

Some Good Practices in Prosecuting Cases under the Anti-Trafficking in Persons Act of 2003 (Republic Act 9208)

These tips were compiled from the Anti-Trafficking Project-assisted Panel Discussion on Dissecting the Anti-Trafficking in Persons Law (Towards its Effective and Efficient Implementation), Manila, August 24, 2004 and Anti-Trafficking Orientation for Judges and Prosecutors, Manila, September 3-4, 2004.

The following are good practices in filing and prosecuting cases under R.A. 9208:

1. As in every case filed in court, its success lies on the sufficiency and authenticity of evidence submitted and reliability of witnesses presented. The same concept applies to prosecuting trafficking cases. There is a need to **build a strong case** backed up by sufficient evidence and investigation to prevent acquittal. It is necessary to properly document pre- and post-trafficking incidents in order to improve prosecution of cases.
2. There is no need to look into the **means used** if the trafficked persons are minors, as stated in the second paragraph of Article 3. There is trafficking even if there was no fraud or deception used in minors, provided that it is for the purpose of exploitation and prostitution.
3. RA 9208 considers recruitment **for the purpose of exploitation, etc.** as the distinguishing provision, as compared to other relevant laws. The information must not fail to allege this element, otherwise, there is no violation of Section 5. It is the “purpose of promoting trafficking in persons,” or the “furtherance of trafficking” that makes the individual acts punishable.
4. There is a need to **prove the intent** in trafficking because of the words “for the purpose of” in its definition. Intent, however, is very difficult to prove considering that it is all in the mind. It does not also appear apparent or obvious during the recruitment process. Intent, however, can be proven by circumstantial evidence. The best strategy to assure the continuity of the case is to overprove than underprove. It is better for prosecutors to cite as many cases or violations as possible, especially those with high penalty, and let the judge decide which case to dismiss or consolidate. If not all of the elements of trafficking are present, one has the option to file illegal recruitment, if the recruiter is a non-licensee; or coercion under RPC, if force is used; or violation of RA 7610, if a minor is involved.
5. The information for qualified trafficking in persons must allege not only the **qualifying element under Section 6**, but must allege the act committed under Section 4 and the means used in the commission thereof under Section 3 of RA 9208.
6. It is important to allege all the elements of trafficking in the complaint or information. There is no harm in alleging because that is an opportunity for the prosecutor to prove the existence of trafficking during trial. If in doubt, **it is better to allege** because what is not alleged in the information can not be proven during trial, thereby giving the defense the opportunity to rebut the allegations and evidence.
7. Trafficking is **a continuing crime**. Some of the elements may be committed in one province in the Philippines and consummated in other provinces or outside the

Philippines. It is better to include among the respondents in the complaint or information, recruiters or employers in the province or country of destination.

8. As a special law, there is **no attempted or frustrated trafficking as well as accomplice or accessory**. All trafficking cases are consummated cases and all the perpetrators are considered principals. Acts promoting trafficking under Article 5 are considered preparatory acts to trafficking but are punished independently from other criminal or trafficking acts. The principals are also not distinguished on whether they are principal by direct participation, inducement or indispensable cooperation. There is also no complex crime of trafficking because it is a special law. The remedy is to file each case independently.
9. The perpetrators are considered as principals; there are **no accessories** in trafficking. In prosecuting these acts, however, there is always a need to prove that the acts are for the purpose of trafficking.
10. Mere **promise of payment** falls under deception or enticement. There is no need to prove whether there is an actual giving or receiving of payments.
11. In case of difficulty interpreting the law, the law should be **construed liberally** in favor of the trafficked victim.
12. The necessity of determining under which law to prosecute, given the many related laws, is important. There is a need to determine the relationship between **RA 9208 and RA 7610**, especially if the victim is a minor given that RA 7610 punishes child trafficking and Section 6 of RA 9208 also punishes trafficking of minors. Prosecutors have to make up their minds on which case to file. When the trafficked victim is a child, it may be better to prosecute under RA 7610 since this law is specially crafted for children. Or it is preferable to file the case with the higher penalty. However, it is prohibited to file various complaints arising from the same acts because it might constitute double jeopardy. If there are two different acts committed based on Sections 4 or 5 of RA 9208, two different informations must be prepared.
13. In situations where the police officers encounter difficulty in determining which case to file, the **chief prosecutor within the jurisdiction may be consulted**. The prosecutors are not prohibited to advise law enforcers, or to help in the preparation of the information, or to conduct investigation.
14. An affidavit from the victims or witnesses in the area where acts of trafficking was committed may be issued, or reports from the Embassy officials may be made. There is **a need to submit other independent evidence** other than simple testimonies to corroborate the allegation. The complaint, though, may be refiled with the presence of other supporting evidence.
15. Pursuant to the new Guidelines on the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, there is now a need for the police officers or the complainant to **submit to the investigating prosecutor all the required documents** for purposes of the preliminary conference. Exhibits not marked during the preliminary conference may no longer be allowed by the Court to be presented and offered during the trial of the case.

16. Production of documents for purposes of preliminary conference becomes a serious concern especially when **trafficking is committed across national borders**. The original or authenticated documents coming from the Philippine Embassy or Consular Office, or from the foreign country where trafficking was continued, may not be forthcoming during preliminary conference. This may cause failure of prosecution of the offense. Therefore, there is a need for a constant communication and coordination between local governments and Philippine representatives overseas.
17. In the filing of cases, **personal knowledge of the crime is essential**. It is not required, however, that the person saw the act or that he was present in the scene of the crime at the time of its commission. Law enforcers should conduct regular monitoring or surveillance of illegal activities to ensure that trafficking incidents really occur provided that the surveillance does not amount to an instigation. There is a thin line that separates entrapment from instigation. As such, the law enforcers must exercise extreme caution in order that they may not be subjected to complaints later.
18. Whatever **properties or proceeds of the crime** are available to the prosecutors, it is advisable to present them in court as evidence so that the court may acquire jurisdiction over them.
19. There is **no need to file a separate civil case** because it is deemed filed with the criminal case. The prosecutor may wish to file a motion to confiscate the properties, or forfeiture, or an attachment in order to place the properties in custodia legis, thereby preventing the accused from disposing his property.
20. One strategy developed by judges over the years is that they **appoint a guardian ad litem** which usually comes from the DSWD, once they noticed that the victim is losing interest in proceeding with the case due to some reasons, valid or not, including the influence of the parents. In this case, the affidavit of desistance which may be filed by the parents later may not be recognized anymore since the guardianship or parental authority is already exercised by other individuals.
21. Under Sec. 3 of RA 9208, trafficking may be committed even if the act of trafficking is with the consent of the offended party. Strictly speaking, when the **offended party consented to the trafficking**, it is understood that the MEANS, such as the use of threat, force, coercion, abduction, fraud or deception does not exist. Hence, in case the consent is given by the offended party, force, violence, fraud and coercion cease to be elements of trafficking, and therefore need not be alleged in the information.

Nevertheless, even if either force, intimidation, coercion, abduction or fraud or deception is absent, consent of the victim may still be obtained through other means, such as, abuse of power or of position, or taking advantage of the vulnerability of the person, or the giving of payments or benefits to achieve the consent of the person having control over another. In such a case, trafficking is still committed although consent was given by the trafficked person. These elements, therefore, have to be specifically alleged in the information.

It should be emphasized, however, that whenever the element of "without the consent" of the victim is alleged in the information, it is necessary to allege the applicable MEANS mentioned in Section 3 which are coercion, intimidation and threat, etc.; otherwise, the allegations of the information would not constitute the offense of trafficking.

22. As a matter of prosecution strategy, there is **no harm in alleging the element of “with or without the consent”** of the victim in every information for trafficking cases. The reason for this is that, if for instance, only the element of “without the consent” of the trafficked person is alleged, but during trial, what was proved was that the victim had in fact “consented” to the trafficking, the accused may invoke his right to be informed of or to know the nature of the offense charged. And to convict him of TIP on the basis of the evidence that the complainant had given his/her consent to the trafficking vis-à-vis an information that alleges lack of consent, would constitute a violation of his right. The court may thereafter acquit the accused in this situation to the prejudice of the trafficking victims.

However, if the information alleges both circumstances of “with or without consent” of the victim, then, in the case given above, the accused may still be convicted even if fraud, coercion, etc. are not proved, because the element of “with the consent” of the victim is alleged in the information.

23. The fifth element of trafficking, which is the commission of the offense **“across the national borders” should be alleged** in the information if the commission started in the Philippines and continued or ended up in another country. This is illustrated in a case of recruitment, ostensibly for overseas employment, but was in reality for the purpose of exploitation. The reason for the need to allege this element is that the prosecution may not be allowed to prove the elements that occurred across the national border, if such element is not alleged in the information.

24. If the offense of **trafficking is committed within the Philippines**, the information need not allege that the offense was committed “within the national borders;” it would merely be a surplusage.

25. There is also a need to focus on the prevention aspect of anti-trafficking initiatives. The **public must be made aware of the law.**

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