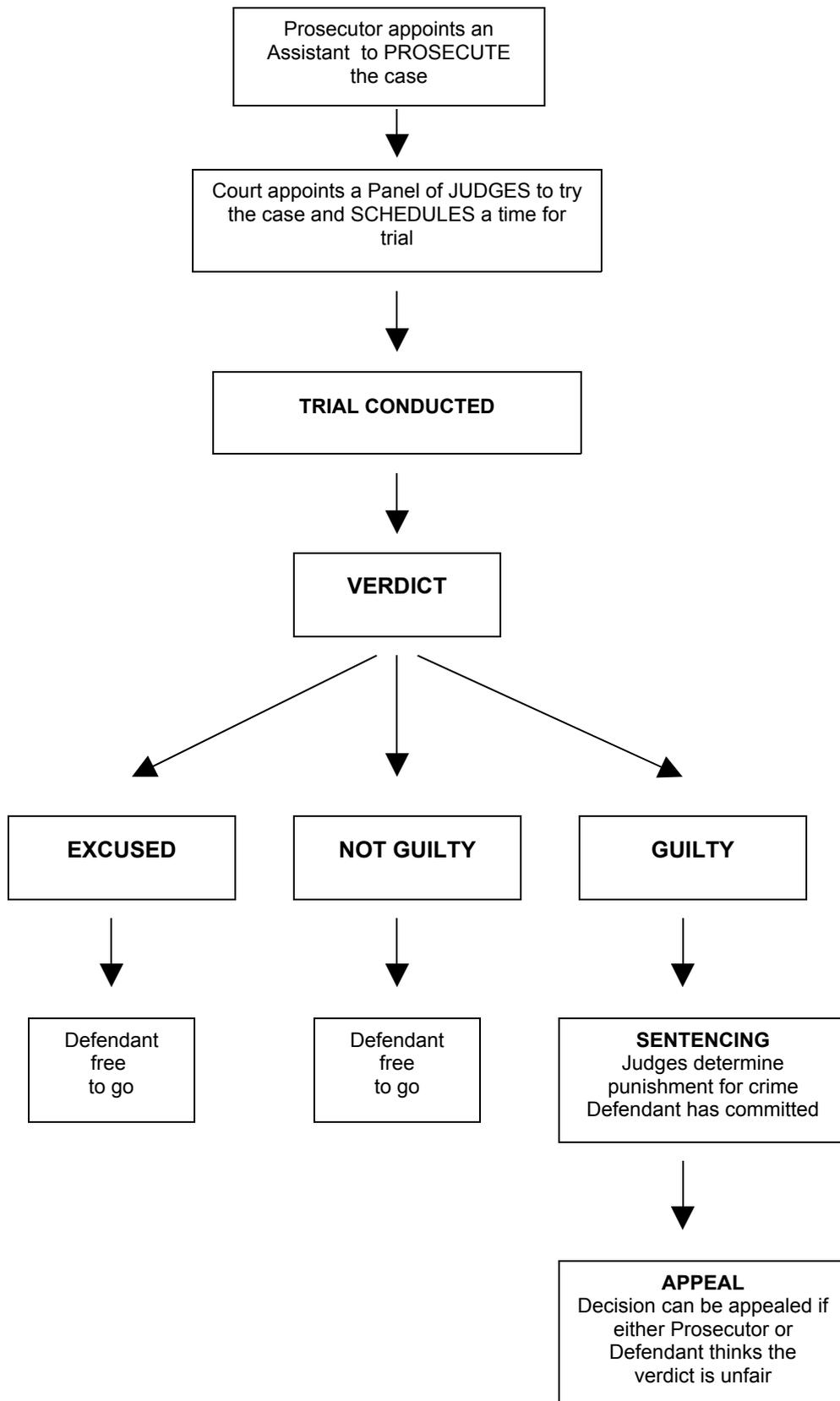
- A state official authorized by law to examine, prosecute and give punishment.
- Judges have been trained about the court system and interpreting law in university. The Department of Justice and Human Rights recruits judges as soon as they graduate from Law School or University.
- Judge as a law enforcer and justice official is obliged to explore, follow and understand legal values in society.
- Due to his duty, a judge is authorized to make a decision for a crime he is prosecuting according to prevailing stipulations and laws.
- Decides guilt or innocence in a case. A judge also determines the sentence or penalty for a crime. The judge is allowed to actively ask questions of witnesses and the defendant during the trial.
- A council or panel of at least three judges should conduct examinations and make decisions in a trial (Article 15 UU No. 14/1970). On a panel of three judges, one judge will be designated the Chief Judge and the others as judge panel members.
- Due to his/her position as a judge, the regulations stipulate that a judge cannot become:
 - A defense attorney
 - The executor or enforcer of the court decision
 - A businessman
 - Have any relation to the case tried by him/her

8.4.f. The criminal justice process and who is involved



8.5. The stages in the criminal process





8.6. Making the police aware of a crime

A criminal investigation may begin after:

- Information about a crime is reported to the police; or
- A complaint is filed with the police by anyone who is allegedly a victim of a crime; or
- The police catch someone in the act of committing a crime.

A *complaint* can be filed in writing or verbally. Along with the complaint is a request that the police take action against someone who has committed a crime (KUHAP, article 1, point 25). This can be done by reporting to the police station with jurisdiction over a case (for example, the district where the victim lives, or where the trafficker lives, or where the violations took place). The trafficking victim should be accompanied by NGO or a legal representative.

A *report* is information regarding a crime received in writing or orally and recorded by the Police (investigator) or an authorized government official (KUHAP, article 1, number 24). It can be given by the victim or a witness to the crime. The report must then be signed by the reporter and the investigator or inquirer.

8.6.a. Filing a complaint

When filing a complaint, the victim should present the police with evidence to support her case such as relevant documents or letters, at least two witnesses if possible, a statement from a legal doctor about the results of a medical examination.

Usually, a victim should take her case to the nearest police station. In some places, it may be possible to request a female police officer. This may make some victims, and especially female victims, feel more comfortable. At most POLDA stations, there are *Ruang Pelayanan Khusus* (Special Room for Victims/Victims' Services) offices with police officers who are specially trained to deal with women and children victims of crime. Some NGOs have found that the officers at local POLSEK stations are often not as sensitive to the needs of victims.

After the complaint (*Berita Acara Pemeriksaan*) is finished and ready for signature, the victim (together with the people providing her with assistance) should read the document and check the accuracy of the contents of the complaint before signing it. If the information in the complaint is incorrect, the victim should ask the investigator to make corrections until it is correct. This is important as the contents of the complaint may be used as evidence to prove or disprove the criminal charges. When the complaint is complete, both the complainant and the investigator should sign the document.

HOW YOU CAN HELP

- ✓ Before filing the complaint, the NGO should prepare the victim for dealing with the police. Let her know that she may experience challenges such as biases of the police regarding trafficking victims (especially those working in the sex industry) and intrusive questioning.
- ✓ An NGO service provider staff person may also be able to give assistance to a victim at the police station as long as she/he has an *assignment letter* from the coordinator or the director of the NGO itself.

HOW YOU CAN HELP

- ✓ Ensure that the Police and Prosecutor do not use the personal history or job history of a victim to disqualify her report of trafficking. For example, if a woman has worked in the sex industry, the Police may not want to pursue a complaint of rape.
- ✓ Ensure that the victim or her representative gets a Complaint/Report Receipt Slip, which should be signed by the complainant/victim and the police officer who received the complaint.
- ✓ Ensure that the victim or her representative gets a receipt for any evidence she has provided the Police.
- ✓ Advocate on behalf of the victim to ensure that she is treated appropriately by the police and her rights are respected.
- ✓ Help the victim to access the *Ruang Pelayanan Khusus* (Special Room for Victims/Victims' Services) services of the Police

8.6.b. Police catch someone in the act of committing a crime

If the police catch someone in the act of committing a crime or soon after, or with evidence on his person that was used in the crime, the Police can take immediate action to:

- Arrest, detain, search, seize and/or other actions based on responsible law.
- Examine the crime scene and after that inform or send the suspect with or without evidence to the police officers who conduct the follow up process.

8.7. Gathering evidence about a crime – examination & investigation

8.7.a. Police processes

According to article 106 (KUHAP), any police officer who receives a report or complaint of any criminal activity must follow it up by conducting a proper examination.

Once they receive a report or complaint in a criminal case, the police should follow it up by conducting an investigation. This can be done by:

- Visiting the crime scene
- Summoning any relevant parties to the case, usually the alleged suspect, the alleged victim and available witnesses
- Seizing property relevant to the case

Defendants' Rights During Investigations

Rights of defendants include (Article 50-68 KUHAP):

- The right to be informed in a language the defendant can understand about the charge(s) against him/her
- The right to a lawyer of his/her own choice
- The right to discuss with his/her lawyer confidentially
- The right to seek any witness who is considered as favorable to his/her position
- The right to yield information freely, meaning that a suspect should not be forced or intimidated and should be able to choose whether to answer questions

The Police have the authority to release a Letter of Summons requiring any suspect or witness to come to the police station for questioning. All members of the Indonesian police are authorized to send a summons letter. If the person summoned is not at the address to

which the summons was sent, then another letter of summons may be sent to another person such as a family member or household association leader/village leader who can guarantee that the letter will be received by the person directly. The person summoned or the receiver of the summons is required to sign the letter. If the witnesses or suspects are outside the police jurisdiction, the police should ask for assistance from other police officers who work in the area where the witness/suspect lives.

After gathering evidence for the case and questioning witnesses, the Police may arrest or detain the suspect in order to prevent the suspect from running away, destroying or concealing evidence, or intimidating or threatening the victim or witnesses.

As a result of the investigation, Minutes of Examination (BAP) are produced by the Police and should be signed by the Investigator and the people who provide information during the examination. This is then included in the Case File which is sent to the Prosecutor's office.

What's the difference between examination and investigation?

Examination is a series of actions by an Investigator (Police) in order to search and find events suspected as crimes to determine whether or not to conduct an investigation.

Investigation is a series of actions by an Investigator (Police or government officials) to search and collect criminal evidence that might also be useful to find the suspect.

8.7.b. Methods of examination and investigation

The examination and investigation of suspects and witnesses can be conducted through various methods:

- *Examination of a suspect*

Before the examination process begins, the Police officer is obliged to inform the suspect about his/her right to get legal assistance or to be accompanied by a lawyer (KUHAP 56). In the examination process, the suspect will be asked whether or not the suspect wants to invite witnesses who may benefit him/her. If he/she does, then the investigator is obliged to summon the witnesses to the police station and examine them for information related to the case.

- *Examination of a victim or witness*

The police may interview any witness who is believed to have seen, heard, understood or had direct involvement in a criminal action. Evidence from witnesses must be based on fact regarding what she saw, heard, or experienced rather than on opinions or assumptions. Information from various witnesses is deemed trustworthy if it is consistent and similar.

Methods of Examination

- Interview: the person being questioned is not obligated to answer the questions
- Interrogation: formal or rigorous questioning which must be answered
- Confrontation: if the testimony of the victim and witness are contradictory, the Police may use a stronger approach to seek information
- Reconstruction: tracking back and sometimes re-enacting the crime to find the missing link between testimonies provided by witnesses.

A witness who is not able to come to the trial due to an accepted reason shall swear an oath before or after giving information to the police so that the evidence they

provide can later be used in court (testimony does not become evidence unless it is given under oath).

The police prepare a witness examination report based on the interview. The witness examination report must be signed by the investigator/assistant investigator, witness and translator if needed.

- *Examination of an expert*

An Investigator may ask for assistance from someone who has special expertise about a particular subject which is needed to clarify a criminal case. Before the examination of the expert begins, the expert should swear an oath in front of the Investigator. If information is privileged, then the expert may refuse to give the information. An Investigator may request that a doctor or other expert to examine a victim who is injured, harmed, or dead and produce a *Visum Repertum*. The Investigator may also ask an expert to examine goods or other tangible evidence in the case related with his/her expertise in order to collect evidence.

HOW YOU CAN HELP	<ul style="list-style-type: none"> ✓ If the Police bring together the victim and the suspect to corroborate evidence, this may be traumatic for the victim. You can help the victim to object to this. While the law does not specifically provide for such an objection, it is important to try in order to protect the victim. ✓ Ensure that the Investigator pays attention to and protects the anonymity of the victim and does not publicize her identify or the results of examinations.
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8.7.c. Searches, raids and seizure

If based upon a police report or suspect/witness' examination results it is believed that any goods or a specific location has a relation to a crime, then the police should conduct a search or raid. The targets of a search/raid are:

- Houses or other closed spaces (such as a hotel, office, etc.)
- Clothes
- A person's body

Any search/raid or seizure by the police requires approval from the Head of the State Court in that area except in an urgent and important circumstance, for example if evidence will be destroyed or the suspect will escape. If a search/raid is conducted without approval from the Head of the State Court, the evidence gathered would be inadmissible. The Investigator must be present when the search is conducted. A raid should be witnessed by at least two people, and ideally a village head or community leader.

If based on the police report and the results of examinations there are any goods or items believed to relate to a crime, the police should seize them (as stipulated in Article 38-46 of KUHAP). A seizure also means to open, check, and seize mail, such as a letter from or to the suspect sent through the mail and/or the telecommunications office, communication and/or transportation company.

Once a seizure is completed, the police involved should draft a seizure report, which is to be signed by the investigator, people who own the goods/items, and people who are witnesses to the process. While in police custody, all the goods should be protected.

8.7.d. Evidence which can be used to prove trafficking abuses

Examples of the types of evidence which can be used to prove a case of trafficking are:

- Proof of transportation to destination: ferry tickets, boarding passes and tickets for airplanes, trains, ships
- Addresses/locations used during transit
- Names and addresses for employers, agents, recruiting agencies, etc.
- Detailed statements by the victim of her experience – with dates, locations, addresses, names, numbers, etc.
- Labour contracts
- Photographs of working conditions, physical abuse, etc.
- Witness statements
- Travel documents (visas, etc.)
- Identification documents (Passports, KTP, etc. including documents which have been falsified)
- Lists of expenses, including any receipts
- Receipt from PJTKI
- Brochure from PJTKI
- Medical Certificate
- Medical Records
- Physical evidence (torn clothing, etc.)
- Migrant Worker Identity Card/KTKLN (if any)
- Copy of insurance policy

The Defendant and his legal representative are not allowed to take depositions or interview the victim/witnesses before the trial. Any interview conducted by the Defendant’s attorney before the trial is not considered as legally binding. A witness can refuse such an interview.

Before a Suspect is indicted in the investigation process, he/she may request that the Police interview or question witnesses that he/she chooses. In addition, the Defendant should give to the police any evidence that may help his/her case during the investigation process. The Defendant may also collect additional evidence to support his/her innocence during the trial in court.

**Can the suspect be held by the police?
-- Detention --**

If based on enough evidence, the police officer in charge strongly believes that the suspect has committed a crime or is an accomplice to a crime, then the police officer should detain him/her. The detention is aimed at:

- ensuring that the suspect does not escape
- destroy or lose the evidence
- repeat the criminal action
- threaten or intimidate the victim or witness(es).

Detention may occur before a formal arrest, meaning that the suspect may be held by the police before charges are filed against him/her.

The police can only detain a suspect who is alleged to have committed a:

- Criminal action that may result in a prison term of 5 years
- Criminal action based on a specific section of Article 21 point 4 KUHAP.
- Fourteen (14) criminal acts in the KUHP are listed in this Article, such as crimes related to profession or a habit to publish pornographic materials, to facilitate prostitution of others, and violence.

The suspect is most often detained in a jail, though detention at a hospital, a police station, house arrest or a command not to leave the area may also be used as types of detention.

The allowable detention period is up to 20 days. If needed for investigation purposes, the period may be extended by the public prosecutor’s order for up to 40 days. For any suspect of a crime that carries a penalty of 9 years or more in jail, the extension of the duration of stay in detention is up to 60 days.

◆ **Victims/witnesses cannot be detained** ◆

HOW YOU CAN HELP

- ✓ Help the victim to gather any evidence she has of the abuses she has suffered. Try to get information which answers the following questions:
 - What? Evidence of the abuses or crime that took place
 - Who? Evidence of the people who were involved in trafficking and what their role or responsibility was
 - When? Evidence of the time period when the abuse took place
 - Where? Evidence of the location where the abuse took place. Also, evidence of where the people who committed the abuse can be found.
 - Why? Try to think about why this case happened and the purpose of each party involved.
 - How? What is the role or responsibility of each person in this case?¹¹
- ✓ If the victim has been physically or sexually assaulted, ensure that she receives medical attention quickly. Evidence of injuries should be taken as soon as possible before the injuries heal. According to law, an Investigator has the right to take a statement from a licensed doctor about the results of a medical examination for use in court. The victim also has the right to get information about the results of the medical check from the Investigator.

8.7.e. Monitoring the investigation

After the complaint is filed, it is important for the trafficking victim, with assistance from her legal representative and/or NGO service provider to monitor the investigation of the case. The Police are not obligated to remain in contact with the victim to update her about the case, so it is up to the victim and her supporters to contact the Police. To do this, they should check-in periodically with the police investigator to find out the status of the case.

The victim or her representatives may ask questions such as:

- Have the police questioned any witnesses?
- Have the police interrogated the trafficker(s)?
- Is there enough evidence in the case to bring it to the public prosecutor?
- Are there any problems with the case, such as: not enough evidence, the trafficker(s) escaped or left the area, lost evidence, etc.?

8.7.f. What to do if there are problems with the investigation

According to article 106 (KUHAP), any police officer who receives a report or complaint of any criminal activity must follow it up by conducting a proper investigation. However, there may be times when a victim or an NGO encounters a situation where the police are reluctant to investigate a criminal complaint. In such a case, an NGO may utilize the internal mechanism of the police by submitting the complaint to the officer or institution that is higher in rank or level.

Often, the Police do not want to pursue crimes which are not in their jurisdiction. For example, a trafficking abuse may take place in one jurisdiction, but the leaders of the trafficking network live in another place. This means that only the lower level traffickers are pursued by the Police. It may be necessary for the NGO to undertake advocacy both in the jurisdiction where the complaint is made and also in another district/jurisdiction if crime in order to try to pursue the people who are actually organizing the trafficking. It is useful in situations like this to network with other NGOs.

¹¹ Purwanto, Edy (2000) *Menangani Sendiri Kasus Buruh Migran*

There is no time limit for how long the Police have to complete an examination and transfer the case to the Prosecutor or a time limit regarding how quickly the Prosecutor must return the case file if there are any problems. For these reasons, cases may take a long time before they reach court.

Encouraging the media to cover the case may also be a useful way to monitor the conduct of the police during an investigation. More media coverage of the case may pressure the police to pay more attention to the investigation. An NGO, however, should ensure that the victim's anonymity and privacy is protected if the media becomes involved in the case.

If after a thorough investigation, the police find that there is not enough evidence to support the complaint of a crime being committed, the Investigator should halt the investigation of the case, and inform the Prosecutor, the suspect, or the suspect's family that the case is not proceeding further.

8.7.g. How to complain if an investigation or prosecution is stopped

Any complaint against the decision of the authorities to halt or to postpone investigation or prosecution on any criminal case is subject to examination by the court through a Pre-Court proceeding mechanism. A complaint to the court may be submitted by a third party to the Head of the Court. Such a complaint must include the third party's arguments for disagreeing with the decision of the investigators.

No later than 7 days upon receipt of the complaint, the court shall issue a decision related to whether or not the Investigator's decision to halt the investigation or prosecution is legally acceptable (Article 82 point c and Article 77 of KUHAP). Only one Judge examines the case and makes a decision. If the court declares that the decision to halt the investigation is not legally acceptable, then the investigation or prosecution against the suspect shall be resumed. The court can also order compensation or rehabilitation for people whose cases are stopped at the investigation or prosecution stage.

A pre-court proceeding could also be used against the Prosecutor's office if people are arrested without a warrant, detained illegally or outside of the authority of the Prosecutor's for that area.¹²

HOW YOU CAN HELP

- ✓ Ensure that the victim understands that it may take a long time to process her case.
- ✓ Remain in contact with the Police and the Prosecutor to monitor the progress of the case.
- ✓ If you believe that the police in the sub-district office have not followed up as required, your NGO may submit a complaint to the police in charge commander of the office, or to the district level of the police office.
- ✓ It may be necessary for you to undertake advocacy both in the jurisdiction where the complaint is made and also in another district/jurisdiction if crime in order to try to pursue the people who are actually organizing the trafficking.
- ✓ Utilize the processes described above to protest if an investigation or prosecution is stopped.

¹² Purwanto, Edy (2000) Menangani Sendiri Kasus Buruh Migran

8.8. Complete and submit a case file

After the investigation process is completed, the police in charge should make a summary of their findings and organize the contents of the case file. The case file should contain:

- The original complaint and Receipt of Complaint slip
- An abstract of the facts of the case
- The police reports (including the results of examinations of the suspect, victim, and witnesses) – Minutes of Complainants, Witnesses and Defendants
- An explanation of the investigation process by the police
- All letters issued for the related investigation process
- A list of witnesses
- A list of suspects
- A list of evidence
- A statement about the validity of the case

Once completed, the Investigator will submit the case file to the Prosecutor. The Investigator may now transfer responsibility for the suspect and all of the evidence to the Prosecutor.

8.9. Arrest

If based on the police report and the results of the interrogations/examinations, the police find that the evidence indicates that the suspect has committed a crime, they may release a Command Letter to arrest the suspect. A command letter is an official police document giving them to authority to arrest a suspect. It contains the name of the suspect and the criminal charges. The police officer who arrests a suspect must show the command letter or their identity to the suspect or his/her family.

After arresting the suspect, the police officer must write an arrest report signed by the officer and the suspect who is arrested. During the arrest process, the police will take the suspect's photograph and fingerprints.

The duration of the arrest based on preliminary evidence is 24 hours. After this period, the suspect must be formally charged and the case handed over to the prosecutor, or else the suspect must be set free. An Investigator may detain the suspect for investigation needs but he must be set free if there is not enough evidence.

8.10. Prosecutor reviews the case

Once the Prosecutor accepts the case file from the Police, the Prosecutor in charge should assess whether or not the case file fulfills the requirements to issue an indictment and file the charges against the suspect in the State Court (Article 13, 14 and 15 of KUHAP). There are three possible actions for a Prosecutor to take after receiving the case file from the Investigator and reviewing the case:

1. Write an indictment and file the indictment with charges against the defendant in State Court.

According to Article 143 of the KUHAP any indictment by the prosecutor shall contain a precise, clear and complete description of the indicted crimes by stating when, where, and by whom the crimes were committed. If it is believed that the suspect has committed more than one crime, the Prosecutor may indict him with more than one crime cumulatively. All indicted crimes must be proven in court.

The indictment serves as a basis for the suspect/defendant to know which crimes he/she is being charged with, allowing his/her lawyer to prepare a defense against the prosecution, and also as basis for the judges to examine and try the case.

If the indictment does not meet all the requirements and include the date, signature of the Prosecutor, the Defendant's full name, place and date of birth or age, sex, nationality, address, religion and job as well as a detailed, clear and complete explanation regarding the charges (indicating time and place where the crime was conducted), the letter is canceled by law.

2. Terminate the case in the name of law.

If the Prosecutor decides to terminate the case due to lack of evidence or because the acts committed are not considered crimes under the law, he must indicate this into a decision letter. The Defendant should be informed of the contents of this letter and released from detainment.

3. Send the case file back to the Investigator for further evidence collection. The case file is then later re-submitted to the Prosecutor with a note indicating that the investigation process is completed as far as possible. In some cases, the Prosecutor may meet directly with the victim(s) and/or witness(es) in coordination with the police investigator,

HOW YOU CAN HELP

- ✓ A victim may ask for financial compensation to be included in the criminal case. Article 98 – 101 of the Civil Code says that it is possible to combine a civil and criminal suit in this way. This request will only be granted if the victim has concrete evidence and can only be granted for tangible losses. This request must be submitted to the Prosecutor **before** he charges the suspect. Make sure the Prosecutor is aware of this.
- ✓ A NGO representative should advocate to the Prosecutor to include in their indictment a demand to send the Defendant to jail. This must be done **before** the verdict is announced. It is ultimately the decision of the Judges as to whether the Defendant will be detained.

8.11. Filing the indictment

Once the indictment is completed then the Prosecutor files the indictment in the State Court in his district with a request to try the case as soon as possible. Enclosed with the request is

the Prosecutor's indictment letter. This now constitutes a criminal case. All parties involved in the trafficking abuses should be included in the indictment.

A copy of the case filing to the court including the indictment letter shall be sent to the defendant, his/her lawyer, and the Investigator. The Defendant and his Attorney are entitled to see or receive copies of the Case File with copies of the indictment letter by the Prosecutor. Enclosed with the letter shall be the copies of the Prosecutor's evidence.

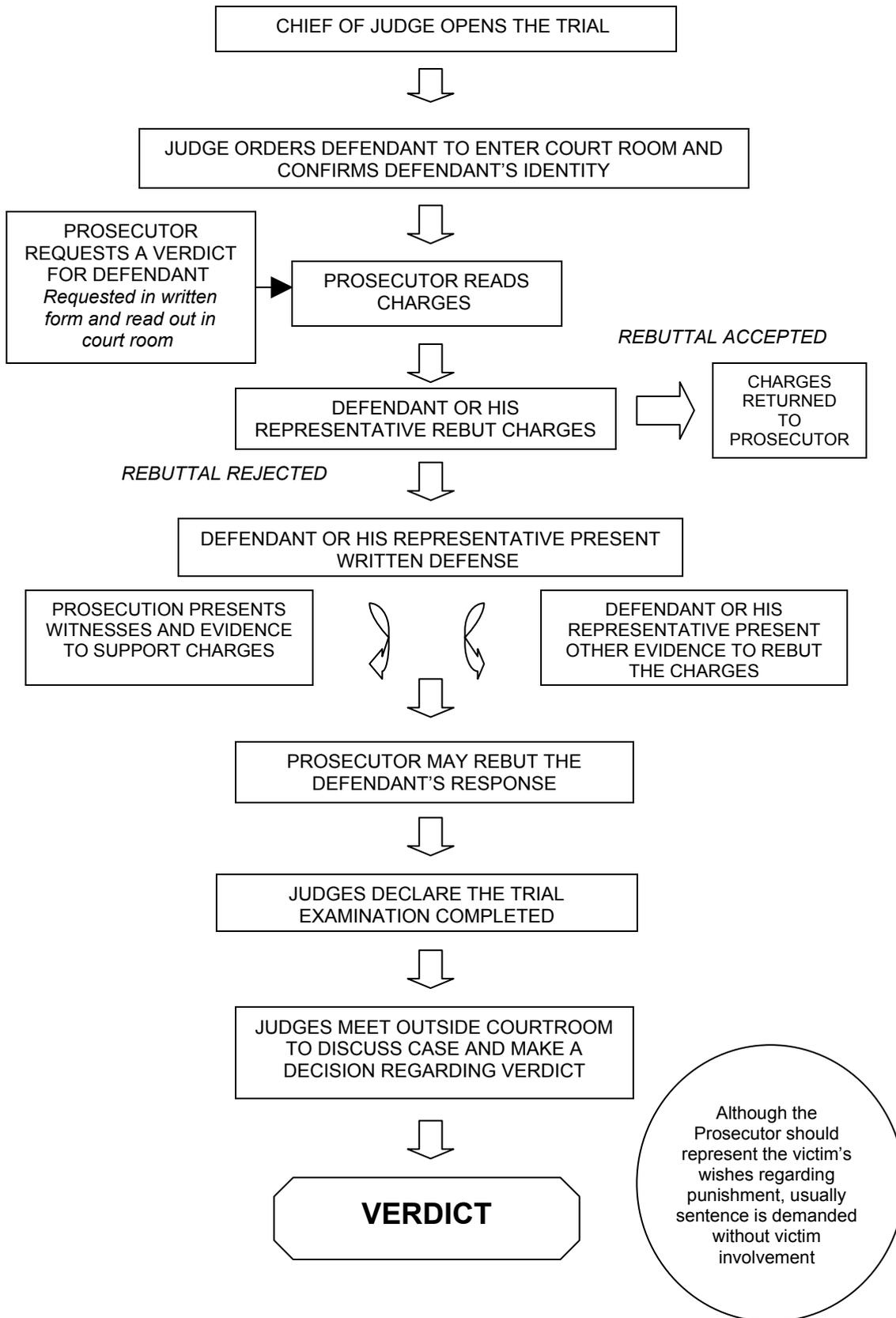
8.12. Schedule for the trial

Once a Prosecutor files an indictment in court, the State Court first ensures that the case is within the court's jurisdiction. Then, the Head of the State Court appoints a panel of judges (usually comprised of three judges) to adjudicate the case at trial. Finally, the Chief Judge schedules the case for the trial.

After the trial is scheduled, the Chief Judge instructs the Prosecutor to summon the Defendant and the witnesses to come to court at the appointed time and date for the trial. The Summons letter, which indicate the date, the day and the time of the trial as well as the case for which the trial will be conducted shall be sent and received by Defendant no later than three days before the trial is scheduled to begin. The Prosecutor should also send a Summons letter to witnesses that indicates the date and the time of the trial as well as the case for which the trial will be conducted. This should also be received no later three days before the trial begins. The letters for all parties should be sent to their domicile.

According to Article 112 of KUHAP if the Defendant does not respond to the summons, the judges will postpone the trial, the Investigator will re-summon him/her with a Command Letter to bring him/her by force. If the Defendant cannot be brought to the court, the court may try him "in absentia." The Defendant may also request to change the trial schedule if he has a valid reason. A witness who is absent from court will be re-summoned.

8.13. The trial process



8.13.a. Presentation of cases

During the trial, witnesses are called one by one according to an order determined by the Chairperson of the Panel of Judges after hearing the opinions of both the Prosecutor and Defendant or his/her lawyer. Usually, the first witness to testify is the victim.

The Chief Judge, the Prosecutor, the Defendant, or the Defense Attorney through the chief judge as an intermediary, may propose their own witnesses to testify in court. A Defendant has the right to propose any witnesses who he/she believes may potentially testify in favor to his/her legal position within the case. To strengthen their indictments, the Prosecutor may bring any witness to contradict the Defendant's position or testify with evidence supporting the criminal charges.

The Prosecutor will use the evidence collected during the investigation by the police as evidence for the case at trial. Questioning of all witnesses and the defendant is done by both the Prosecutor and the Defense Attorney through the chief judge as an intermediary. The parties in the trial (upon the Chief Judge's approval) may request to have the other party's witnesses confronted in the courtroom. The Chief Judge allows the Defendant to react to the testimony. The Chief Judge may object to any questions asked of the witnesses.

Any witness summoned by the police are obliged to testify. If they do not, they can be brought forcibly to court (Article 112 of KUHAP) or charged with a crime. For a witness who does not make an appearance due to legitimate reasons (such as a serious illness or his/her domicile is too far away) the investigator may conduct the questioning in the witness' domicile (Article 113 of KUHAP). Should there be any differences in statements given in courtroom and ones taken into Minutes of Examination then statements made in court will be used.

The following are the legitimate types of evidence which can be considered in a trial (KUHAP 183 – 184):

- Testimonial evidence: This type of evidence is considered legitimate only if:
 - The witness is eligible to become a witness (Article 168 of KUHAP). A person is not eligible to be a witness if:
 - she or he is related by blood or by marriage in ascending or descending straight line up to the third degree from the Defendant or he or she is also a Defendant;
 - the husband or the wife of the Defendant although they have divorced or he or she is also a Defendant
 - the testimony is provided before the court;
 - the testimony is conducted under oath according to his/her own religion;
 - the testimony relates to all things or situations which he/she him/herself has experienced, seen, or heard; must have personal knowledge, and not information from others.
- Expert Testimony: An expert witness does not have direct knowledge of the events of the case, but has a particular expertise useful to clarify a criminal event for the purposes of trial.
- Letter evidence: everything containing identified symbols or characters.
- Indication (judicial notice): Evidence which the Judge recognizes through the court process.
- The Accused Clarification: recognition or

Prior to testifying, all witnesses shall swear an oath or vow according to his/her religious beliefs that she/he will provide truthful testimony. If a witness refuses to swear an oath or vow, then the witness may still testify, but her testimony is given less weight and is regarded as supplementary evidence for the case.

Intimidating questions to either the defendant or witnesses are not allowed. The Chief Judge and the other members of the Panel of Judges may ask questions to the witness regarding his/her testimony that are considered as necessary to ascertain the facts of the case and clarify any points of confusion.

If a witness who has already testified during the investigation process (in front of the Police or Prosecutor) is unable to attend the trial for a legitimate reason (such as death, serious illness, etc.), then the written report of his/her previous testimony will be read during the trial in the courtroom. If the investigation report indicates that the witness gave such evidence under oath, then the testimony will be regarded as equivalent to testimony given during the trial in the courtroom.

Testimony of a witness or the victim in court during the trial is given in the presence of the Defendant and/or his/her lawyer unless the Chief Judge determines that there is an issue that should be heard without the defendant present. When the witness finishes testifying, the witness shall stay in the courtroom unless the Chairperson directs her to leave. The approval for a witness to leave shall not be given if the Defendant or the defense attorney requests him/her to stay in the courtroom.

**HOW
YOU
CAN
HELP**

- ✓ Witnesses should not be asked intimidating questions. If you find that the questioning is too difficult for the victim, you should indicate this to the Prosecutor.
- ✓ If the victim feels too scared to testify in court in front of the Defendant, there can be a request that he be removed from the courtroom. Once the testimony is finished, however, the case shall not proceed until the Defendant is informed about the evidence received during his absence.
- ✓ If the victim feels too scared to testify in court in front of the Defendant or lives far away from where the trial is taking place may want to negotiate with the court for the option to testify by way of a teleconference during the trial session. This is not common, but a NGO could propose the option.

8.14. The verdict

At the end of the trial, the panel of judges will meet in a closed session to determine the verdict. A verdict is any judge's statement declared within open court that may order penalties, discharges, or releases from penal charges based on ways regulated by the criminal law procedures. The verdict shall be based on the charges in the indictment and the facts that were proven during the trial examination.

Article 183 of the Indonesian Penal Law Procedure (KUHAP) stipulates that judges are prohibited from convicting anyone, unless:

- there are at least two kinds of legitimate evidence, and
- he/she believes that a crime was really committed, and
- the accused is found guilty of committing the crime in a court

Article 1.11 of KUHAP states that the court verdict can order one of the following three actions:

1. Execution:

Finding the Defendant guilty and giving punishment according to Article 10 of KUHP. The Judges must make an order to send the Defendant to jail.

2. Release:

Finding the Defendant not guilty and ordering the Defendant released. The court finds that in the course of the trial examination the Prosecutor does not prove legally and surely that the Defendant committed the charged offences.

3. Excusing the Defendant: Releases (excuses) the defendant from penal charges.

The court finds that although the charges against the Defendant were proven in court, the acts of the accused are not criminalized in the law. This may be because the respondent has committed the crime unintentionally, or there were excuses or justifications proven that are recognized under existing laws.

The penal law system requires that the judges consider only the facts that were concretely raised during the trial. Judges must ensure that the Defendant really did commit the criminal acts with which he is charged. The judges shall declare exactly which article of the law the accused violated. If there are multiple charges, however, the judge may only convict the defendant for those crimes that were proven in court.

The verdict should be unanimous. However, if there is a split decision, the majority verdict will prevail. If the judges cannot reach a split decision, then the decision that is the most favorable to the Defendant prevails. Once imposed, no one can pressure the court to change the verdict. Any effort to reject the verdict may only be undertaken through the appeal process.

The verdict making process shall be recorded into the documentation book, and will be treated as classified information. The court verdict may be taken and announced on the same day or on another day provided that the Chief Judge informs the Prosecutor, the Defendant and/or his/her lawyer in advance about the date.

Once the verdict is announced, the defendant has the following rights:

- To immediately accept or reject the verdict.
If the defendant accepts the verdict, he/she has the right to ask to delay the execution of the verdict in order to submit a request for a President's pardon.

The defendant may reject the verdict and request an appeal. The defendant has seven days within which to decide whether to appeal. Once this period of time has passed, and the defendant fails to file an appeal, then the defendant is legally deemed as accepting the verdict.
- The right to study the verdict before stating whether he/she accepts or rejects the verdict.
The Defendant must provide an answer no later than seven days after the verdict is announced or in the case of the defendant's absence at the trial, after the verdict is informed to him/her.

**HOW
YOU
CAN
HELP**

A NGO representative should advocate to the Prosecutor to include in their indictment a demand to send the Defendant to jail. This must be done **before** the verdict is announced. It is ultimately the decision of the Judges as to whether the Defendant will be detained.

8.15. Sentencing

If the Judges decide that the suspect is guilty of the charged crime(s), then they shall impose a sentence against him. The punishment in a criminal case is usually a prison term, however there may also be a punitive fine or sanctions imposed.

The Prosecutor demands a particular sentence for the Defendant. The panel of judges then decides the amount of prison time or fine by referring to the allowable maximum punishment in the Criminal Code. The length of the prison term is up to the discretion of the judges. Judges usually take the following aspects into account when deciding the sentence for a Defendant:

- level of involvement of the defendant in the crime (whether she/he was the main actor or an accomplice)
- the severity or effect of the crime for the victims and others
- the behaviour of the defendant during the trial proceeding (Was he cooperative? Did he show regret?)
- his/her criminal records (whether he/she committed the crime for the first time or is a repeat offender)

In the case of a multiple indictment, if all indicted crimes are proven, the judge shall state in her verdict that the suspect is proven to have committed each crime, using the word “and.” The total punishment imposed shall not be more than the maximum punishment of the highest crime plus one third of that maximum punishment.

If it is not clear if the Defendant was the main actor in the crime or only an accomplice, the Prosecutor may charge the Defendant with an alternative indictment. The Prosecutor shall only prove one of the indictments that he thinks he has enough evidence to prove.

8.16. Appeal process

It is the Defendant and Prosecutor’s right to reject a court decision and request a re-examination of the case. If a defendant is found guilty, he/she may appeal the case to the High Court. A Prosecutor may also appeal a case if he/she is unhappy with the sentence or punishment. A Prosecutor cannot, however, appeal a case in which the defendant is found not guilty. If a victim is not happy with the verdict, she must advocate to the Prosecutor to undertake an appeal.

On appeal, the High Court or Supreme Court may change or uphold the State Court’s verdict. The change may reduce or increase the punishment.

An appeal must be requested within seven days of the verdict or within seven days of advising the defendant of the verdict in cases where they were absent from court. If the seven-day period passes without any request for an appeal, then the parties are considered to have accepted the verdict.

A request for an appeal of all verdicts of the first level court (State Court) may be made to the High Court. The appeal may be requested by the Defendant or the Defendant’s legal representative, or by the Prosecutor as long as he/she has not yet discharged the verdict (for example taking the Defendant to jail).

8.16.a. Request to review the final court decision

The Supreme Court regulation No. 1/1980 article 9 stipulates that the Supreme Court may review all verdicts that have obtained the final legal authority as long as the verdict contains penalties against the defendant.

Article 263 (2) of KUHAP stipulates that, any review to the final verdict is conducted if:

- There is any new fact found that is significant enough that if it had been considered during the trial process, the court would have decided to discharge or release the Defendant from penal charges or the Prosecution would have ordered a lighter punishment
- Even though the fact was proven, the facts or things used as argumentation or basis for the decisions were contradictory to each other
- The verdict is based on wrong ways or real inaccuracies

8.17. Positive & negative aspects of the criminal process

Please also see Chapter 4 for a more general discussion of the challenges when dealing with trafficking cases in the legal system.

<u>Positive</u>	<u>Negative</u>
◆ the burden of the case is taken by the State	◆ the victim has little to no control over the process
◆ the costs of investigation and adjudication are all borne by the State	◆ even if the trafficker is found guilty, the legal system may not enforce the sentence
◆ the traffickers could receive a prison sentence, which can serve as a public warning not to victimize others in this way	◆ the victim will likely be forced to testify in court
◆ criminal punishments may help victims to reach closure or feel empowered or vindicated	◆ the victims' identity may be divulged in media during the trial process, which is a public process
◆ if the traffickers are imprisoned this increases the safety of the victim and others because their trafficking activities will cease	◆ the trafficker may threaten the victim or her family, or the NGO assisting her, to prevent her from testifying
	◆ the Police may not want to pursue traffickers who live outside of their jurisdiction, though these people may be responsible for organizing the trafficking

8.18. Examples of Criminal Cases

8.18.a. Example #1:

Sri is a 20 year old woman from rural North Sumatra. She was interested in working outside her village and so she accepted a job offered to her by a man named P who was introduced to her as a staff member of the Ministry of Manpower. P promised her employment in a biscuit factory in Dumai, Riau province

with salary of Rp.400,000 per month. She was also told that she could repay back all expenses incurred - i.e. transportation, housing, etc. - after she had started working.

Prior to arriving in Dumai, she was sent to Medan. She was taken to a hotel where she was forced to have sex with P. The following day, she was transported to Dumai where P transferred her to B, a bar owner. P received Rp.600,000. Sri does not want to work at the bar and told this to the owner who locked her in a room for two days where she was prevented from leaving by two bodyguards. In the course of her confinement, B told her that she was obliged to repay all expenses spent for her travel. With no other options and a large debt, Sri agreed to work at the bar. There, not only was she assigned to serve as waitress but also to provide sexual services to guests. For each client she received Rp.10,000. When she refused to have sexual relations with clients, her employer threatened to beat her. While working at the bar, she was forced to live with B who required that she also provide him with sexual services. She thought often of escaping this situation. After 6 months, she managed to escape and returned to Medan where she reported this case to the Police.

The prosecutors charged the man who trafficked her with violating Article 332 (1) of KUHP on abducting a female for the purpose of ensuring his power over her by punishment up to 7 years imprisonment, and Article 297 of KUHP on trading a female and underage boy by punishment up to 6 years imprisonment, by referring to article 55 of KUHP on taking a part to commit a crime act.

8.18.b. Example #2:

When they were on school holiday, 3 girls (14, 15 and 17 years old) were offered to work in a Karaoke club. It was found out later that the one that offered them the job was a daughter of an agent. Once the victims were interested, they were brought to the parent who was the recruiter. At the recruiter's home, they were served chocolate. After eating the chocolate, they felt hypnotized and followed what the trafficker said.

Without their knowledge, the girls were brought to an unknown area, taking ferry to Tanjung Balai Karimun. They were then handed over to a boss/pimp. They were locked up for 2 weeks. During that time, the boss was negotiating the right price for virgins like them to his customers. One of the three victims did not stop crying in the lockup. The boss decided to send this crying victim back home. Once she was home, she reported to her parents about her experience.

Meanwhile, the parents of the other girls were also looking for their daughters. With the information from the other girl, the parents decided to try to bring their daughters home by hiring a Brimob (mobile brigade police). When they arrived there, police guarded the lockup. Negotiation took place and they agreed to pay Rp 800,000,- for each girl in order to bring her back home as the compensation for their travel expenses. After they paid, they brought the victims home.

At home the parents reported to nearby police. However, the police did not respond positively and they were even mad at the parents and accused them of lying. Having failed in getting attention from local police, they contacted the NGO PKPA and explained their case and their failure in getting help from police. Once PKPA got enough information from victims' parents, PKPA offered legal assistance for this case. PKPA then formed a team of lawyers consisting of NGO network such as LBH Medan, LBH Apik and other professional lawyers. The team then decided to bring the case to POLDA (Medan Provincial Police).

The team went to POLDA and met with the RPK (Special Room for Victims) head. POLDA responded positively and assigned its counselor to provide psychological counseling for rehabilitation and strengthening the victims psychologically to deal with legal process. Considering victim's psychological state, PKPA asked that examination of the victim be done only once. POLDA agreed with this. Once the victims felt strong and ready enough, they were brought to POLDA, and female police officers conducted the investigation in the RPK office. The team felt that the investigation went well and the police treated the victims warmly and did not ask any harassing questions or have a harassing attitude towards the victims.

Two weeks after this case report, POLDA arrested the recruiter who is in Medan. The legal team had actually asked police to catch the trafficker who is responsible for the lockup in Tanjung Balai Karimun. However, Medan POLDA said that the perpetrator is not in their jurisdiction, so they could do nothing.

PKPA assisted by collecting necessary evidence, such as names of witnesses and ferry tickets. The victims had to undergo medical examination at Police expense. For traumatic and physical treatment, PKPA covered the costs. If the NGO had not assisted them, the Police would have asked for money from the parents to pay for the medical examination.

Once they went through the process with Police, the case was then submitted to Prosecutor's office. In this process, PKPA team actively made lobbies to ensure that the Prosecutor is serious in dealing with this case. PKPA also tried to support the Prosecutor with necessary materials to provide arguments in court

The Prosecutor was cooperative and pleased to accept help from PKPA. The Prosecutor made more than one charge i.e. (main indictment) with article 297 providing maximum 6 years jail and an alternative indictment with article 332 about taking a way underage child with maximum punishment seven years.

Once the Prosecutor was ready with his charges, the hearing court in the local court in Medan commenced. The court was closed to the public. However, the parents and the staff assisting the victims were allowed to accompany the victims during the process. During the process, victims were present two times, once is when they provided testimony and second when they were confronted with the trafficker.

During the hearing, the Judge directed more questions to the suspect than victims. The judge's attitude and questions did not harass or blame the victims. There were 12 court hearings in total.

Finally the judge decided that suspect was guilty of having helped to traffic the girls. The judge defined that trafficking to underage women and underage children is equal to taking women or underage children to be prostitutes. The Judge tried to prove two things: whether there the victims were moved and whether they then were prostituted. Since these two things were proven then the suspect was punished with 1 year and 8 month in jail, although article 297 charges 6 years jail at maximum. The Judge said that suspect was not the main trafficker and he did this because other people ordered him to do this. Therefore, he could only get punished a maximum half of it, which is 3 years. The Judge also took into account that the guilty person was still young, cooperative during the hearing and had not been convicted of a crime before.

The whole process from reporting the case to the police until the verdict was made took 6 months.

(from PKPA Medan)

HOW YOU CAN HELP

Important things that the NGO did in this case:

- ✓ Formed a legal team to assist the victim
- ✓ Assisted the victim to find the most supportive office of the Police to deal with her case
- ✓ Worked with the victim and Police to collect evidence for the case
- ✓ Advocated on behalf of the victim to the Prosecutor (regarding charges which should be made against traffickers) and to the Judges (asking that the victim not have to appear in court too many times and be treated with sensitivity)
- ✓ Advocated on behalf of the victim to the Police to obtain funding for medical examination
- ✓ Accompanied the victim to court (including obtaining permission to be present at a trial which was closed to the public)
- ✓ Provided the victim with funding for treatment of physical and mental injuries resulting from trafficking

8.18.c. Example #3 (Police intervention to rescue victims of trafficking):

The parents of a victim reported to PKPA that their daughter had been missing for 8 months. PKPA then tried to help the parents to find their daughter. The information was getting clearer after they were able to identify a person who met with the victim for the last time. They found that a man who is trafficking broker has brought away the victim and sold her for commercial sex. With this information PKPA reported the case to POLDA of Riau.

Based on the information in this POLDA, found that there were other 8 children with the victim. Police then brought the victim home by ship back to Medan and picked up PKPA staff at Belawan Port. All expenses to pick up and return the victim is on Police. If the NGO had not accompanied the parents of the victim, the Police would usually ask them to pay half of the overall expenses.

The case was then sent to the Prosecutor and tried in court, similar to the process in the previous case study. In the verdict, the trafficker was punished 1 year and 6 months, based on the fact that the guilty person is not the main trafficker.

(from PKPA Medan)

**HOW
YOU
CAN
HELP**

Important things that the NGO did in this case:

- ✓ When the NGO brought the case to the attention of the Police, it was found that there were other trafficking victims in need of protection
- ✓ The NGO's involvement in the case meant that the Police treated the victim and her family better than if they had been acting alone (for example, they did not have to pay travel costs)

CHAPTER 9

CIVIL COURT PROCESSES

9.1. What are civil cases?

A civil case in State Court is initiated by a person(s) or corporate entity. It is different than a criminal case because the case is not initiated by the State on behalf of its citizens and there is no Prosecutor who instigates the case. Article 1365 of the Civil Code stipulates: “A party who commits an illegal act, which causes damage to another party, shall be obliged to compensate therefore”.

Some trafficking abuses cannot be raised in a civil case until a criminal case is complete. This situation arises when a violation is illegal under criminal law. For example, if a trafficking victim has been sexually assaulted, she cannot sue the perpetrator through the civil court

process for compensation until after the perpetrator is tried in court for the criminal charge of sexual assault. If the perpetrator is found guilty, then the trafficking victim may bring a civil case for the sexual assault violation. If the perpetrator is found not guilty, the victim may still file a civil case for compensation, but her chances of winning would be less.

The trafficking victim is the Plaintiff in a civil case. The laws relevant to civil court procedures are HIR (Herziene Indonesisch Reglement), KUHPperdata, and RBg.

Some of the people against whom a trafficking victim could launch a civil case:

- Recruiters
- Employers
- Agents
- People who buy sex from people involved in prostitution
- Brothel owners
- Pimps
- Government employees complicit in trafficking (for example providing fake immigration documents)

9.2. What abuses or violations can be handled through civil court?

Currently, civil court processes are not often used in cases of trafficking. This is usually because the victim is concerned about how long the process will take. Other challenges in the court system are discussed in Chapter 4. It is important, though, to remember that civil processes remain an option for a victim and should be discussed with her.

Please see the *Index of Abuses* which is included on page 89.

9.3. What are the possible outcomes of civil cases?

In cases of trafficking in persons, civil court processes may be used to ask for compensation or restoration for the victim from the person who exploited or injured the victim. Through a civil case the trafficking victim could seek redress such as:

- monetary compensation
- payment of wages
- return of property

- closing down of a recruiter
- debt forgiveness

In some cases, a victim may ask for financial compensation to be included in the criminal case. Article 98 – 101 of the Criminal Code of Laws say that it is possible to combine an indemnity charge case (a civil case) with a criminal case. This request will only be granted if the victim has concrete evidence and can only be granted for tangible losses (such as non-payment of wages). This request must be submitted to the Prosecutor before he makes the indictment/charges the suspect. Claims for intangible losses (such as mental suffering) must always be handled through a separate civil process.

In a civil case the judge will decide either in favor of the Plaintiff or the Defendant. A

decision in favor of the Plaintiff is ruled when the Plaintiff proves that the Defendant injured her in some way and violated a provision of the law. If the judge finds that the plaintiff did not prove that she was injured by the Defendant or that the injury was not a violation of a particular law, she will decide in favor of the defendant.

If the judge decides in favor of the Plaintiff, she will order compensation for the Plaintiff to be paid or provided by the Defendant. If the judge decides in favor of the defendant, the Plaintiff receives no compensation. If the civil claim is combined with a criminal case, the verdict on the civil claim comes into force when the criminal verdict also comes into force.

A hypothetical civil case

Ruli is a 16 year old migrant worker from Wonogiri, Central Java. She was recruited by an agent to work as a domestic worker in Malaysia. After spending 3 months in a PJTKI holding center, Ruli was sent to Singapore to work for a family. After nine months of work, Ruli did not receive any wages. She ran away from her employer and with the assistance of the Indonesian Consulate, she was able to return home.

Ruli visits a local NGO in Wonogiri to see if they can help her to get the wages owed to her. The NGO assigns one of its legal staff to assist Ruli. They attempt to negotiate with the PJTKI for her unpaid wages. The PJTKI, however, refuses to pay her. Therefore, Ruli and her attorney decide to file a civil case in State Court against the PJTKI in order to get compensation for Ruli. Ruli must prove in court that she had a contract with the PJTKI to work in Singapore, the amount of wages that she was owed, and that she did not receive any wages. If she meets the burden of proving her case, Ruli could be entitled to monetary compensation in the form of unpaid wages, perhaps with interest.

HOW YOU CAN HELP

- ✓ It is important to inform the trafficking victim that it is difficult to predict the outcome of a case, so she should be prepared for any outcome.
- ✓ A civil trial may take several years to complete. The victim must be prepared for this and be sure that she is willing to follow the case through. Your NGO must assess how you can provide support to the victim through this potentially long process.

9.4. Who is involved in a civil case? What are their roles?

The roles of the different players in civil court processes are outlined in the Diagram of the Courtroom on page 61. Please also see Chapter 1 for more information about the role of NGOs in assisting victims of trafficking.

Using Civil Court Process to launch a Citizens' Lawsuit

The Consortium for the Defense of Indonesian Migrant Workers (KOPBUMI) together with LBH-Jakarta and several other NGOs recently filed a case against the Indonesian government, specifically the administration of President Megawati Sukarnoputri on behalf of undocumented Indonesian migrant workers who were deported from Malaysia to Nunakan, East Kalimantan in a mass deportation process in August 2002. The NGOs refer to the case as a "citizen's lawsuit". The NGOs alleged in court that the government failed to live up to its duty to protect the Indonesian migrant workers who suffered many forms of exploitation, and harsh conditions after their deportation. Over 70 workers died in holding camps set up to receive expelled migrants, with many workers charging that slow reaction from the Government was partly to blame. KOPBUMI brought the case in State Court through the civil process. Instead of demanding compensation, the plaintiffs are asking the court to order the government to enact a law on migrant worker protection, to ratify United Nations conventions on migrant workers, and to cooperate with the Malaysian government in order to prevent forced repatriation from reoccurring.

9.5. The civil court process and who is involved

COURT CLERK

- Organizes the administration of the case, keeps records and prepares documents related to the court process, including making copies of the verdict
- Records the process during the trial
- May be involved in executing the verdict

JUDGES

- Examine the case
- Decision makers in the case
- Usually a panel of 3 Judges

Civil trials are open to the public

ATTORNEY

- Represents the Plaintiff and presents her case in court
- Assists the Plaintiff to file her case in court
- Named as Plaintiff's Attorney in Minutes of Complaint
- Must be registered as a lawyer in the jurisdiction of the court

WITNESS

- Person who has seen an event take place or has been the victim of a crime and describes it in the court
- The Plaintiff/Victim is considered a witness
- Expert who has knowledge in a relevant field (for example psychology)

ATTORNEY

- Represents the Defendant and presents his case in court

NGO

**PLAINTIFF/
VICTIM**

- The victim of trafficking
- Person who is injured, harmed or has experienced damages as a result of trafficking abuses
- Lead actor and bears the burden of proof to prove that Defendant injured her in violation of civil law
- In some cases, the trafficking victim's family can also bring a case to court on her behalf, for example if the victim is a child under 21 years old and not married.
- Gathers evidence to prove her case
- Serves as a witness in court and testifies (talks about her experience) against the Defendant.
- Should be represented by an Attorney
- Must attend all sessions of the trial

DEFENDANT

- Person who is presumed to have committed an abuse or damages against the Plaintiff.
- Defendant can be anyone involved in trafficking process, such as an PJTKI, employers, recruiters, pimps, government employees complicit in trafficking
- Defendant is represented by an Attorney
- Responds to Plaintiff's claim that he injured her and may present his own evidence to disprove the claim

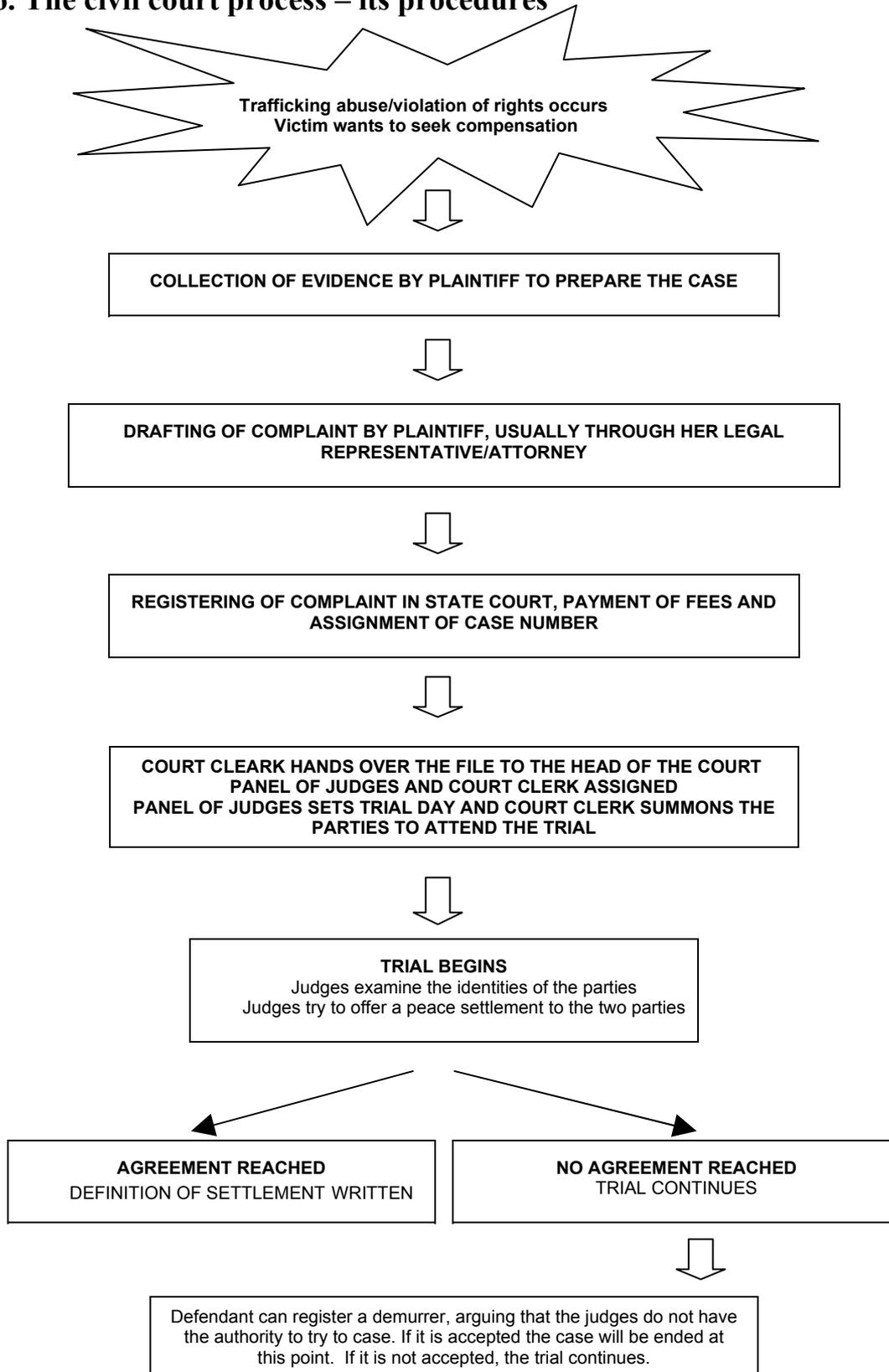
NGO

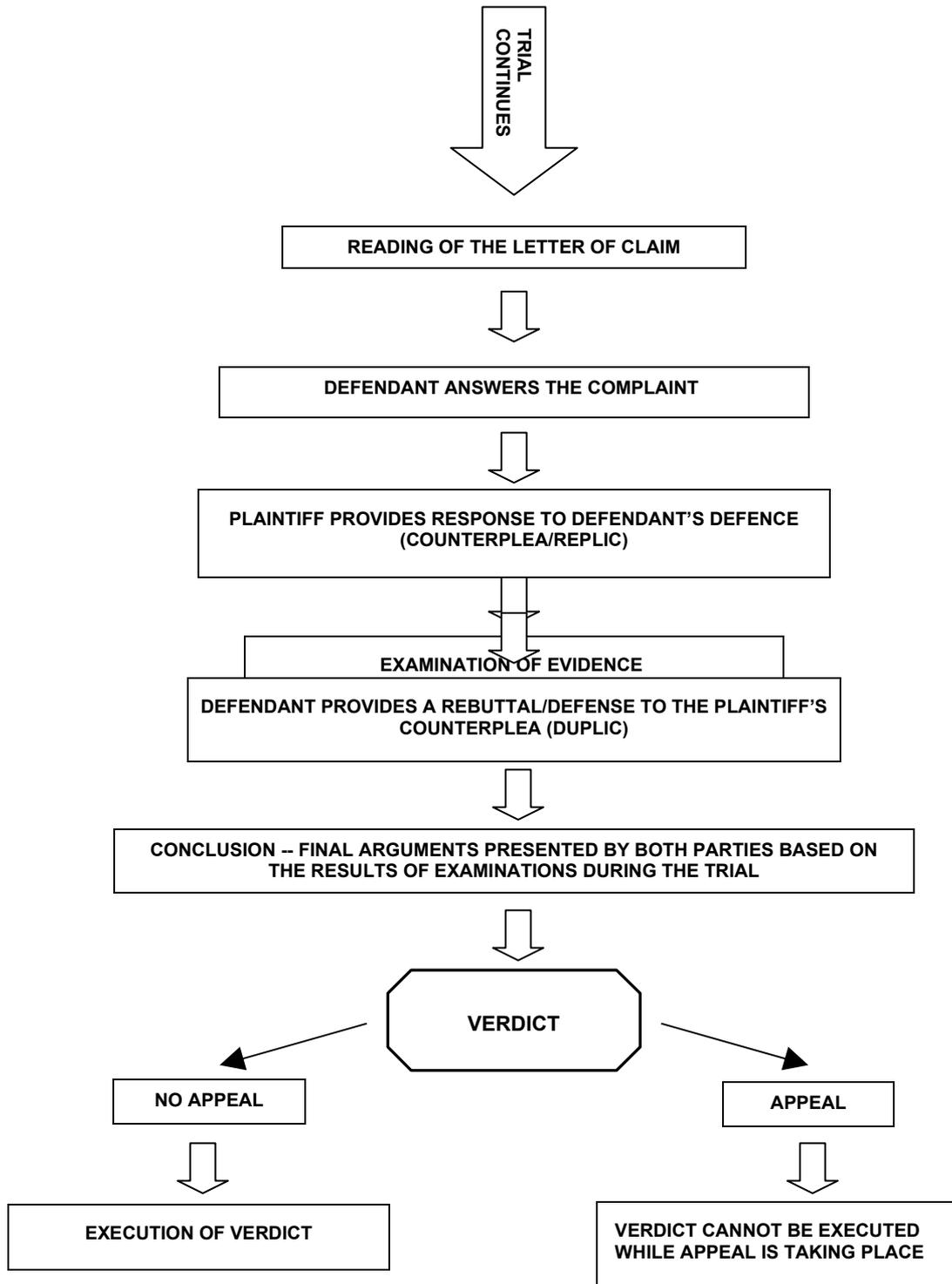
- Supports and assists the victim
- Accompanies the victim to meetings related to her case (for example with doctors, lawyers)
- Assists victim to file her case in court
- If NGO has an in-house lawyer can provide legal support
- Accompanies the victim to court (for example give her encouragement, ensure that she does not come into contact with Defendant)
- Advocates on behalf of the victim to other actors such as court officials during the process

BAILIFF

- Maintains order and security in the courtroom
- Takes oaths from witnesses
- Follows orders of Chief Judge
- Summons and escorts witnesses

9.6. The civil court process – its procedures





9.7. Gathering evidence for the case

In a civil case, the investigation and collection of information and evidence must be all be done by the Plaintiff and Defendant and/or their legal representatives. The government or Police are not involved. However, evidence collected by Police or Prosecutors for a criminal case may be used in a civil case which takes place after the criminal case.

A guilty verdict from a criminal case may also be used to support and corroborate a civil case. The copy of the court's verdict in the criminal case is very important as evidentiary support in a civil case. The copy of the verdict can be obtained in the courthouse where the criminal case was heard.

Examples of the evidence which can be used to support the civil case of a trafficking victim are:

- Proof of transportation to destination: ferry tickets, boarding passes and tickets for airplanes, trains, ships
- Addresses/locations used during transit
- Names and addresses for employers, agents, recruiting agencies, etc.
- Detailed statements by the trafficking victim of her experience, with dates, locations, addresses, names, numbers, etc.
- Labor contracts
- Photographs of working conditions, physical abuse, etc.
- Witness statements
- Travel documents (visas, etc.)
- Identification documents (Passports, KTP, etc.)
- Lists of expenses, including any receipts
- Receipt from PJTKI
- Brochure from PJTKI
- Medical Certificate
- Medical Records
- Physical evidence (torn clothing, photos of injuries, etc.)
- Migrant Worker Identity Card/KTKLN (if any)
- Copy of insurance policy

HOW YOU CAN HELP

- ✓ Help the victim to gather any evidence she has of the abuses she has suffered. Help the victim to focus on information which relates to the case and to find evidence which is strong enough to support her case. Try to get information which answers the following questions:
 - What? Evidence of the abuses or crime that took place.
 - Who? Evidence of the people who were involved in trafficking and what their role or responsibility was.
 - When? Evidence of the time period when the abuse took place.
 - Where? Evidence of the location where the abuse took place. Also, evidence of where the people who committed the abuse can be found.
 - Why? Try to think about why this case happened and the purpose of each party involved.
 - How? What is the role or responsibility of each person in this case?¹³

¹³ Purwanto, Eddy (2000) Menangani Sendiri Kasus Buruh Migran

9.8. Drafting the complaint

The administrative procedure for filing a civil case in State Court requires that a Plaintiff, or an Attorney on behalf of the Plaintiff, write a complaint that conforms with all material as well as formal requirements. In writing the complaint, the Plaintiff, with legal advice, must decide which parties to charge in the case and what outcomes she would like from the case.

The substance of a complaint must include:

- A clear and complete statement of the identity (name, age, address) of all parties involved in the case. The parties' identity card (KTP) is not always necessary; other identity documents are acceptable such as a driver's license, family member card, passport, etc.. If the complaint is being filed against a legal entity such as a business, there must be caution to file the charge against people actually authorized to act on the behalf of the legal entity. A mistake can cause the complaint to be rejected.
- *Posita* or *Fundamentum Petendi* is a basic complaint that has 2 sections: a chronology of events or a dispute, and an explanation about which law(s) covers the rights or legal basis for the lawsuit
- *Petitum* or complaint: a statement of the issues in dispute (for example a false promise by a recruiter) and the Plaintiff's demands that are formulated clearly for the judge's decision.
- Legal facts which elaborate on the causes of the dispute, such as a false promise in a trafficking case:
 - Action qualifications which clarify the violations which were allegedly committed by the Defendant(s).
 - An elaboration of the losses as a result of the Defendant's actions or any other requests the Plaintiff wants to bring to the court's attention. This may include financial calculations.
- A statement of the Plaintiff's or Attorney's domicile and a date, month and year of the law suit in the left-hand corner.
- The signature of the Plaintiff or her Attorney.

The Plaintiff is central in the drafting of a complaint. However, whenever possible, the Plaintiff should have legal representation. If the Plaintiff has legal representation, this person will draft the complaint, based on information provided by the victim. When seeking a legal representative, the Plaintiff or her supporters should make sure that the Attorney has a license to practice law in the legal territory of the State Court that is authorized to try the case. The Plaintiff must sign a Letter of Attorney to formally confirm who will be representing her. This letter must mention the name of the Plaintiff, Attorney/legal representative, case number and the court where the case will be tried.

More than one witness or corroborating evidence is needed for a court proceeding. HIR Article 169 stipulates that the testimony from only one witness (as to prove any fact) without any other evidence corroborating shall be regarded legally as unreliable.

HOW YOU CAN HELP

- ✓ Support the victim in the process to draft the complaint or civil case. This may mean accompanying her to meetings with her Attorney. If your NGO has a lawyer on staff, drafting of the complaint may be able to be completed with your NGO.
- ✓ Assist the victim to gather the information necessary to draft the complaint, and especially to formulate her demands. Help her to think about what kind of compensation would be necessary for the abuses she has suffered. It might be helpful to ask others who have been involved in civil cases about strategies regarding compensation.
- ✓ Provide the victim with facilities such as computers or fax machines which may be needed in preparing her complaint.
- ✓ It is helpful if the complaint can include information regarding the assets of the Defendant at the time of filing the claim. This will help to make the court aware if the Defendant intentionally dissipates his assets to avoid having to pay damages to the Plaintiff. This information, though, may be difficult to obtain. If the Plaintiff believes that the Defendant is going to dissipate his assets in an effort not to pay any damages, this should be included in the complaint in order to bring it to the Judges' attention (see information about Collateral Confiscation in section 9.12.a).

9.9. Filing of the complaint

The Plaintiff and/or her legal representative must file a civil case directly in the State Court. Before filing the case, it must be confirmed which State Court is authorized to try the civil case (i.e. what legal territory) and a Power of Attorney letter must be registered with the Court Clerk. The following steps should be followed in order to properly file the case:

STEP 1: Registration of the case

The Letter of Claim is forwarded to the appropriate State Court, and then to the First Desk Civil Court Clerk assigned to receive claims and set the case cost plan. The fees for each case are stated in the Letter of Authorization for Payment (SKUM).

STEP 2: Case Cost Payment

The Plaintiff then pays the costs as detailed in the SKUM. The SKUM also serves as a receipt and includes a stamp to indicate the Letter of Claim has been registered, the name of the person who paid and the amount of money paid. There are three copies: the first copy is for the Plaintiff; the second and third copy are for the cashier who attaches one in the case file.

After the Letter of Claim has been completed with a SKUM the Plaintiff or her Attorney pays the case down payment fee to the State Court. This amount is indicated in the SKUM.

STEP 3: Claim Submission to the Judges

The Second Desk Court Clerk registers the case into the Civil Case Registration Book. The case is then also given a folder with a Panel of Judges Stipulation Form. It is then forwarded to the Deputy Clerk to be in turn forwarded to the Head of the State Court. Within seven days the Head of the Court through an official letter shall designate a Panel of Judges to examine and try the case and must distribute the case file to the judges.

If the Plaintiff is illiterate, the complaint can be filed orally and will be recorded by the Civil Court Clerk.

9.9.a. Court fees

To file a complaint in Civil Court, the plaintiff must pay the following fees:

- Filing fee
- For the Civil Court Clerk
- For calling both parties
- A material fee
- An administration fee

A nominal fee for a case in the State Court is Rp. 15.000. A Power of Attorney letter costs between Rp. 10,000 and Rp. 20,000. An advance fee for a case in State Court varies between Rp. 650,000 and Rp. 750,000 depending on how many witnesses are summoned and how far away they live. To appeal a case, the fee is Rp. 20,000. The amount of fees will also depend on how many witnesses are summoned and how far away they live. The fees may be determined by referring to the Circulation Letter.

Where to file a complaint

In order to avoid problems and having the complaint rejected, it is important to ensure that the complaint is filed with the State Court authorized to try the case.

Usually, the court authorized to hear a case is the court in the area where the Defendant lives (Actor Sequitor Forum Rei, Article 118 HIR). There are several exceptions to this:

- The charge is filed at the place the Defendant is staying if his/her place of residence is not known;
- If there are two or more Defendants, the complaint is filed in the area of residence of one of the defendants;
- If the place of residence and temporary residence of the Defendant is not known, the complaint can be filed to the State Court where the Plaintiff resides;
- In a complaint to ask for fixed assets (for example a house or land), the complaint is filed with the State Court where the assets are located;
- If the Defendant is not capable in the eyes of the laws (below the age of 15 and unmarried or mentally-ill person), the charge is filed to the State Court where the parents, trustees, or caretakers of the Defendant reside;
- If the charge is against a civil servant, the court where she/he workes is authorized to try the case.

A charge which is wrongfully filed, concerning the

If a person cannot afford to pay the court fees, she may submit an Economy Hardship Letter/Letter of No Capability (*Surat Keterangan Tidak Mampu*) to the Head of the State Court. This form can be obtained from District and Sub-District officials. The waiver must include an Economic Hardship Letter from the Head of the local police. This letter may also be issued by the village head and duly authorized by the *Camat* from the person’s domicile (Article 237 HIR, 273 RBg).

The payment of fees may be done by the legal representative of the Plaintiff. Therefore, the trafficking victim does not need to be present during this step in the legal process.

HOW YOU CAN HELP

- ✓ The trafficking victim does not need to be present for the filing of the complaint, so someone else can do that on her behalf.
- ✓ If the Plaintiff is illiterate, the litigation may be filed verbally to the Court Clerk and the Court Clerk will write all the demands on their behalf.
- ✓ If she cannot afford to pay the court fees, assist the victim to obtain an Economic Hardship Letter from local officials.

9.10. Schedule for trial

Once designated, the panel of judges in charge of the case will set a schedule for the trial. The Chief Judge then orders the Bailiff to summon all parties involved in the case by sending a written Summons and copies of the complaint against the Defendant(s) to the Defendants' address, requiring him to appear before the State Court on a particular date. After the Bailiff has summoned all parties involved, the bailiff must submit a written report to the judge who will examine the report, as evidence that all the parties have been notified properly.

If the Defendant does not come to the trial and does not send someone to represent him, but has been summoned properly, the complaint is accepted with a verdict without the Defendant present (Article 125 HIR). If the Plaintiff does not come to the trial and does not send someone to represent her, the complaint is considered void and the Plaintiff is fined to pay the court costs. The Plaintiff, though, is entitled to file the complaint again.

9.11. Presentation of evidence in court

9.11.a. Types of Evidence

During the trial, both the Plaintiff and Defendant are required to prove or disprove the truth of the legal charges that are presented in the case. The following principle applies: "who sets forth an opinion must prove it" (Article 163, HIR). If the Plaintiff cannot prove the charges made, the complaint will be rejected by the Judges. An argument which is not denied by the other party does not have to be proven. Facts that are generally known to the public (*fakta notoir*) also do not have to be proven.

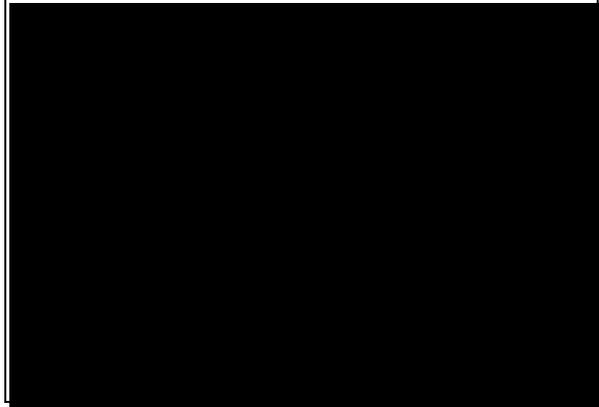
The charges may be proved or disproved through various types of evidence (Article 164, HIR). The following are the types of evidence which can be used in a civil case and the requirements for this evidence:

- Written Evidence: Anything containing identified symbols or characters such as register books, letters, notes, etc. or formal written records such as statements of transactions (akta) (Article 1881,1883 KUHPperdata, article 294,297 RBg).
- Testimonial Evidence: Testimonial evidence is considered as legitimate only if:
 - It relates to things or situations which the witness has experienced, seen, or heard himself; not information from others (hearsay).
 - The witness is eligible to become a witness. A witness cannot be a child under 15 years of age; be related by blood or marriage to either of the two parties, have mental health problems or developmental problems, and cannot be a prisoner.
 - It is provided before the court.
 - It is conducted under oath according to the religion of the witness.
- Expert testimony: An expert witness does not have direct knowledge of the events of the case, but has a particular expertise useful to explain the event; usually an academic, a doctor, or a person with expertise in a certain professional like psychology. For example, in a trafficking case, a psychologist may testify as to the psychological damage suffered by the victim as a result of repeated sexual assault.

Experts' testimony is not intended to find out the truth about a case. Article 1886 of the Civil Code of Laws does not admit experts' information, but experts' information can be used by the Defendant or Plaintiff as information that lessens the charge (ad de charge) or provide background information.

Expert witnesses may provide evidence in written form; however, usually experts present evidence through testifying in person.

- **Confession:** A written or verbal statement which is stated truthfully and firmly by one side or more in a court proceeding, which confirms a part or a whole of an event, rights, or legal matter claimed by the Plaintiff and results in no further investigation or examination.
- **Suspicion:** A suspicion is a conclusion drawn by a Judge from an event which is considered to have been proven. One suspicion is not enough, but there have to be a number of suspicions that are mutually related in order to prove something.
- **Oath:** This is different from oaths in criminal cases where an oath is not admitted as evidence. In a civil case an oath is an important evidence. Either the Plaintiff or Defendant is sworn in. The information supported with an oath becomes evidence but not the oath itself.



9.11.b. Sharing of evidence

Both parties are entitled to copies of each other's evidence or documents. These copies are distributed by the Clerk of the Court. Questioning of each other's witnesses is usually only done during the trial. The parties are permitted to interview each other's witnesses before the trial; however, testimony given before trial cannot be used in court. A Plaintiff may want to interview the Defendant's witnesses in order to prepare for trial in terms of understanding the Defendant's defense.

9.12. Definition of settlement

An agreement may be reached between the two parties before the Judges examine a case (Article 13, paragraph (1), HIF). This is done through a *Definition of Settlement* (also called a Peace Settlement). This describes an agreement in terms of what is given from one party to the other. A Definition of Settlement agreed before a judge has the same legal power as a Judge's verdict, and is enforceable.

The difference between a settlement and a verdict is that in a settlement both parties agree to the outcome. With a verdict, the judge makes the final decision about the outcome, and both parties may not agree with the verdict of the judge. Because both parties agree to a Definition of Settlement, it cannot be appealed.

A Peace Settlement can also be agreed while the case is being processed in the court. If the two parties agree to a Peace Settlement, they can follow this settlement, rather than the verdict decided by the judges.

9.13. Verdict

After the all of the evidence and arguments have been presented in the trial, the judges conduct a discussion amongst themselves to arrive at a decision. The judges' decision must be based on the charges made by the Plaintiff and all the facts that were clearly proven during the trial process. According to Article 178 of HIR, a judge shall try all parts of a Petition or complaint. Judges will not make a verdict which is more than what is requested by the Plaintiff.

The Chief Judge of the Panel of Judges provides a legal opinion along with any possible considerations and arguments. A verdict must cover the following issues:

- a clear summary regarding the charge and replies
- legal considerations
- legislative provisions which are the bases of the verdict
- a decision on the principle of the case
- a decision on the case cost.
- information regarding whether the two parties were present when the verdict was read out.

Most often, the verdict or decision is unanimous one. If it is not unanimous, there are two methods for coming to a decision: majority vote; or if a majority vote cannot be reached or ends in a draw, the selected decision or verdict shall be the judge's legal opinion that is most favorable to the Defendant.

The court verdict may be decided and announced on the same day as the trial or on another date decided by the judges. The judge(s) shall inform the Plaintiff and Defendant (or their attorneys) in advance about the date of decision.

There are several possibilities regarding the verdict. The Judges will decide one of the following:

- *granting the complaint in whole*
- *granting the complaint partially (only some parts are granted, while the rest is rejected or cannot be accepted);*
- *rejecting the complaint in whole.*

If the verdict is in favor of the Plaintiff's demands but the Defendant and his/her attorney do not attend after being summoned properly (Article 125 of Civil Court Proceeding/HIR), an in absentia verdict will be entered. If the defendant feels the decision is unjust on in *absentia* verdict, then the defendant can appeal the decision to the higher court (Article 200 RBg and Article 8 section 1 of the Act. No.20 of year 1947).

Any court verdict shall only be considered as legitimate and containing legal authority if it is announced in a trial open to the public. The judges' decision is also provided in writing. The decision making process shall be recorded by the Court Clerk into the book of verdict documentations which is treated as classified information.

9.13.a. What is awarded to the victim if she is successful in a civil trial?

Civil remedies are usually financial, as outlined in the Civil Code.

In practice, civil processes to obtain a final and binding decision may take years to complete, during which time the Defendant may dissipate his/her assets. The Plaintiff may obtain a verdict in her favor, but if the Defendant has insufficient assets, the Plaintiff may not receive any compensation. It is therefore in the best interest of the Plaintiff to include in her case information the Defendant's assets, where possible.

In order to protect the interests of the Plaintiff to be able to receive the compensation awarded to her, civil laws acknowledge collateral confiscation. Collateral confiscation is applied to assets such as movable or immovable assets so that they cannot be transferred or handed over before the execution of the verdict is carried out.

If the verdict is the favor of the Plaintiff and the complaint is granted, a collateral confiscation is automatically valid. But, if the complaint is not granted, the collateral confiscation will be removed.

In practice, a collateral confiscation request is always forwarded together with the charge and is covered in the Letter of Charge. If after the trial is in the process it is deemed necessary to request for a collateral confiscation, the request is forwarded with an ordinary letter to the Head of the Court and in turn to the panel of judges examining the civil case. The request can also be forwarded orally in the trial.

If the Plaintiff has filed a frivolous case such that his/her complaint was rejected by the Judge, then there is no direct sanction. The Defendant, however, can counter-charge the Plaintiff and ask for remedies such as costs of defending the case.

9.13.b. Enforcement of the verdict

After the Judges have made a verdict or a settlement has been reached, it must be put into action or enforced. This is also called execution.

The verdict is executed under the supervision of the Chief Judge of the State Court and based on a series of legal parameters which all law enforcement personnel must follow. If the verdict directs that a seizure of property must take place, this is done by a Court Clerk along with two witnesses.

A verdict cannot be executed until it has a final legal force. Final legal force will be achieved only when the verdict made by the State Court is accepted by both parties, or it is upheld by the High Court or Supreme Court. This means that if one party requests an appeal, the verdict is subject to reexamination, and cannot be executed.

HOW YOU CAN HELP

- ✓ Monitor the process to execute the verdict and advocate for action if the verdict has not yet been executed. Advocacy should be undertaken with the Court Clerk and the Judge.
- ✓ If a Defendant does not follow a verdict or settlement reached in Civil Court, the Plaintiff can petition the Judge to incarcerate the Defendant. You can help the victim advocate for this action if necessary. You can also assist the victim advocate that the police take action if the Defendant fails to follow a verdict.

9.14. Issues regarding amending, dismissing or ending civil cases

Amendment: A judge may grant a motion to amend or change a complaint as long as the amendment does not deviate from the material evidence that was the basis of the lawsuit and does not violate the rights of the Defendant to defend him or herself.

Dismissal of a lawsuit may be granted in three cases:

1. If the Defendant has fulfilled the remedies demanded in the complaint of the Plaintiff before the Judge announces his/her verdict in the case in court.
2. If at the beginning of the trial the Defendant(s) successfully requests the court refuse the case brought by the Plaintiff because it does not fulfill the legal requirements.
3. If the Defendant files a cross complaint against the Plaintiff. This is called a Reconvencion Complaint: It must be presented together with the answers/response in written or oral form, at least before the investigation of evidence (articles 132b HIR and 158 RBg).

Plaintiff Failure to appear: If the Plaintiff has been summoned properly to appear before the State Court, and fails to appear before the State Court on the day designated or fails to appoint a person on his/her behalf to appear before the court, then the case will be dismissed and the Plaintiff(s) will be fined court fees. The amount of fees charged depends on the court. However, the Plaintiff still has a right to re-file the lawsuit after paying a fee. (Article 124 of Civil Court Procedure/HIR).

Termination of process: The trial process may be terminated if there are circumstantial changes to a party or both parties related to incompetence which is losing the ability to act physically or to communicate in court. If one of the parties dies, then the trial examination can be terminated, after the Judge is notified of the death. (Article 248 Rv).

9.15. Appeals

If one of the parties in a civil case is dissatisfied with the judges' verdict in State Court, then they can request an appeal to the High Court. The appeal must be based on an alleged error of fact or law by the lower court. Despite the fact that the High Court is an appeals court, it may still examine and judge the facts and legal aspects of the case. It is not limited to examining only the decision of the State Court judges.

The time period for requesting an appeal is within 14 days after the verdict is announced. If, however, one of the parties is out of the State Court jurisdiction (district), the time period is extended within 30 days after the verdict is announced. An appeal must be submitted through the State Court where the verdict is announced.

The requirements for an appeal are:

- Requested by a party to the case
- Requested within the period of appeal
- The decision legally may be appealed (based on alleged error of law or fact)
- Appeal fee is paid
- Registration with the Court Clerk

Similar to the first level of court, Appeals Court judges are not allowed to decide more than or beyond what it is filed or argued with them. This means that the Appeals Court judges shall uphold any part of the decision of the first level court as long as none of the parties reject or debate that part in the appellate level court (*tantum devolutum quantum appellatum*).

On appeal, the High Court may make decisions in the form of:

- Upholding the State Court verdict
- Revising or altering in some way the State Court verdict
- Annuling the State Court verdict. If the High Court annuls the State Court verdict, the high court will try the case again and make its own decision.

A copy of the High Court verdict shall be sent to the related State Court. Once the verdict is received, the State Court shall inform both parties related to the case.

The following is the process to make an appeal:

- The party appealing the case or his/her attorney requests the appeal in the State Court where the initial decision was made
- If in the State Court, the power of attorney states that the legal representative may also represent the plaintiff on appeal, a new Power of Attorney does not need to be filed.
- The appeal must be submitted in written form
- The party appealing the case must register the appeal to the First Court Clerk Desk and pay the fee as required in the Letter of Authorization of Payment (SKUM), with three copies of the fee payment receipt
- The appealing party (or appellant) pays the appeal fee to the cashier in the court, then the cashier signs and files the appeal into the Journal of Appeal.
- The Appellant asks the Court Clerk for a Certificate of Appeal Request
- The Appellant presents the Certificate to the Second Desk Court Clerk to register into the Civil Case Register Book
- The Second Desk Court Clerk delivers the file of case to the Third Desk Court Clerk to process further and to inform the other party within 7 days about the appeal
- The appellant submits a Memorandum (memory) of Appeal to the Third Desk Court Clerk and gets a receipt
- The Third Desk Court Clerk must notify the other party, through the Bailiff, about the Memorandum of Appeal.
- The other party could submit a Contra Memory of Appeal to the Third Desk Court Clerk and get a receipt
- The Third Desk Court Clerk must notify the appellant of the Contra Memory of Appeal through the bailiff.
- The Third Desk Court Clerk must inform both parties within 14 days, to provide opportunity to study the appeal case before it is submitted to The High Court
- The Third Desk Court Clerk finalizes the minutes of appeal in to B bundle before both parties study the case
- The lower court will deliver all file and fees to the High Court
- The High Court processes the appeal case
- Schedule for investigation of both parties and any witnesses
- Judges and Court Clerk observe /investigate the case and make the BAP, seal the file

9.16. Positive & negative aspects of civil court processes

Positive

- ◆ Victim can receive compensation for the abuses she has suffered
- ◆ A civil verdict is legally binding
- ◆ The victim is the main decision maker in the process

Negative

- ◆ Victim may not receive any compensation, though she may put a lot of time, energy and resources into the case
- ◆ The Defendant may resist paying any compensation or dissipate his assets in an effort not to pay
- ◆ Rules for evidence are strict and it may be difficult to prove the victim's claims, especially for intangible damages

CHAPTER 10

ADDITIONAL ISSUES RELATED TO APPEALS

This information is relevant for both Criminal and Civil Processes.

10.1. Appeal to the Supreme Court – Cassation request

A Cassation request is an appeal from lower courts. The purpose of Cassation is to create united legal enforcement by way of annulling any court decision found to contradict existing laws or found to be inaccurate in applying any article of laws. All court verdicts, except for any verdicts made by the Supreme Court, may be requested for cassation to the Supreme Court as long as the verdict is not yet discharged. The Supreme Court usually examines a cassation case based on written documents and by summoning relevant parties when necessary.

A Cassation examination can determine:

- whether any articles of the law were not enforced appropriately
- whether or not the trial process was run in accordance with existing laws
- whether or not the court acted beyond its authority

The Supreme Court may make one of the following decisions:

- Disapproval of a cassation request. The verdict made in the lower court is upheld.
- Approval of a Cassation request if:
 1. The State Court or High Court is not authorized to make decisions or the decision is beyond its jurisdiction. The Supreme Court will then send the case to another court jurisdiction.
 2. If the State Court or High Court has mistakenly applied the law, enforced the wrong laws or failed to meet the requirements the Supreme Court will make its own verdict.

If a Cassation request in a criminal case is successful, the Supreme Court may make a decision in the form of:

- Discharge or release of the Defendant from any penal charges
- Rejection of the prosecution of the Public Prosecutor
- Sentence of the accused to a lighter punishment
- Corroboration of the previous verdict, but punishment of the Defendant is not increased

10.2. Request to review the final court decision – judicial review

Upon a request by any parties, the Supreme Court may review all verdicts that have reached the final legal authority if any significant new evidence is presented and which could have had an impact upon the verdict if it had been taken into account during the trial.

Law No. 14/1985 article 67 stipulates that the following arguments are reasonable for requesting Judicial Review:

- When any verdict has allegedly been taken based on any fraud or deception or based on any evidence which is uncovered to be faked
- When after the verdict imposed, any crucial evidence which was missing during the trial examination is found
- When the verdict is found to be unrelated to the complaint filed by the Plaintiff or beyond the Plaintiff's demands
- When verdicts about the same case or within the same level of court are found to be in contradiction of each other
- When within the verdict making process, it is clearly found that the judges have committed fundamental mistakes during the trial

However, article 66 point 2 of law No. 14/1985 stipulates that any Judicial Review recourse shall not postpone or halt verdict execution, unless the Supreme Court finds that any verdict made is fundamentally wrong or against the law. In this case, the Supreme Court may demand that the execution be postponed.

10.3. Prorogation

Prorogation is an act of proposing a dispute based on both parties' agreement to a judge who does not have the original authority to examine the dispute, namely the judge at a higher-level court. The dispute should be brought to State Court, however if both disputing parties agree, it may be brought to Higher Court or Supreme Court.

CHAPTER 11

INVOLVING GOVERNMENT DEPARTMENTS IN ADDRESSING TRAFFICKING CASES

11.1. What involvement could government offices have in trafficking cases?

Ultimately, the Government of Indonesia has a responsibility to protect the rights of Indonesian workers and to hold accountable those who violate the rights of workers. Various Departments or Ministries of the government may assist in resolving disputes related to trafficking in persons. These departments, as part of the Executive branch of government (under the control of the Indonesian President), are tasked with implementing and enforcing the laws and regulations of the country. A list of relevant departments is included in the Appendix. Within these departments, there are procedures for trafficking victims to make complaints when laws and regulations have been violated or not been enforced.

Other government bodies that may help to resolve disputes related to trafficking are the police, Dinas Social social workers, and the Governor's Office. There are both formal and informal

methods for resolving disputes with the assistance of government offices. Some of these government officers, however, do not have formal authority to force compliance with the law; however, due to their power and position, they may be able to assist a trafficking victim.

Example of a case handled through advocacy to government officials

An underage girl from Karawang was recruited and brought to Singapore through Batam. In Batam she was locked up for three months. The PJTKI that recruited her said that she had to wait for her administrative process to depart to Singapore. It became clear then that the victim's identity had been falsified.

The family of the victim then contacted Solidaritas Perempuan about the case. Based on their report, SP contacted the local Depnaker and reported that the victim was underage. SP asked Depnaker to cut the administrative process of her departure to Singapore. Depnaker accepted this demand.

SP with the father of the victim went to Batam to pick up the girl and settle the dispute with the PJTKI agent which recruited her. Based on the father's request, SP negotiated with the agent to send the victim back home with her ticket paid for by the agent. The agent was also asked to return all the money which had been spent by the victim. The agent fulfilled the demands and SP together with the father were able to bring the victim home to Karawang.

11.2. What abuses or violations could be handled through government departments?

Please see the *Index of Abuses* which is included on page 89.

11.3. What are the possible outcomes?

The actions of government departments cannot provide for prison terms for a trafficker. This may only be done through the Criminal Process.

The potential outcome depends upon the particular case and department or ministry that is being utilized. Taking a case of trafficking to a government department may be used to negotiate a quicker and less costly agreement for compensation or reparation or freedom to a trafficking victim. Outcomes could include:

- freedom for the trafficking survivor (if she is being held against her will)
- compensation
- payment of wages which have been denied
- punishment of traffickers (for example labor suppliers) for violations of workers' rights

11.4. Who is involved? What are their roles?

11.4.a. Victim

- Initiates the process
- Provides evidence and information to support her case
- Involved in negotiating settlement

11.4.b. NGO

- Assists the victim to find the most appropriate government body to report her abuse to.
- Can serve as a representative for the trafficking victim with government officials, and accompany her throughout the process.
- May act on the behalf of the victim and advocate action in her case when the victim cannot take action, for example when a victim is being detained in a PJTKI holding center or other employment location.
- Please also see Chapter 1 for more information about the role of NGOs in assisting victims of trafficking.

**Freeing a trafficking victim from
detainment in a PJTKI holding center**
(a hypothetical example)

If a trafficking victim is being held in a PJTKI holding center without being allowed to leave on her own due to a debt that she owes the PJTKI, an NGO may contact a Ministry of Manpower inspector or other official to negotiate with the PJTKI to allow the trafficking survivor to leave the center. While it is not illegal to loan money or services to someone putting them in debt, it is a violation of human rights to restrict their freedom of movement. Through her administrative authority, a Labor Inspector may help an NGO to negotiate for the release of a trafficking survivor from a PJTKI.

11.4.c. Government representative

- Responds to the complaint of the victim based on policies, protocols and legislation.
- Seeks information from the victim, the alleged abuser and any witnesses regarding the complaint.
- An official from the Governor's Office may not be responsible for direct enforcement of the law, however through his/her position of authority and power, he/she may be able to negotiate with an employer or trafficker for compensation for a trafficking victim.
- Training staff so that they will be responsive towards trafficking issues.

11.5. What is the process?

11.5.a. Begin with written correspondence

All cases should be first reported to the person or organization who employed the worker or organized their employment, for example a labor supplier. The best way to do this is by written correspondence.

Keep copies of all correspondence which is sent and received as well as receipts to prove that the correspondence was sent such as receipts for fax transmissions or the post office. It is best if there is a signature indicating that the letter has been received and if the sender also makes a record of the letter in an Expedition Book or the records of the office.

HOW YOU CAN HELP

- ✓ Assist the victim to gather the information necessary to include in the letter, including the contact information for the company or individual she has a dispute with. It is also helpful if there is a photo of the person who abused the victim.
- ✓ Assist the victim to write the letter, including providing her with facilities such as a computer. You can use the example letters found in the back of this manual in the Appendix.
- ✓ Assist the victim to follow-up on her letter, in order to determine if it has been received and whether action has been taken.

11.5.b. Making a complaint to a government department

If this direct correspondence to the people responsible for the violations of rights is not successful, then a complaint can be made to the appropriate government department for the district, advocating that the government ensure that the worker's rights are recognized and compensation made for any damages or outstanding payments. Previous correspondence should be attached into the letter sent to government and Cc to other related institutions. If the complaint is against an organization such as a labor supplier, there may also be a request that the government stop the organization from operation since it is violating workers' rights. The complaint can be made by the trafficking victim or her representative. This is done by contacting the relevant government official with responsibility in the district.

How cases can be handled through Labor Inspector

(a hypothetical example)

If a trafficking survivor has a dispute with a PJTKI, she would contact the Labor Inspector who is responsible for the district in which the PJTKI is situated. After contacting this official, similar to filing a complaint with the police, a trafficking survivor would provide the government official with information about her case, including important background information relevant to the resolution of the case. At this point, the government official should explain to the trafficking victim the options available to her, and the action that the government official is willing and able to take. Once the officer agrees to assist the victim, a schedule should be decided upon with the victim, the NGO, and the administrative officer. The administrative officer may want to approach the other party (for example, the PJTKI) without the survivor or NGO present; or, the officer may arrange a meeting for all of the parties.

Within the Ministry of Manpower (Depnaker/Disnaker), there are Labor Inspectors. The role of inspectors is to inspect and monitor places of employment and employers, including PJTKI holding centers, and places in the informal sector such as cottage industries employing child labor, and private employers for domestic workers. If a trafficking victim has a dispute with a PJTKI, she should contact the Labor Inspector who is responsible for the district where the PJTKI is situated. The Labor Inspector has the authority to force an employer, such as a PJTKI, to follow the law.

In the case of migrant workers who have been trafficked, complaint letters may be sent to:

- Local office of Manpower (where the migrant worker domiciles)
- Local office of BP2TKI. See attachment (in the provincial capital)
- Directorate General of Indoctrination and Migrant Worker Placement Aboard. (Dirjen PPTKLN)
- Director of Protection and Migrant Worker Empowerment (Direktur Perdaya TKLN)

The most common cases which migrant workers who have been trafficked report to labor suppliers and Depnakertrans are:

1. Postponed deployment by labor suppliers
2. Excessive fees
3. Unpaid wages
4. Excessive commissions which become a burden for migrant workers
5. Lost contact with family members
6. Unpaid insurance
7. Jobs were not as stated on the contract
8. Demand for compensation due to death of the migrant worker

HOW YOU CAN HELP

- ✓ Assist the victim to gather the information necessary to include in her complaint. Make sure that the information gathered is as accurate as possible.
- ✓ Find out which government department is most relevant for the victim's case and how to contact them. Some addresses can be found in this manual in the Appendix.
- ✓ Accompany the victim to make her report to the government office. It can be very intimidating to a victim to have to tell her story to a government official.
- ✓ Advocate for fair and sensitive treatment for the victim from government officials.
- ✓ Ask government officials what plan of action they will take to respond to the complaint. Use this information in follow-up contact. Ask for the name cards or contact information from officials that you deal with so that it is easier to contact them later.
- ✓ Assist the victim to follow-up on the case and to urge government officials to take action.

11.5.c. Making complaints against government officials or decisions

Sometimes during the course of dealing with a trafficking case, government officials do not fulfill their roles properly or commit abuses themselves. There are various ways to make complaints against government officials:

- If members of the police ask for bribes or are engaged in extortion a complaint can be made to the Provost of the officer's unit
- If members of the military ask for bribes or are engaged in extortion a complaint can be made to the Military Police

It is better to have a witness or someone else with you when you are meeting with government officials. If those officials act inappropriately, make sure you note their names and position in the institution.

If the victim is not happy with the decision taken by a government department or official, this case can be taken to the Administrative Court. Please see Chapter 3 for information about the Administrative Court.

11.6. Challenges

In practice, lack of resources, lack of will or a lack of understanding of their responsibilities means that government representatives do little to respond to complaints of workers. Corruption may also influence their actions. In spite of this, it is important that workers and their supporters continue to confront government with the abuses they face and try to work for justice for the abuses that they have experienced.

It is important that the victim and the people supporting her are diligent in following up on any complaints that are made. If there is no follow-up the complaint may get stalled and will not be resolved. Follow-up will also emphasize to the government representatives that they have a responsibility to address the abuses which workers experience.

11.7. Positive & negative aspects of involving government departments in trafficking cases

Positive	Negative
<ul style="list-style-type: none">◆ Involvement of a government official in trying to negotiate the settlement can increase the chance of reaching an agreement◆ The process is much faster than pursuing a case in court	<ul style="list-style-type: none">◆ It is difficult to predict the outcome of the process, especially given the potential for corruption and influence on government officials◆ The victim may not want to talk about her experiences in front of a government officer◆ The authority, effectiveness, and commitment of officials varies from department to department. The outcome of a process will depend very much on the government officials involved and their interest in the case

CHAPTER 12

ALTERNATIVE DISPUTE RESOLUTION

12.1. What is Alternative Dispute Resolution (ADR)?

Alternative Dispute Resolution (ADR) is an out of court method for resolving disputes. The procedure is agreed upon by all parties to the dispute. This means that both the victim and the people that abused her must agree to participate in ADR.

Disputing parties may prefer to use ADR to settle their claims because it is usually faster than the court system and less costly. ADR is also often less confrontational or traumatic than the court system because it may be conducted in an informal setting. ADR cannot be used to bring criminal charges against a defendant, but it can be used to resolve a trafficking victim's civil claims, such as compensation for abuse or unpaid wages.

ADR is not yet a well known approach in Indonesia. This may change, though, as a new Industrial Dispute Resolution Bill has been developed. This law will clarify and formalize the use of ADR. The bill also requires the use of ADR in certain types of disputes. It is not clear, though, whether the bill will have an effect on trafficking cases.

There are several different types of ADR:

1. **Negotiation:** This is the most well known type of ADR. The disputing parties meet together to try to reach a solution to their dispute. There is no third party/other person to help them reach an agreement together. The agreement which is reached is somewhat informal and is not legally binding.
2. **Mediation:** A Mediator facilitates the discussion between the parties to reach a constructive negotiation agreement. A mediator usually has had professional training in this field. The Ministry of Manpower (Depnaker) has designated mediators to resolve labor related disputes, including issues related to migrant workers.

The Mediator asks questions to clarify information to the disputing parties to assist the parties in reaching a resolution. The mediator does not make a decision in the dispute – she is neutral. She simply facilitates discussion between the parties so that they may reach their own agreement to resolve the dispute.

The disputing parties may be accompanied by their lawyers / legal representatives. Witnesses may be called to present information during a mediation process.

3. **Conciliation:** Similar to mediation, in conciliation there is a third party called a Conciliator. The difference between mediation and conciliation is that in conciliation Conciliators do not only facilitate negotiations but instead provide active input. These inputs may be suggestions regarding potential agreements or ways to settle the dispute. It is up to the disputing parties whether they want to accept the suggested agreement or decision or not. If one or both parties disagree with the suggested agreement, they may reject it and/or find another Conciliator.

4. **Arbitration:** The arbitration proceeding is formal. The Arbitrator has more power than the third party in other kinds of ADR. An Arbitrator will make a decision which the parties must then abide by. The parties may not agree with the decision of the Arbitrator. The Arbitrator's decision has legal standing and it binds both parties. The decision is final and cannot be appealed.

The arbitration services are based on an agreement between the disputing parties that states they are subjects of the arbitration and that they will abide by the Arbitrator's decision. The Arbitrator and duration of an arbitration process must be agreed upon by all parties

In order to be eligible to be appointed as an Arbitrator, a person must be:

- Competent at executing legal action
- At least 35 years old
- Have no family relations with the disputing parties
- Have no financial or other interest regarding the arbitration decision
- Minimum of 15 years of experience in her field

Judges, Prosecutors, Court Clerks and other court officials can also be assigned or appointed to be Arbitrators. An Arbitrator can be brought up on denial/refused if there is enough doubt that she can perform her task freely and impartially, or when it can be proven that the Arbitrator has some relationship or interest in the decision.

12.2. What kind of abuses can be dealt with through ADR?

A trafficking victim may use ADR to resolve a claim for compensation against anyone who exploited her, for example a trafficker, PJTKI or an agent. Please see the *Index of Abuses* which is included on page 89.

12.3. What are the potential outcomes of ADR?

The trafficking victim could receive redress such as:

- monetary compensation
- back wages
- debt forgiveness
- payment of an insurance claim

12.4. Who is involved in the process? What are their roles?

12.4.a. Victim

- A party to the dispute
- Initiates the process
- Alone or with her representative, will negotiate with the opposing party to use ADR

- Involved in all aspects of the ADR process through presenting her side of the case, listening to the case presented by the other party and deciding whether to accept or decline the proposed potential agreements

12.4.b. NGO

- May represent the trafficking survivor in ADR meetings and negotiations
- If the victim is comfortable to present her own case, the NGO can provide accompaniment and support throughout the process
- Assists the survivor in making decisions about proposed agreements

12.4.c. Third Party

- Another person who acts as a third party between the two parties who are in dispute and tries to help the parties reach an agreement
- There are different types of third party roles -- Mediator, Conciliator or Arbitrator. These are described in more detail at the beginning of this chapter.

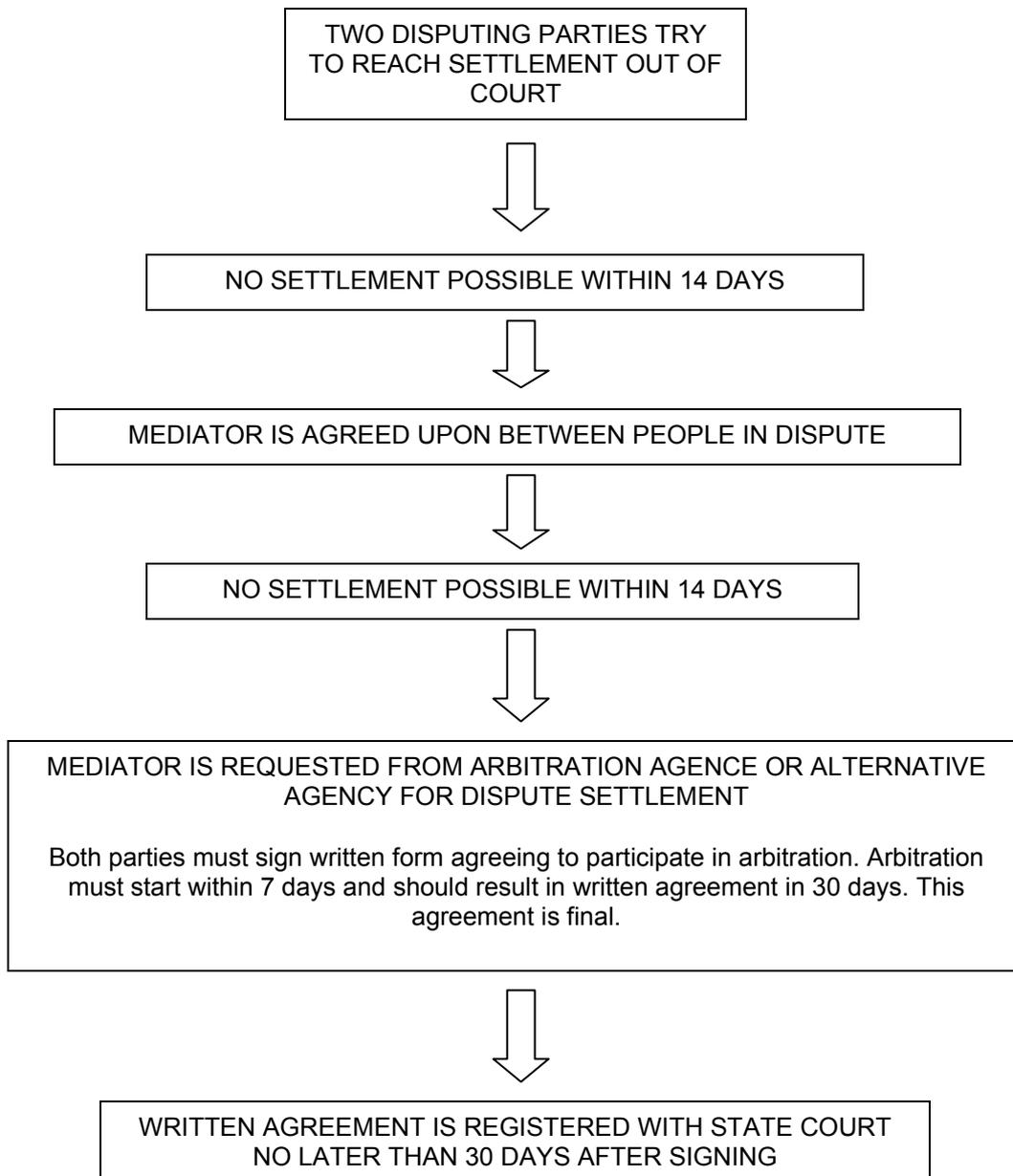
12.4.d. Trafficker

- The trafficker or traffickers are the other party to the dispute. They discuss the dispute directly with the victim through the third party.
- The trafficker will make his own proposals regarding how to solve the problem or reach an agreement and these will be discussed with the victim through the Third Party.

Information that must be included in an agreement to begin arbitration:

- The disputed matter
- Full name and address of disputing parties
- Full name and address of Arbitrator or Arbitrators' panel
- Secretary's full name
- Timeframe for dispute settlement
- Statement of Arbitrator's compliance
- Statement of compliance of parties to pay all expenses for dispute settlement through arbitration

12.5. The ADR process



Important notes:

If the disputing parties reach an agreement through arbitration, it means that they no longer have any right to take the dispute to court. As well, the court has no right to interfere in the settlement of the dispute through arbitration.

There is no possibility for appeal of an agreement reached through arbitration.

12.6. How much does ADR cost?

Costs involved in ADR are usually the fees of the third party who helps to reach the agreement, transportation, meeting locations, witness fees. If the trafficking victim is represented by legal counsel, she may also have to pay fees for this person.

Usually, the person who loses in the dispute is required to pay all of the costs of mediation or arbitration. If only some of the demands are accepted, the costs may be split between the two parties.

Costs for the trafficking victim may be reduced in ADR through agreement by the parties. For example, the victim her representative may negotiate in advance with the other party to split the costs of ADR or for the other party to pay the entire fee. However, if the parties negotiate such an agreement, they should not inform the third party, as this may influence her decision.

12.7. Positive & negative aspects of ADR

Positive	Negative
◆ Costs may be lower than taking a case to court	◆ More formal types of ADR (conciliation and arbitration) are not widely used or well known in Indonesia
◆ The process is much faster than pursuing a case in court	◆ There are no penalties for not following the decision in ADR
◆ The victim has some control over the process	◆ One party may have more influence over the third party. For example, an influential businessperson may be able to pay off or bribe a third party decision-maker.
	◆ The victim will likely have to meet face-to-face with the person who abused her rights

Differences between ADR and Involving Government Departments

While involving government departments in cases of trafficking may seem similar to ADR, there are a few important differences. ADR negotiation may take place without a third party and does not always involve government officials. While mediators and/or conciliators may be government employees, they are not active actors or parties in the dispute – their role is only to facilitate an agreement. Government officials may use negotiation as part of the administrative process, however it differs from ADR as it is the government official acting as the lead negotiator. Another important difference is that both parties must agree to use ADR; whereas the involvement of government departments may be initiated by only the trafficking survivor alone.

APPENDIX

APPENDIX 1

INDEX OF TRAFFICKING ABUSES AND POSSIBLE LEGAL RESPONSES

A.1.a. Important notes

This chart is intended to provide guidance only. It can help you at the first stages of dealing with a case to consider what action a victim could take. Each case is different and there may be several different ways to approach a case of trafficking abuses. For every case, you should try to consult with others and especially with people who have legal experience in order to determine what legal options are available to a victim of trafficking.

A victim of a criminal offense can also seek compensation in civil court, for example for the psychological impacts of a rape. It is important to remember that the criminal case must first be finished before a civil case can be brought to the courts. The verdict of the criminal case can be used as evidence in a civil case. In some cases, compensation can be requested during a criminal case. This must be discussed with the Prosecutor early on, ideally before the case goes to court.

It is important to explain to your client, that in any case it is hard to predict the outcome. While you hope that the outcome will be positive, the victim should also prepare herself for an outcome which she will not like (for example, she may not be awarded any compensation at the end of a civil process).

A.1.b. Summary of the different legal responses which are possible

Criminal process:	<ul style="list-style-type: none"> ✓ When someone has committed a crime as defined in the Criminal Code (KUHP) ✓ Investigation conducted by the Police. In court the case is led by the Prosecutor ✓ The outcome of the case is decided in court by judges ✓ The possible outcomes are punishment of the offender usually through a prison term ✓ Please see Chapter 8 for more information about the criminal process
Civil process:	<ul style="list-style-type: none"> ✓ When a someone has been a victim of a crime or has suffered damages, loss or injury as the result of another person's actions ✓ The Police are not involved in the case ✓ The victim and her legal representative collect the evidence necessary to prove their case ✓ The outcome of the case is decided in court by judges ✓ The possible outcomes include monetary compensation, repayment of wages, return property, and debt forgiveness ✓ Please see Chapter 9 for more information about the civil process

<p>Involving Government Departments:</p>	<ul style="list-style-type: none"> ✓ When a victim formally requests in writing that the people who have violated her rights (for example a recruiter) rectify these abuses and compensate her and/or b) When a government body is asked to act within its mandate to protect the rights of workers and to punish those who violate the rights of workers ✓ The outcome of the case is decided through communication and negotiation with the people who violated the worker’s rights. Government officials may be involved in this process. ✓ The possible outcomes include repayment of wages or outstanding payments, compensation for damages, fines against a company or individual or punishment of a company (for example by closing down a holding center), victim could be freed from illegal confinement ✓ Please see Chapter 11 for more information.
<p>Alternative Dispute Resolution (ADR):</p>	<ul style="list-style-type: none"> ✓ Mediation and related processes are used to find a solution and to avoid taking a case to court ✓ The victim and the abuser and/or their representatives deal with each other directly through a third party who is experienced in dealing with people in conflict ✓ The possible outcomes include monetary compensation, repayment of wages, return property, and debt forgiveness ✓ Please see Chapter 12 for more information about ADR.

A.1.c. Index of abuses and possible legal responses

	Criminal	Civil	Government Depts	ADR
Abduction, kidnapping	X			
Child labor	X		X	
Coercion/Deception	X	X		
Dangerous or poor living and working conditions		X	X	X
Debt bondage		X	X	X
Deception about the conditions or types of work		X	X	X
Demand for compensation due to death of a worker			X	
Excessive commissions			X	
Extortion (if perpetrators are civilians report to the Police; if perpetrators are Police report to Provost in unit; if perpetrators are military report to Military)	X	X		

Police)				
Falsified documents	X	X	X	
Forced labor		X		
Illegal confinement, detention, and imprisonment	X			
Illegal fees		X	X	X
Illegal recruitment (without job orders; underage children; without consent of parents or legal spouse)			X	
Lack of attention to cases when they are reported to authorities			X	
Lost contact with family members			X	
Misleading or no work contract		X	X	
No time off / long working hours		X	X	X
Non-payment of wages or reduced wages		X	X	X
Physical abuse	X	X		
Poor condition of holding centers			X	
Psychological abuse & psychological impacts of other abuses		X		
Restricted or no access to health and medical care/facilities			X	X
Restrictions on freedom of movement	X			
Selling of a person	X			
Sexual assault, violence, and rape	X			
Sexual harassment	X	X	X	
Unfulfilled insurance rights		X	X	
Violating terms of a labor contract		X	X	
Violations of labor rights			X	
Withholding of identification and immigration/travel documents	X	X	X	

(Adapted from Menangani Sendiri Kasus Buruh Migran, Edy Purwanto, SH)

APPENDIX 2 EXAMPLE FORMS AND LETTERS

A.2.a. Example Intake Form

(For collecting information about victims of trafficking)

Form completed by:
(name of NGO staff)

Date form completed:

INFORMATION ON THE VICTIM

Name:	
Alias names:	
Current address:	
Age:	
Sex:	Male Female
Birthdate:	
Marital status:	
Ethnic group:	
Highest level of education:	
Religion:	
KTP number:	
Date the victim contacted your NGO for assistance:	

VICTIM'S WORK HISTORY

Type of work the victim was doing:	
Salary promised:	
When was the victim working? Give dates.	
Name and address of the victim's employer:	
Was the victim working overseas? <i>Remember, it may not be possible to take legal action in Indonesia for abuses which took place outside of Indonesia.</i>	
Date of departure from Indonesia (if victim was working overseas):	
Date of return:	

INFORMATION ABOUT ABUSES

You should take a full history of the victim’s experiences during trafficking. This more extensive information can be written on a separate sheet. Below, you should record more specific information which is important to her case.

Location where the abuses took place (list ALL locations, if the victim was abused in several places):		
Abuses which the victim suffered: <i>Use the Index of Abuses on page 89 to help you make a complete list</i>	<u>Abuse</u>	<u>Perpetrator</u>
What were the physical impacts of this abuse? Include any current illnesses or physical problems related to abuse which took place in the past.		
Did the victim seek medical attention for any of the abuse? What doctor or medical professional was consulted? What was the result of this?		
What has been the psychological impact of the abuse?		
Were there any witnesses to the abuse?		
Address and contact information for any witnesses.		
Did the victim experience financial abuse (such as non-payment of wages or high interest rates)? Provide details about this.		

INFORMATION ON PERPETRATORS

Names (including aliases) and addresses of all perpetrators (people who abused the victim):	
Other relevant information about perpetrators (for example, car license plate numbers, names of close contacts, information about their finances):	

Is the perpetrator a continuing threat to the victim and her family?	
Has the perpetrator been accused of abuses in the past or contacted by the police?	
Is the victim aware of any other people who have been abused by the same perpetrator(s)?	

INFORMATION ON RELEVANT INDIVIDUALS IN THE CASE

Name and address of the victim’s employer:	
Name and address of the PKJTI (if one was used by the victim):	
Name of PJTKI’s Director:	
Name and address of agents or recruiters:	
Name and address of any other people relevant to the case:	

LEGAL INFORMATION

Has the victim already taken any legal action? If yes, what was the result?	
What legal action would the victim like to take? <i>The victim may not have any idea until you review her case and give her information about the legal options available to her.</i>	
What demands does the victim have? <i>(for example, repayment of wages; return of documents)</i>	
Does the victim already have a lawyer? Name of the victim’s lawyer:	
Has the victim ever been involved in a legal case in the past?	

INFORMATION ON THE VICTIM’S FAMILY

Marital status:	
<i>If the victim is married</i> Name and address of spouse:	

<i>If the victim is a child (18 or younger)</i> Name and address of mother:	
Mother's occupation:	
<i>If the victim is a child (18 or younger)</i> Name and address of father:	
Father's occupation:	
<i>If the victim is cared for by someone not her mother or father</i> Name and address of caregiver:	
Caregiver's occupation:	
Names and addresses of victim's children:	

THE VICTIM'S NEEDS

What does the victim need besides legal assistance (for example, a safe place to live)?	
List any referrals you have made for the victim:	
Does the victim have any financial resources which she can use to take legal action?	

Adapted from Pusat Kajian dan Perlindungan Anak (PKPA)/Center for Study and Child Protection and the United Nations High Commissioner for Refugees.

A.2.b. Matrix to guide discussion and consultation regarding the victim's options

Types of Violations	Type(s) of Legal Process	Potential Claim(s)?	Steps in the Process	Role of the Victim	Role of the NGO

A.2.c. Example Case Tracking Form

(For recording information about action taken on a case)

Example:

Who was contacted	Date of contact and what took place				
Lawyer	<i>27 – 04 – 04</i>	<i>03 – 05 – 04</i>	<i>05 – 05 – 04</i>		
	<i>1st meeting with lawyer. Lawyer gathered information about case.</i>	<i>Met with lawyer to review complaint which will be filed in civil court.</i>	<i>Lawyer called to advise that case had been filed in civil court.</i>		

Who was contacted	Date of contact and what took place				
Lawyer					
Police					
Prosecutor					
Doctor or other medical professional					
Mediator					
Perpetrator					
Employer or recruiter					
Victim's family					
Any organizations to which you refer the victim					

A.2.d. Case management within your organization

Record here information about any meetings you have with the victim, when there is consultation about the victim's case or any other relevant information related to the support you are giving to the victim.

Date of contact and what took place					

Date of contact and what took place (continued)					

A.2.e. Consent for release of information

(This should be read and signed by the victim, whenever you want to share information with other organizations about the victim's case. By signing this consent form, the victim shows that she gives you permission to talk to others about her case.)

I _____ (*victim's name*) give my permission for _____ (*name of organization*) to share information about my case and about my current needs. I understand that this permission is needed so that I can receive the best possible assistance. I understand that the information will be treated with confidentiality and respect, and shared only as needed to provide the assistance I need and request.

Names of organizations or individuals who will be given information about my case:

1. _____
2. _____
3. _____

Victim's Signature: _____

Witness's Signature: _____

Date:

(Adapted from the United Nations High Commissioner for Refugees, Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response.)

A.2.f. Checklist for Reviewing Legal Options with Victims

Step One: The Victim's Story

Introduce yourself, your organization and explain the interview process to the victim, and the process in the NGO.

Listen to the victim's story and her experiences.

Ask the victim why she has come to your NGO for assistance. What is the outcome that she is looking for?

Interview the victim to gather information about her experiences according to the tips provided in the manual.

Take notes on the types of abuses and exploitation that the victim faced as the type of legal recourse best suited for the victim depends in part on the violations which have incurred. Use the Intake Form provided in the manual.

Step Two: Analyzing the Victim's Case

Provide the victim with an opportunity to rest. The consultation may be done while the victim waits or you may ask her to meet again at another time, after you have analyzed her case more thoroughly. Consult with other NGO staff to discuss the victim's case. Make sure you have the victim's permission to do this first.

Review the abuses and exploitation suffered by the victim.

Discuss the options the victim has articulated.

Discuss the various types of legal action that may be relevant for her case.

Discuss the potential difficulties or challenges for each option.

Discuss the role of the victim.

Discuss the amount and type of assistance that your NGO can provide the victim and whether any referrals are needed.

It is critical that the victim be recognized as the primary decision-maker and the NGO staff role be in assisting rather than directing the process.

Step Three: Review of Options

Discuss with the victim the various options for legal action that are relevant given the facts of her case and her wishes. Since the victim may not understand that she has legal recourse for other violations, discuss all legal options available and not just the ones based on her desired outcome. Include a discussion of the following aspects of these important issues:

Potential remedy or outcome for each option

Role of the victim in the process

Positive and negative aspects of each type of legal action

The estimated length of time involved in resolving each type of legal action.

The costs of each type of legal action.

The steps or processes that are involved in seeking justice through the various options.

The role of your NGO in the process including what assistance you can and cannot provide. Also discuss what other supports are available through other organizations.

Ensure that she understands that her access to services does not depend upon her taking legal action for the trafficking abuses she has suffered.

Finally, NGO staff should explain to the victim how much support they will be able to provide to her throughout the process. You should discuss the following issues with the victim:

- Will your NGO assist the victim in finding legal representation or provide legal representation directly for the victim?
- Will your NGO provide financial assistance to the victim for legal and non-legal (ex: travel) expenses?
- Will your NGO assign a staff person to accompany the victim throughout the legal process?
- What will your NGO *not* be able to do for the victim?

APPENDIX 3

EXAMPLES OF COMPLAINT LETTERS

(Adapted from Menangani Sendiri Kasus Buruh Migran, Edy Purwanto, SH)

A.3.a. Example of complaint letter regarding unpaid salary

A complaint letter should include the following things:

- Place and date when the letter was written
- Name of the person who is in charge to solve the problem
- Name, address, occupation of the person who wrote the letter and their relationship to the victim
- If the letter is sent by an organization it should have a registration number from the office
- A description of the problem/why the complaint is being filed
- Demands of the person
- Reasons of those demands
- Place and date of where the letter was written

The letter should be sent by courier to ensure that it arrives safely and that there is a record of it being sent.

If the letter is written by an Attorney, it should include the 6,000 Rupiah stamp.

Copies of the letter should be sent to (cc) to relevant people or organizations such as the Ministry of Manpower and Transmigration and the supervisor of the person to whom the complaint is sent. This helps to apply more pressure in the case.

Re: Please Pay the Salary

June 9, 2004

To:

Bapak _____
Director of (PJTKI) PT. _____
JAKARTA

Dear Sir,

Herewith I:

Name : [OF PERSON MAKING COMPLAINT]

Age :

Address:

would like to file a complaint on a case that happened to [NAME OF VICTIM], ## years old, Passport Number _____, who told me her story through letters as follows:

- PT. _____ sent my daughter to Hong Kong on December 9, 2002 as a migrant worker to work as domestic worker to an employer named Wong Annie with the address of _____ Hong Kong
- She was promised that she would get her monthly salary amounting to \$HK 3.670 that will be deducted with \$HK 1.000 each month

- The problem that occurred is that my daughter has been working for six months but has never received her salary as promised
- She has fulfilled her obligations as stipulated in her contract therefore she deserves to get her salary according to what is agreed
- According to Minister of Manpower and Transmigration Decree No. 104.A/2002 on deployment of migrant workers, the agent (PJTKI) that sent migrant workers should protect them whenever they get difficulties with their employer.

As _____'s parent, I demand Bapak _____ as Director of PT. _____ to:

- Talk to my daughter's employer about payment of her salary
- Give the salary directly to our daughter or to us

Thank you for your assistance in handling my daughter's problem.

Sincerely,

CC:

Minister of Manpower and Transmigration
Indonesian Consulate General in Hong Kong
File

- *If the letter is written by the victim herself, the letter is signed by her.*
- *If the letter is written by the victim's lawyer or legal representative he should identify himself in the following way:
Herewith the undersigned _____, a lawyer, with the address of _____, who acts as the Attorney for a migrant worker named _____ with the address of, _____ based on a Letter of Attorney dated on (date letter was written)*
- *If the letter is written by the victim's parents they should identify themselves in the following way:
Herewith I am [NAME OF PARENT], ## years old, with the address of _____, the father of a migrant worker named _____, ## years old, Passport Number _____ who is having a trouble abroad.*

A.3.b. Example Letter of Attorney to pursue unpaid insurance

LETTER OF ATTORNEY

Herewith the undersigned:

Name: [VICTIM'S NAME]
Address: _____

Herewith stating that I appoint [NAME OF LAWYER OR LAWYERS] located on _____ [ADDRESS] to:

----- SPECIFICLY-----
on behalf of and for above mentioned name handle migrant workers insurance problems that occurred due to one-side lay off by the employer, documents falsification, employing the workers outside the holding center without payment that was carried out by PT. _____ and also employers who employed workers beyond their working hours for seven months without overtime pay.

Therefore, the Attorney shall have the rights to appear before and stated any legal opinions to State Court Clerk of Central Jakarta or any Court Proceedings and private institutions or government offices, military agencies, and submitted any necessary documents. As well as to write and sign letters, to submit litigation, to file complains to the police. Furthermore, to submit evidence and list of witnesses that related to the case as well as to receive money and sign receipts, to accept and to settle payments, to request execution, to rebut all charges, to settle out of court and to sign settlement agreement.

This authority is given with a privilege to transfer to another person.

December 17, 2003

Authority Grantee

Authority Grantor

LAWYER'S NAME

stamp

(all parties should sign the document)

A.3.c. Example of letter to Labor Suppliers concerning the cancellation of deployment due to delay

Subject: Deployment Cancellation

To
Director of PT. _____
Address

Herewith, the undersigned:

Name :
Age :
Occupation :
Address :

Legal Husband of:

Name :
Age :
Occupation :
Address :

The chronology of events is as follows:

On November 12, 2001, a migrant worker candidate named _____ addressed in _____ came to my house in Ngawi-Jawa Timur; he offered my wife a job in Taiwan with immediate departure (no more than three months). Due to the Lebaran season there were plenty of vacancies. My wife was told she needed to pay the amount of Rp.1.300.000 (copy of receipt attached) and if the departure was canceled the money would be refunded.

Five days later, on November 17,2001 the agent _____ came again to my house to take my wife to a holding center and asked for Rp. 500.000 as part of a down payment to process migrant workers that are going to Taiwan.

One month later, exactly on December 11, 2001 _____ came again to for the rest of money at the amount of Rp.800, 000, out of the total of Rp. 1,300,000. (receipt attached)

On January 2002, I went to visit my wife at the holding center of the labor supplier, which addressed on Jalan _____. It turned out that my wife still was not deployed. I was informed that my wife would be deployed after she got a passport.

On February, 2002 I came to visit my wife again and found out that my wife was still not deployed. However, she already received her passport.

On March 7, 2002 I tried to call the holding center, however, I could not get through. I then went there and found out that my wife was still there. My wife informed me that she had already gotten a job order. However, the labor supplier did not give the job order to her because she was sick. On the other hand, when the agency asked her about working, she was given pressure and this made her nervous and she gave the wrong answer. As a result, she was not able to receive the job order.

On April 1, I called my wife and this time I got through. She asked me for money because she ran out of money, and then I went there to visit her. I did not see any signs that my wife would be deployed soon. She told me that she was only being promised to be deployed. Nonetheless, there were plenty of people who came later than her who had already been deployed.

On May 5, my wife called and she said that she was going to be deployed by the end of May. Therefore, I went to visit her at the holding center; however, I did not see any sign that she would be deployed.

On June 23 I visited my wife again at the holding center and found out my wife was still at the holding center. She was working at Ibu Siska's as a maid. According to the Labor Supplier she was being trained before she went abroad. I explained to the Labor Supplier, that my wife had said something wrong to the labor supplier, and that was why she was not deployed

At the same time, I conveyed to the Labor Supplier my intentions to take my wife home. I was told that in order to bring her to her back home I had to fulfill all the requirements, which meant I had to pay all expenses the Labor Supplier had already paid.

Based on the chronology above, herewith I, husband of SUPRAPTI, regret the treatment and behavior of the Labor Supplier towards my wife.

The Labor Supplier abandoned my wife (1st party) for 8 months at the holding center. Eight months had passed but my wife was never deployed as the Labor supplier promised. According to Depnaker regulations, a labor supplier shall deploy migrant workers no more than three months. Therefore, based on the regulations, the Labor Supplier has broken the law and does not any right to demand any compensation if I would like to withdraw my wife and take her home. Nonetheless, your company may be sanctioned.

Your Labor Supplier is only giving promises and never fulfills any of them. Last May 2002, my wife called me and said that she was going to be deployed at the end of May. She was very sure of it. But in reality, on June 2002 my wife was still not being deployed. Therefore, I have concluded that your Labor Supplier has deceived my wife, my family and myself as the husband. As the husband, I may report this case to the police.

If you demand a compensation for duration stay of my wife in the holding center and administration fees, I will refuse to pay these fees because I believe that your Labor Supplier has injured me as well:

I had to make six around trips between Jakarta-Ngawi to deliver the things that my wife needed and those trips cost a lot of money. Now my child is sick and expecting his mother come home.

When my wife was leaving, I paid Rp.1.300.000 to your Labor Supplier named _____ domiciled in _____. He promised that:

- Within three months my wife would be deployed to work abroad to Taiwan because there were a lot of job orders
- If the deployment was cancelled the money would be refunded

Therefore, based on the events described above I as a legal husband of Suprapti of _____ now demand of the Labor Supplier, which you lead:

- To cancel the agreement to work abroad between my wife and your Labor Supplier
- To allow me to take my wife back immediately
- To cease asking for compensation for the money your company has spent for administrative purposes
- Compensation for me equal to Rp. 2.040.000 to cover expenses that I had for traveling Ngawi-Jakarta with details as follows:
 - Ngawi-Jakarta Rp. 100,000 x 6 = Rp.600.000
 - Cost of living in Jakarta Rp.10.000 x 4 day x 6 = Rp.240,000
 - For my wife's needs while she stayed in the holding center
 - Rp. 200.000 x6 = Rp. 1.200.000
 - A refund to cover all administration costs paid to a sponsor (Sugiyatno) equal to Rp.1.300.000.

Evidence is attached to reinforce my demands.

Therefore, if this letter of demand does not receive a response from your Labor Supplier, I am going to report this case to the Police.

Thank your for kind attention

Jakarta, 25 June 2002

Sincerely yours

A.3.d. Example of Police Complaint for Document of Falsification

Jakarta, 14 October 2002

Attachment: 1 file

Subject: Document Falsification Complaint

To

Bp. Police Chief of Jakarta

Jakarta

Dear Sir,

Through the letter we are [NAME OF NGO OR LAWYER] Jl. _____ for and on behalf of our client named _____ would to file a complaint about a state document falsification that our client went through:

Name :
Date of Birth :
Last Education:
Address :
Passport No :

The offense that allegedly has been committed by the labor supplier, which deployed workers to Malaysia collectively or individually by;

Name :
Position : Director of PT. _____
Address :

a state document (Passport Number: _____) was falsified with a purpose for deploying the complainant to go to work in Malaysia. Even though at the time the complainant was still underage to go to work aboard because when she deployed, she was 16 years old and eleven months. However, it stated in her passport that she was 27 and her address was in Wonosobo- Central Java but it was changed to Pandeglang West Java.

Falsifications of documents is being practiced a lot among labor suppliers all over Indonesia. Nonetheless, it is never been reported because the parties involved usually settle out of court or victims are forces to take a responsibility with an argument that everything was done with the consent of them. Consequently, no one is ever reported to the police and faces a public trial.

On this case that we are reporting to the police, it had a negative impact to a victim, the victim was underage and raped more than once by her employer in Malaysia. At present moment Depnakertrans and Department of foreign Affairs are handling the case.

We hope that this case will get special attention because of the falsifications of documents by labor suppliers and business community in Indonesia. Labor placement aboard has changed to trafficking in persons. We hope this case could be a good precedent for the protection of Indonesian migrant workers that might need assistance in the near future.

To complete this report, herewith we attached copies of birth certificate, elementary diploma and passport on the name of _____ and her letter of attorney. Her false ID that was used for passport is being detained by the perpetrator.

Thank you for your kind attention and immediate action

Sincerely Yours

Cc:
National Police Chief, Jakarta
Attorney General, Jakarta
Archive

A.3.e. Example of Civil Case Complaint -- Demands for Compensation through District Court

Attachment: Evidence P-1/ P-13

Jakarta, 6 April 2003

Subject: Lawsuit against _____

To:

Proceeding Judge of District Court of Central Jakarta

Jakarta

Dear Sir,

Herewith, the Undersigned;

Name : NAME OF VICTIM

Age :

Address :

An Indonesian citizen, (forward will be mentioned)

----- As PLANTIFF

Pressed charges against:

Name : PT _____

Address :

An Indonesian Labor Supplier, (forward will be mentioned)

-----As DEFENDANT

These Plaintiff's charges are based on the following facts:

Included here is complete information on the events which took place during the victim's experience of trafficking, including:

- Who the victim had contact with
- Promises that were made to the victim
- Any money paid by the victim to agents, labor suppliers, etc.
- Information about documents or contracts which were signed by the victim
- Where the victim worked
- The conditions under which the victim worked
- Information about any previous efforts to resolve the case

The breach of contract caused the Plaintiff damages. As a result, the Plaintiff has filed a lawsuit against the Defendant through the District Court of Central Jakarta to enjoy justice because all efforts of negotiation have failed.

Law No. 35 (1999) concerning the changes over Law no. 14 (1970) concerning the main provisions of Judges, stipulated regarding judges' obligations or court obligations in court proceeding. Article 5 section states, "In a civil case, a court assist justice seekers and performs to its best ability to handle any obstacles and hindrances to achieve a simple court proceeding, inexpensively and quickly.

Article 17 of the law No. 39 (1999) concerning Human Rights stipulates that" any person without discrimination has a right to enjoy justice/fairness in submitting requests, complaints and litigation in both criminal and civil cases or administrative through a court proceeding that is free and fair in accordance with minutes of laws, which guarantees an objective examination by honest and fair judges to produce the right and just verdict.

Based on article 1365 of the Civil Code, the Defendant should compensate all damages that happen to the Plaintiff including both tangible and intangible losses or damages, such as the Plaintiff's lost wages or wages she would have earned in Taiwan if the problem hadn't arisen.

These are all the tangible damages that need to be compensated by the Defendant:

- The money that was paid to the Defendant's representative office of PT. _____ in [ADDRESS], of which the Defendant is a director. Compensation should be Rp. 3,100,000 with the current exchange rate between rupiah against US dollar.
- The money that Plaintiff spent which was caused by the breach of contract of the defendant. This amounts to Rp.7,600,000. These expenses cover transportation and accommodation while taking care of this case in Jakarta and Surabaya.
- And all the money that the Plaintiff spent to live since the recruitment at the beginning of 1996 up to the settlement of this case. The defendant should Rp. 47,800,000, based on a calculation of Rp. 15.000 per day.

These are all the intangible damages that need to be compensated by the Defendant:

- Boredom because of the uncertainty about when the deployment will take place.
- Embarrassment because the Plaintiff was being talked about and mocked.
- Guilt because of the burden this situation caused for the Plaintiff's parents.
- Confusion because plans to open a business and get married and have children were ruined.
- Stress because of all of the problems above.
- Therefore, the total intangible damages that are demanded in order for the Defendant to compensate for all the things that are listed above are Rp. 100,000,000.

To prevent the verdict from not being executed and to guarantee the implementation of the verdict, seizure of Defendant's properties are requested, such as a piece of land and building, which located on Jalan _____.

Based on the reasons above, the Plaintiff is pleading to the panel of judges of the District Court of South Jakarta to grant a verdict as follows:

- To grant all the plaintiff's charges.
- To accept all evidence that is submitted for the trial.
- To decide that the defendant was in breach of contract due to failure to deploy the Plaintiff as promised.
- To decide to seize the defendant's property (a piece of land).
- To punish the Defendant by paying all the tangible and untangle losses to the Plaintiff.

Tangible losses/damages:

The money that had paid to the defendant (New exchange rate)	Rp.12.400.000
Case Handling Expenses	Rp. 7.600.000
Living Expenses	Rp.47.800.000
Sub Total	Rp.67.800.000

Intangible losses/damages Rp.100.000.000

Total Rp.167.800.000

The Defendant shall execute the verdict of the case, if the defendant fail to execute this verdict, a fine shall be imposed for Rp.50, 000 per day after the verdict is read.

Due to this litigation is supported by authentic and legal evidence, therefore the Plaintiff pleads to the Panel of Judges to grant this verdict to be executed, even though, the Defendant is appealing the case or requesting for a legal review.

The defendant has to pay all expenses that occur on this trial.

Pleading to the panel of judged to examine thoroughly and sentence the defendant justly.

Sincerely yours

[NAME OF LAWYER]

APPENDIX 4

LAWS & LEGISLATION RELATED TO TRAFFICKING

Understanding the laws and regulations that may have been violated during a client's trafficking experience is important for organizations providing services to trafficking victims. Such an understanding provides a context within which a client may seek legal redress.

While there is currently no anti-trafficking law in Indonesia, there is existing legislation that may be (and has been) used to punish traffickers. It is important also to use any local regulations your province or local area which are relevant to trafficking in persons, migration, children's rights or related issues.

A review of existing legislation which is related to trafficking can be find on-line at the ACILS website at www.solidaritycenter.org. Choose the link to take you to Asia programs, then select Indonesia, then select the Counter-Trafficking Project. In the information about documents from the project, there is a link for the book entitled *Trafficking of Women and Children in Indonesia*. Look for the chapter called "Laws and Legislation Related to Trafficking."

APPENDIX 5

GLOSSARY OF IMPORTANT TERMS RELATED TO TRAFFICKING IN PERSONS

Istilah dalam Bahasa Inggris	Definisi Bahasa Inggris	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Appeal	Resort to a superior or higher (i.e. appellate) court to review the decision of an inferior or lower court or administrative agency. A complaint to a higher tribunal or court of an error or injustice committed by a lower tribunal or court, in which the error or injustice is sought to be corrected or reversed.	Banding	Pemeriksaan oleh Pengadilan yang lebih tinggi tingkatannya. Karena dalam tingkat banding ini seluruh pemeriksaan, baik mengenai fakta maupun mengenai hukumnya diulangi, maka banding juga dinamakan ulangan. Pengadilan banding untuk putusan-putusan Pengadilan Negeri adalah Pengadilan Tinggi.
Attorney (Lawyer or Legal Representative)	A person authorized to perform both civil and criminal legal functions for clients, including drafting of legal documents, giving of legal advice, and representing such client before courts, administrative agencies, boards, etc.	Pengacara atau Kuasa Hukum	Seseorang yang berwenang untuk mewakili klien baik pada perkara perdata maupun pidana, termasuk membuat dokumen-dokumen hukum, memberikan saran-saran secara hukum, dan merepresentasikan klien di depan persidangan, badan-badan administratif, dsb.
Burden of Proof	The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a case.	Beban Pembuktian	Kebutuhan atau tugas dari pihak yang menyetujui untuk membuktikan sebuah fakta atau fakta-fakta dalam menyelesaikan sebuah kasus di antara para pihak
Case File	A file containing all of the information relevant to a particular criminal case. The case file will usually include the complaint or indictment, investigation reports, and other types of evidence.	Berkas Perkara	Sebuah berkas yang berisi informasi-informasi yang relevan terhadap kasus pidana. Berkas perkara ini biasanya etrmsauk laporan atau dakwaan, laporan hasil investigasi, dan bukti-bukti terkait.
Cassation Request (Appeal)	A decision by which a decree or judgment in the appeals court is broken or annulled.	Permintaan Kasasi (Banding)	Sebuah keputusan dimana sebuah putusan atau vonis pada pengadilan banding dianulir atau dibatalkan.
Civil Process	The rules, procedures, and steps in adjudicating a case between two or more parties	Proses Perdata	Peraturan, Prosedur, dan Langkah-langkah dalam menyelesaikan sebuah kasus

	in State Court based on a civil issue or the Civil Code.		antara dua pihak atau lebih di Pengadilan Negeri berdasarkan pada Kasus Perdata atau Hukum Perdata.
Command Letter	An official letter authorizing an action by a government official, such as arresting a suspect.	Surat Perintah	Sebuah surat resmi yang mencantumkan kewenangan aparat pemerintah untuk bertindak, seperti penangkapan seorang tersangka.
Compensation	Payment for damages to restore an injured party to her former position. Compensation may be awarded to people who have suffered loss, abuse , or injury, themselves or to their property. Compensation can be awarded for acts which are committed but also is someone failed to do something which they have a responsibility to do.	Kompensasi	Permbayaran kerugian untuk memulihkan pihak yang terluka. Kompensasi dapat diberikan kepada mereka yang mendapatkan menderita kerugian, penganiayaan, atau luka, pada diri mereka atau pada properti mereka. Kompensasi dapat juga diberikan untuk tindakan yang telah diambil tetapi juga untuk seseorang yang gagal untuk melakukan sesuatu dimana mereka bertanggung jawab atas sesuatu tersebut.
Complaint	The initial or original document by which a case is commenced under civil law. It sets forth a claim for relief or damages.	Gugatan	Dokumen yang berisi kasus yang termasuk dalam hukum perdata. Di dalamnya terdapat permohonan untuk minta keringanan maupun ganti kerugian.
Criminal Process	The rules, procedures, and steps in adjudicating a case between the State and a defendant (s) in State Court based on criminal charges from the Criminal Code.	Proses Pidana	Peraturan, procedures, dan langkah-langkah untuk menyelesaikan sebuah kasus antara negara dan terdakwa di Pengadilan Negeri berdasarkan pada tuntutan pidana yang ada pada Hukum Pidana.
Detention	The act of keeping back, restraining or withholding a person or thing; confining. Detention occurs whenever the police accosts an individual and restrains his freedom to walk away.	Penahanan	Tindakan penahanan terhadap seseorang atau menyimpan sesuatu. Penahanan terjadi ketika polisi berhadapan dengan seseorang yang dicurigai dan menahannya.
Evidence	Testimony or material which is presented to prove a fact.	Bukti	Pernyataan atau materi yang disampaikan untuk membuktikan suatu fakta.
Execution	The legal process of enforcing a verdict or court decision.	Eksekusi	Proses hukum untuk melaksanakan putusan pengadilan secara paksa.
Executor of Court Decision	The judicial branch official who carries out the process	Eksekutor untuk melaksanakan	Petugas pengadilan yang ditugaskan selama proses

	of enforcing a verdict or court decision.	putusan pengadilan	pelaksanaan eksekusi putusan pengadilan.
Forced Labour (& Slavery Like Practices)	The extraction of all work or services from any person by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion. Forced labour can be for the benefit of governments, private individuals, companies or associations.	Kerja Paksa (& Praktek-Praktek Serupa Perbudakan)	Memerintahkan seseorang untuk bekerja atau memberikan jasa dengan menggunakan kekerasan atau ancaman kekerasan, penyalahgunaan wewenang atau posisi yang dominan, jeratan utang, kebohongan atau bentuk-bentuk pemaksaan lainnya. Kerja paksa dapat dilakukan demi keuntungan pemerintah, individu pribadi, perusahaan atau asosiasi.
Guilty	Responsible for an offence.	Bersalah	Bertanggung jawab atas suatu pelanggaran.
Hearsay	Something one has heard but does not know to be true; rumour, gossip.	Kabar angin	Sesuatu yang didengar oleh seseorang namun tidak diketahui apakah informasi itu benar; atau hanya sekedar rumor, ataupun gossip.
High Court	An Indonesian provincial court of appeal; first-level of appeals courts in the Indonesian legal system.	Pengadilan Tinggi	Pengadilan yang berada di tingkat provinsi yang digunakan untuk banding. Pengadilan banding yang pertama pada sistem hukum Indonesia.
Human Rights	The basic rights and freedoms to which all humans are entitled. These are contained in the Universal Declaration of Human Rights which can be found at www.unhcr.ch	Hak Asasi Manusia	Hak-hak dan kebebasan-kebebasan dasar yang berhak dimiliki setiap manusia. Hal ini terdapat dalam Deklarasi Universal tentang Hak Asasi Manusia yang dapat ditemukan dalam www.unhcr.ch
Indictment	To accuse someone formally of a crime.	Dakwaan	Menuduh seseorang secara resmi atas suatu kejahatan.
Jurisdiction	The authority of a court or organization to decide a matter in controversy or to have control over parties to a case.	Yuridiksi	Kewenangan sebuah Pengadilan atau organisasi untuk memutuskan suatu sengketa permasalahan atau memonitor sebuah kasus melalui para pihak.
KUHP	Indonesian Criminal Code	KUHP	Kitab Undang-undang Hukum Pidana Indonesia
KUHAP	Indonesian Criminal Code Procedures	KUHAP	Kitab Undang-undang Hukum Acara Pidana Indonesia
Labour Rights	The basic rights within the workplace, to which all workers are entitled. These include the right to work, the right to a fair wage, freedom of association,	Hak-Hak Buruh	Hak-hak dasar di tempat kerja, yang berhak dimiliki semua buruh. Hak-hak ini di antaranya adalah hak untuk bekerja, hak untuk mendapat upah yang layak, kebebasan untuk

	freedom from discrimination in the workplace, etc. These are also known as ‘workers’ rights’.		berkumpul, kebebasan dari diskriminasi di tempat kerja, dll. Hak-hak ini juga disebut sebagai ‘hak-hak pekerja’.
Letter of Summons	A document issued by a bailiff or the police ordering a person(s) to come to a police station for questioning or a court to testify.	Surat Panggilan	Sebuah dokumen yang dikeluarkan oleh petugas pengadilan atau oleh polisi yang memerintahkan seseorang untuk datang ke kantor polisi untuk diminta keterangannya atau untuk diminta datang ke Pengadilan untuk bersaksi.
Non-government organisations (NGOs)	An organisation which works for the welfare benefit and/or development of society or certain section of society. It is usually ‘non profitable’, which means that its members are not entitled to any profit from the earning or income that it generates.	Lembaga Swadaya Masyarakat (LSM)	Suatu organisasi yang bekerja untuk kesejahteraan dan/atau pembangunan masyarakat atau bagian tertentu dari masyarakat. Lazimnya bersifat ‘nirlaba’, yang berarti para anggotanya tidak berhak atas keuntungan dari penghasilan atau penerimaan yang diperolehnya.
Oath	Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. An affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury.	Sumpah	Segala bentuk pengesahan yang dilakukan orang yang berwenang terhadap orang lain yang diambil sumpahnya bahwa ia menyatakan yang sebenarnya. Pernyataan yang menegaskan bahwa jika ia memberikan keterangan yang tidak benar, maka ia akan dihukum karena melakukan sumpah palsu.
Prosecute	To institute legal proceedings against, or conduct criminal proceedings in court against.	Penuntutan	Mengambil tindakan hukum terhadap, atau mengajukan gugatan pidana ke pengadilan.
Prostitution	A sexual act engaged in for money.	Pelacuran	Tindakan seksual yang dilakukan untuk memperoleh uang.
Punishment	Discipline or penalty imposed for wrong-doing.	Hukuman	Tindakan disipliner atau sanksi yang dijatuhkan atas suatu kesalahan.
Rape	Non-consensual sexual intercourse.	Pemeriksaan	Persetubuhan yang terjadi tanpa ijin salah satu pihak yang terlibat.
Recruitment	The act of enlisting persons for work or an activity.	Perekrutan	Tindakan mendaftarkan sejumlah orang untuk suatu pekerjaan atau aktivitas.
Remedy	The means by which a right is enforced or the violation	Pemulihan	Bentuk-bentuk penegakan hak atau upaya-upaya pencegahan

	of a right is prevented, redressed, or compensated.		terhadap pelanggaran hak, upaya ganti rugi atau kompensasi.
Search	Looking for or seeking out that which is otherwise concealed from view. An examination of a person's house or other buildings or premises, or of his person, or of his vehicle, etc. with a view to the discovery of evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged.	Pengeledahan	Pencarian atau mencari sesuatu yang kemungkinan tersembunyi. Pemeriksaan terhadap rumah seseorang atau gedung-gedung lain atau tempat lain, atau pada diri orang tersebut, atau terhadap kendaraan mereka, dsb. Dengan fokus untuk mencari barang bukti yang dapat digunakan dalam penuntutan pada persidangan.
Seizure	The act of taking possession of property for a violation of law or by virtue of an execution of a judgment.	Penyitaan	Tindakan mengambil atau merampas hak milik sebagai akibat dari pelanggaran hukum yang dilakukan atau berdasarkan atas eksekusi putusan hakim.
Sentence	The judgment formally pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine or prison term.	Vonis	Keputusan Hakim yang secara formal dibacakan di sidang pengadilan atau diucapkan oleh hakim di depan terdakwa setelah terbukti secara meyakinkan di depan persidangan pidana, menimbulkan hukuman untuknya, biasanya dalam bentuk denda atau penjatuan pidana penjara.
Settlement	An agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other.	Penyelesaian	kesepakatan dari pihak-pihak yang sedang bersengketa untuk menyetujui atau mematuhi (saran) apa yang diberikan oleh masing-masing pihak.
Sexual violence	Violence force exerted for the purpose of sexually violating, damaging, or abusing.	Kekerasan seksual	Kekuatan kekerasan yang dikeluarkan dengan tujuan untuk melakukan kekerasan, melukai, atau menganiaya secara seksual.
Summons	A document ordering a person to appear in court at a trial.	Surat Panggilan	Sebuah dokumen yang meminta seseorang untuk hadir pada persidangan di Pengadilan.
Trafficker	A person who commits the crime of trafficking in persons.	Pelaku trafiking	Seseorang yang melakukan kejahatan trafiking terhadap manusia.
Trauma	An emotional wound or shock that creates substantial, lasting damage to the psychological development of a person.	Trauma	Luka emosional atau kejutan yang menciptakan kerusakan besar untuk jangka waktu yang lama terhadap perkembangan psikologis seseorang.

Trial	Examination of evidence and applicable law by a court of law (tribunal) to determine the issue of specified charges or claims.	Pemeriksaan Pengadilan	Pemeriksaan barang bukti dan hukum yang digunakan untuk persidangan untuk menentukan dakwaan yang tepat untuk kasus yang disidangkan atau permohonan.
Verdict	The formal decision or finding of a judge.	Putusan	Putusan resmi dari Hakim.
Violence (physical)	Physical force exerted for the purpose of violating, damaging, or abusing; or Abusive or unjust exercise of power.	Kekerasan (fisik)	Kekuatan fisik yang dikeluarkan dengan tujuan untuk mengganggu, melukai, atau menganiaya; atau penggunaan kekuasaan yang sifatnya menganiaya atau tidak benar.
Vulnerable	Likely to injure or open/susceptible to attack.	Rentan	Menghadapi kemungkinan besar untuk terluka atau mudah untuk diserang.

APPENDIX 6 USEFUL WEBSITES

A.6.a. State Organs

People's Consultative Assembly: www.mpr.go.id/h/index.php

House of People's Representatives: www.dpr.go.id

A.6.b. Cabinet, Key Departments & Department-level Agencies

Certain government departments are beginning to make available on their websites key legislation in their respective fields.

Cabinet: www.dfa-deplu.go.id/new/grcabinet.htm

Department of Foreign Affairs: www.dfa-deplu.go.id

Department of Home Affairs: www.depdagri.go.id

Department of Defense: www.dephan.go.id

Department of Justice & Human Rights: www.depkehham.go.id

Department of Finance: www.depkeu.go.id

Department of Mines & Energy: www.setjen.dpe.go.id

Department of Agriculture: www.deptan.go.id

Department of Forestry: www.dephut.go.id

Department of Transportation: www.dephub.go.id

Department of National Education: www.pdk.go.id

Attorney-General's Office: www.kejaksaan.go.id

A.6.c. Law Links

Hukumonline: www.hukumonline.com is a free website available to access Indonesian law. This Website is updated regularly and contains useful legal information, including draft bills.

Indobizlaw: www.indobizlaw.com lists Indonesian government departments with websites.

A.6.d. Information about Trafficking

Unless indicated, these websites are in English.

NGOs

www.buruhmigran.net

The website of Konsorsium Pembela Buruh Migran Indonesia (KOPBUMI) – National Secretariat (The Consortium for the Defense of Indonesian Migrant Workers). This website contains information related to Indonesian migrant workers. BAHASA INDONESIA.

www.stop-traffic.org

This website includes lists of relevant resources and links to NGOs and government agencies involved in countering trafficking projects in many parts of the world.

<http://www.catwinternational.org>

The website of the Coalition Against Trafficking in Women. The Coalition Against Trafficking in Women-Asia Pacific is an international network of feminist groups, organizations and individuals fighting the sexual exploitation of women globally.

www.antitrafficking.org

The website of an anti-trafficking project from the UK, working on trafficking issues worldwide. This website includes information about best practices and legal instruments. Organizations can register to be included in their upcoming database of organizations working to combat trafficking.

www.antislavery.org

The website of Anti-Slavery International a NGO which conducts advocacy campaigns to end human slavery and trafficking. This website includes information on advocacy campaigns.

www.humantrafficking.org

This website was developed in through the Asian Regional Initiative Against Trafficking (ARIAT). The website includes descriptions of prevention, protection and law enforcement initiatives, examples of awareness raising materials, national legislation and lists of organizations working to fight trafficking and other resources.

www.stophumantraffic.org

This website is produced by Anti-Slavery International and includes good background information about trafficking.

www.solidaritycenter.org

The website of the American Center for International Labor Solidarity (ACILS or Solidarity Center). This website includes information about Solidarity Center programs worldwide, including Indonesia.

www.trafficking.org.ph/about/index.htm

The website of the Trade Union Congress of the Philippines and the Solidarity Center-Philippines Anti-Trafficking Project.

www.icmc.net

The website of the International Catholic Migration Commission (ICMC). The site includes information about ICMC's counter trafficking programs all over the world, including Indonesia. Information about trafficking in Indonesia can be accessed through this site.

International Organizations

www.un.org/depts/dhl/resguide/resins.htm

This website includes United Nations conventions, declarations and other instruments contained in General Assembly Resolutions from 1946 onwards.

www.ilo.org

The website of the International Labor Organization (ILO). This website includes reports and publications about trafficking problems and interventions worldwide.

www.iom.int

The website of the International Organization for Migration (IOM). IOM's work includes assisting victims to return to their home countries. This website lists information about counter-trafficking projects around the world.

www.unodc.org

The website of the United Nations Office on Drugs and Crime. This site includes counter-trafficking awareness-raising video clips. They also occasionally fund counter trafficking project proposals.

www.unifem-eseasia.org

The website of the South East Asia office of the United Nations Fund for Women. UNIFEM's main goal is to promote gender equality. This website includes trafficking data for SE Asia and "press kits" on trafficking.

www.usaid.gov

The website of the United States Agency for International Development. USAID has funded a number of counter-trafficking projects in Indonesia. This website includes descriptions of USAID's response to trafficking and the counter trafficking initiatives they are funding around the world.

www.usaid.gov/our_work/cross-cutting_programs/wid/

The website of the USAID Office of Women in Development. This website includes information about USAID's women and gender focused initiatives, including reports on trafficking in persons.

www.unhcr.ch

The website of the United Nations High Commissioner for Human Rights (UNHCR). This website contains international human rights treaties, and other resources and information related to human rights.

www.adb.org

The website of the Asian Development Bank (ADB). This website includes reports from studies about how to fight trafficking.

Universities and research institutes

www.protectionproject.org

The website of the Johns Hopkins University Protection Project. This website includes a database of anti-trafficking legislation from around the world and trafficking video documentaries which can be viewed on-line.

www.legislationline.org

This website contains anti-trafficking legislation from around the world, and especially from Europe.

www.mincava.umn.edu/traffick.asp

The website of the Minnesota Center Against Violence and Abuse. This website includes a large collection of downloadable reports and information including information on the health effects of trafficking.

www.humantrafficking.com/humantrafficking/htindex.aspx

The website of the Polaris Project. This website includes database which can be used to search for resources regarding trafficking as well as a calendar of events, help in writing proposals and discussion forums.

www.umn.edu/humanrts/svaw/trafficking

The website of the Minnesota Advocates for Human Rights and the University of Minnesota Human Rights Library as part of the Stop Violence Against Women Project. This website includes training materials to help build awareness about trafficking.

A.6.e. Email List Serves

Please contact these list Serves directly if you are interested in joining. Some may be more current and active than others.

- anakjalanan@yahoo.com
- child_trafficking@yahoo.com
- jarak_network@yahoo.com
- kasus_anakdanpr@yahoo.com
- kopbumi-network@yahoo.com
- lindunganak@yahoo.com
- mitraperempuan@yahoo.com
- pekerja_perempuan@yahoo.com
- perempuanguroup@yahoo.com

· stop-traffic-request@friends-partners.org

A.6.f. Selected Publications Available On-Line

A Comparative Study of Women Trafficked in the Migration Process, Coalition Against Trafficking in Women, North Amherst, MA, USA, 2001. www.catwinternational.org.

Human Rights in Practice: A Guide to Assist Trafficked Women and Children, Global Alliance Against Trafficking in Women. 1999. Available in English and Bahasa Indonesia. GAATW@mozart.inet.co.th

The Role of Employers and Workers' Organizations in Action Against the Worst Forms of Child Labour, Including the Trafficking of Children into Labour and Sexual Exploitation, ILO, Oct. 2001. www.ilo.org.

The Sex Sector, The economic and social bases of prostitution in Southeast Asia, Lin Lean Lim, ed., Geneva, ILO, 1998. This book contains a history and analysis of the sex sector of Southeast Asia including a chapter on Indonesia. www.ilo.org

Trafficking in Children Report: Problem and Responses Worldwide, ILO, 2002. www.ilo.org

Women Migrant Domestic Workers: Bringing the Sector into the Open, International Confederation of Free Trade Unions, December 2002. www.icftu.org

Asian Labour Migration: Issues and Challenges in an Era of Globalization, Piyasiri Wickramasekera, International Migration papers, No. 57. www.ilo.org.

Human Traffic, Human Rights: Redefining Victim Protection, Baine Pearson, Antislavery International, 2002. www.antislavery.org.

Child Domestic Workers: Finding a voice, a handbook on advocacy, Maggie Black, Antislavery International, 2002. www.antislavery.org.

Training Manual for Combating Women and Child Trafficking, UNIAP, IOM, and Save the Children UK. www.un.or.th/TraffickingProject/Publications/trafficking_manual.pdf.

Guidelines on Justice for Child Victims and Witnesses of Crime, International Bureau for Children's Rights, March 2003. www.ibcr.org/Guidelines_e.pdf.