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국제학석사학위논문

**Human Trafficking and the Protection of Human
Rights:
Case of Mongolia**

인신매매와 인권보호: 몽골의 경우

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**Human Trafficking and the Protection of Human
Rights:
Case of Mongolia**

A thesis presented

By

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ABSTRACT

Human trafficking incidents are increasing every year around the world taking even more sophisticated forms that organized criminal groups have started to work actively creating a multinational network. This issue inevitably draws worldwide attention, and countries have acknowledged that they need to cooperate on international and regional levels for a common goal to prevent and abolish the crime of human trafficking, detect and convict the offenders and various multilateral measures have been taken in this framework.

Mongolia has undertaken the obligation in front of the world community to persistently fight against human trafficking by joining in the international treaties on human trafficking. As the country is considered as having high vulnerability to trafficking, works to detect, prevent, and abolish this crime have been conducted in the framework of state regulatory policy and certain measures were taken in the past several years. Social and economic problems, especially unemployment and poverty, are pressing current situations in Mongolia which prompt the motivations and aspirations of the citizens to live and study abroad leaving their country behind, and so are easily taken by the external and domestic bodies to be used negatively for their greedy purposes, such as making profits by trafficking them under name of an intermediating service including visa issuance, employment and marriage with foreigners. This criminal action is a serious conflict of human rights.

This negatively influences the safety of the country and the citizens and the number of incidents and victims increase continuously year by year; moreover, most of the victims tend to be vulnerable citizens, young girls, women and children.

Therefore, on this matter, the government should make and implement policies to strengthen social inspection over the law implementation, motivate community participation and support NGOs actively, not just drafting laws to control and decrease further damages and incidents of the crime.

This research work covers the issues of whether the national laws and legislation related to the human trafficking protect human rights or not, fight these crimes, and what mechanism is needed to make the implementation of these laws to be more effective.

Key words: Human trafficking, Mongolia, human right, international trafficking, domestic trafficking, government control

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Өчүүхэн надад энэгүй их хүч, урам хайрлаж, хайр энэрэлээрээ байнга тэтгэж байдаг хайрт аав Цогтоо ээж Адьяа, дүү Тулга болон амьдралын минь баяр баясгалан болсон хамгаас хайрт хүү Хангэрэл нартаа чин сэтгэлийн талархал илэрхийлье. Та бүхний сэтгэлийн дэм, хайрын хүчээр охин нь, эгч нь, ээж нь үргэлж зовхи өөдөө, сэтгэл тэнүүн явдаг.

ACRONYMS

| | |
|--------|--|
| GASR | General Authority of State Registration |
| GEC | Gender Equality Center |
| HRDC | Human Rights and Development Center |
| HSPSC | Human Security Policy Studies Center |
| ILO | International Labor Organization |
| MOU | Memorandum of Understanding |
| NGO | Non-Governmental Organization |
| NHRC | National Human Rights Commission |
| NLI | National Legal Institute |
| NUM | National University of Mongolia |
| OINFC | Office of Immigration, Naturalization, and Foreign Citizens of Mongolia |
| PRC | Peoples Republic of China |
| PTRC | Population Teaching and Research Center |
| SCM | Supreme Court of Mongolia |
| SCOM | Swiss Cooperation Office Mongolia |
| UN | United Nations |
| UNICEF | The United Nations Children’s Fund |
| USAID | United States Agency for International Development |

CHAPTER ONE

INTRODUCTION

1.1 Definition

Mankind has been privileged with special properties and power since its existence. As the human society developed steadily, the difference in power between individuals and groups increased with the result that some humans have been treated like animals and traded like property. Unfortunately, even today this concept has still not been demolished and young girls, women, children and adult men are still being trafficked as such.

Like every country in the world, Mongolia is also involved in human trafficking, as the scope of human trafficking of women has spread throughout the world. Human trafficking is the severest crime that enforces victims by infringing on their general human rights by trafficking them like a supply good.

A legal environment for protecting, rendering assistance, reviving reputations and rehabilitating victims and witnesses of this so-called “modern slavery” crime is currently missing in Mongolia.

The concept of human trafficking consists of trafficking victims from one place to another place for the purpose of violating and exploiting people and/or the trading of organs. Human trafficking is a crime that is carried out in an organized way with the trafficking and transferring of victims within a country or abroad and in which victims are violated and offensive actions done to them with the purpose of enrolling, supplying, intermediating, transporting, sheltering and transferring of these or other victims.

The incident of human trafficking is named “slavery” and is a big business like the marijuana, narcotics and arms trade which makes profits of tens of billions dollars without any utilization of raw materials or industrialization.¹

There are several arguments about when human trafficking could have started. Some say that the slave trade, in which Africans were captured by slave traders and shipped across the Atlantic to the Americas, was the first human trafficking. Others argue that the forced labor of children during the 1700s was the real beginning of what is now known as human trafficking. Human trafficking for sexual purposes was first legally recognized by the term “white slavery”. It was because there were European white women committing prostitution over Arabian and Eastern countries, which finally required special attention from the governments of European countries. At that time, the term “trafficking” stood for the immoral actions of women, such as the “migration of prostitution”². Therefore this should be noted about the current definition of human trafficking, which is now defined as the trading of humans.

Human traffickers use impermanent employees, in particular, young girls and women, as means of making profits by luring them into a trap by promising such things as high paid jobs in foreign countries and marriage with foreigners. In recent years, the existence of human trafficking has increased enormously and the tendency of the future will be a continuous increase in proportion to crimes.

Beforehand discussing about these issues, it is logical to identify firstly what is actually “trafficking in persons”. The UN Convention on the fight against organized transnational crime created a definition of human trafficking in a general form on the international stage for the first time.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime³ defines “Trafficking in persons” shall mean the

¹ B.Namsrai, Crime and Immunization, (Ulaanbaatar, 2006) p. 5.

² B.Batzorig, Human trafficking, (Ulaanbaatar, 2009) pp.7-9.

³ United Nations Treaty Collections, 25 December 2003, The Protocol to Prevent, Suppress and Punish

recruitment, transportation, transfer, harboring or receipt of persons, by means of threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Therefore common denominator of trafficking scenarios is the use of force, fraud, or coercion to exploit a person for profit.

1.2 Research Problem

The “Trafficking in Persons Report 2009” presentation by the US Department of State elaborates the risk of increased human trafficking in the following way: “This growing poverty is making more people vulnerable to both labor and sex trafficking, boosting the supply side of human trafficking all over the world. For example, the current economic crisis has led to revenue losses in countries like Mongolia due to crashing copper prices and high inflation and has reduced real incomes significantly, slowing investment, and most probably costing jobs. The resulting pressure on the public is likely to cause more young women to seek work away from home or abroad and a corresponding increase in the risk of trafficking.”⁴. The report classified 170 countries into 4 tiers⁵ in terms of the human trafficking situation and Mongolia has been in the tier 2 country since 2004.

Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, <http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en>.

⁴ U.S. Department of State, “Trafficking in Persons Report”, (Washington, D.C.:GPO, June 2009), p. 34.

⁵ See the list of tiers in Appendix 1.

The Mongolian economy is based primarily on livestock herding, agriculture and mining. Despite the growing economy, 35.2 percent of the population is living in poverty, and the unemployment rate stands at 9 percent⁶ while inflation is 11.1 percent⁷ as of February 2012.

Social and economic difficulties, especially unemployment and poverty, are pressing current situations in Mongolia which prompt the motivations and aspirations of the citizens to live and study abroad leaving their country behind, and so are easily taken by the external and domestic bodies to be used negatively for their greedy purposes, such as making profits by trafficking them under name of an intermediating service including visa issuance, employment and marriage with foreigners. This criminal action is a serious conflict of human rights.

This severely negatively influences the safety of the country and the citizens and the number of incidents and victims increase continuously year by year; moreover, most of the victims tend to be vulnerable citizens, young girls, women and children.

Therefore, on this matter, the government should make and implement policies to strengthen social inspection over the law implementation, motivate community participation and support NGOs actively, not just drafting laws to control and decrease further damages and incidents of the crime.

This research work covers the issues of whether the national laws and legislation related to the human trafficking protect human rights or not, fight these crimes, and what mechanism is needed to make the implementation of these laws to be more effective.

In order to elaborate on the research design and implementation of my research, I have divided the paper in five chapters.

⁶ World Bank, "Mongolia quarterly update (February 2012)" Washington D.C. The World Bank. <<http://www.worldbank.org/en/news/2012/02/28/mongolia-quarterly-economic-update-february-2012>>

⁷ Ibid., p. 5.

In chapter I of the thesis, I define human trafficking and introduce an overview and purpose of research on how this study has evolved. This part provides also brief outline of the methodological approaches used in the paper, highlighting, for example, documentary analysis and interview approaches.

Chapter II examines an overview of national case studies on trafficking of human beings in Mongolia. It also covers a brief history of combating human trafficking in Mongolia. Human trafficking is not a new type of crime; it was derived from ancient practices and the same is true for Mongolia. In order to solve the theoretical– legal pillar issues of combating human trafficking, it is necessary to determine the characteristic and causes of the phenomenon in chronological order. In the territory of Mongolia, cases of human trafficking in various forms were recorded from the Middle Ages, and some evidence has been found from archives and included in this research.

This thesis offers a complete understanding of key issues such as the characteristics and methods of human trafficking incidents, the identification of traffickers, and the current situation and future prospects, as well as the causes of human trafficking in Mongolia, which are described using real-life examples with specific conclusions.

In chapter III, I did an analysis on human trafficking from the point of human rights. My research mainly covers the status of human rights and the legal protection against human trafficking in Mongolia as well as at the international level. Also it shows the national response to deal with the crime of human trafficking in their society. In this chapter, an analysis on the selected provisions related to the crime of human trafficking has been made. Additionally, an analysis on the actions by the state organizations and NGOs in response to human trafficking has been made and public opinions and understanding about the incidents and response activities have been specifically reflected.

Chapter IV does an analysis on the combat activities against human trafficking in Mongolia. The analysis herein demonstrates a critical view of legal protection and mechanism of law and legislation, comments on activities by the government in response to human trafficking and does an evaluation on the activities by NGOs in the field. The results of the analysis show that an effective way to decrease incidents of the crime is to strengthen social inspection through creating active participation of the community.

Chapter V provides conclusions that were drawn on the basis of the thesis research.

1.3 Aim of the research

The aim of the research work is to identify the human trafficking level in Mongolia, in particular, negative consequences on the physical and emotional well-being of the citizens due to the crime, and social, economic and political reasons influencing it and raise potential methodologies to intercept those hindrances and make implementation of the law more effective. Within the framework of this aim, the following objectives are defined as;

- To get familiar with the historical and current conditions of human trafficking, identify the types, characteristics and methodologies of the criminal actions and detect the main factors of the incidents of the crime committed
- To research the statistics about the incidents of human trafficking and the activities taken in response to human trafficking by legal rights
- To research the main activities and community participation implemented by the State and International organizations and NGOs in response to human trafficking
- To complete an analysis on the aspects required to make the implementation of the laws related to human trafficking be effective

Research question

In order to narrow the focus of the research paper, I formulated the following question:

- Do Mongolian laws combat human trafficking and protect human rights?

1.4 Methodology

This part presents the research methodology employed by the thesis. There are several research methods that were used in this research which include the collecting of documentary evidence and interview approach.

Document analysis approach

This paper is a synthesis of documentary research conducted at various libraries, the state and coherence of legal documents, laws, international agreements, and conventions that regulate the crime of human trafficking were studied in addition to the getting conversant with archived documents. Archived documentary analysis was intended to document the history of human trafficking procedures in Mongolia more thoroughly than had been done in the previous analysis.

Interview approach

A number of interviews and meetings were conducted with professors, researchers, and employees of court, police, and legal organizations in an effort to get a clear understanding of the current situation of the human trafficking crime in Mongolia from aspects of legal and international relations. During my research, I interviewed some victims of human trafficking, Mongolian government officials, professors (National University of Mongolia), and several legal organizations' officers (court, police and prosecutor) and 6 NGO workers from 3 different organizations (Asia foundation, Mongolian Gender Equality Center, Swiss Agency for Development and Cooperation). I attended 3 forums about the issue of human

trafficking in Mongolia. I also participated in an international researcher`s meeting with the topic “National, regional and international experience in fighting against contemporary slavery” which was organized by the Ministry of Foreign Affairs of Mongolia on February 9, 2010. During the meeting, members of European security cooperation organization, Asian partners of the organization, representatives from other several international organizations and representatives of domestic agencies and departments participated and discussed and exchanged views and opinions about fighting against international crimes through transnational borders.

Additionally, I participated in the debate with the topic “Sexual exploitation and human trafficking” organized by the General Intelligence agency on September 9, 2011 involving representatives from international organizations for saving human rights and non-government organizations, expressed my views and opinions on the prevalence of human trafficking and migrations based on the research works and materials on these types of crimes and identified the activities to work on in cooperation under laws and legislation.

On June 13, 2012, I also participated in international research session with the topic “Pressing issues on the process of fighting against transnational organized crimes” held by the University of Domestic affairs. The research session involved over 150 participants including 140 representatives from 70 organizations and 10 representatives from five foreign countries. The main objective of the session was to study international methods and practices of fighting against transnational organized crimes, strengthen partnerships and identify government actions in response to these types of crimes, and their management and strategy of technical development and state policies.

CHAPTER TWO

OVERVIEW OF HUMAN TRAFFICKING IN MONGOLIA

2.1 Historical background

It is considered by scholars that the crime of human trafficking has evolved since the formation of human societies and has taken place during all phases of history. Even though significant time has passed since the human rights have been accepted and the policies of world countries were directed towards the purpose of creating the most favorable conditions to protect human beings, the crime of human trafficking has been expanding regardless of borders.

The crime of human trafficking is undoubtedly a negative multilateral social phenomenon. Thus, in order to resolve the theoretical-legal pillar issues of combating this crime, it is necessary to discover the characteristics, causes, and conditions of this phenomenon comprehensively with respect to chronological concerns.

It is said that the crime of human trafficking was committed in the territory of Mongolia since the time of the middle age and proofs were recorded in historical evidences. Slavery and bond service, however not in its classic form as that of ancient Greece and Roman Empire, existed in the territory of Mongolia for centuries. It was mentioned in an archive document that there were 157 slaves as of 1747 and 42 slaves as of 1855 registered in the book of the Tusheet Van district of Tusheet Khan Province⁸. The forms of slavery included humans sentenced to become a slave, trading oneself as a slave, or sold as a slave, enslaved as prisoners during wartime, or given as a wedding present to a royal family etc. One had to get permission from the local administration in the case where an individual wants to sell himself as a

⁶ State History Archive of Mongolia, M-17-1-67, p. 202.

slave to a family as a result of losing all his properties and animals and having no other way to survive⁹.

It is clearly seen from the sources of codes and legislative documents that trafficking of Mongol women across border increased extensively during the Manchu rule. During the second half of the 19th century, human trafficking crimes in the form of forced prostitution and making women home servants under the curtain of fake marriages were so widely spread that it was legislated that a Chinese citizen cannot marry a Mongolian woman; if a violation of this rule was found, the girl was returned to her parents' home. The Chinese national who was found guilty was punished by being chained for three months, whipped a hundred times, and sent back to China. Furthermore, the nobleman who had control over the guilty person was fined 27 livestock, and 6 months of remuneration was withheld according to local codes, but in case the nobleman found the offence himself, he was excused from penalty.

Despite the rigid codes of the Manchu, the crime of trafficking in persons continued to occur. For instance, in the last month of Autumn of the year tiger in the 15th zharan (60 years as one zharan) a merchant man nicknamed "Beard" Sonom sold his slave Tsevel with her 8 year old daughter Uzmeel to a man named "Tsoohor" Deng, the vice president of a Chinese firm for 1.12 kg of gold and 3.72 kg of silver by deceiving the mother and daughter saying that he would take them to the main altar of Vangiin khuree and show them the artificial mountain "Divaaajin". Later Tsevel told her painful story to Avir, a bookkeeper of trade caravan from Janchkhuu¹⁰.

This kind of human trafficking crime continued to occur until the early 20th century. In 1911, with the victory of National freedom revolution, Mongolia

⁹ B.Bayarsaikhan, Mongol Codes /comparative study/ (UB, 2001), pp.94-95.

¹⁰ B.Batzorig, ed, The Crime of Human Trafficking, /Handbook/, (UB, 2009), p. 8.

achieved its independence and reorganized the state administration, and started to implement policies to unite the Mongols in the territory of Mongolia.¹¹

In 1921, following the victory of the People's revolution, the People's Government was formed, and a series of actions to eliminate bond service relations were taken. The First State Great Khural that assembled in November 1921 adopted the Constitution of Mongolia and declared the sovereignty of the People's Republic of Mongolia. Since that time, Mongolia existed with a socialist regime for 70 years. On October 31, 1968 Mongolia ratified the "Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery".¹²

The collapse of the socialist regime did not pass over the People's Republic of Mongolia and the Democratic Revolution that took place in 1990 started the intensive political and economic reform in Mongolia. The transition from a socialist style centrally planned economy to a market economy was followed by various positive and negative outcomes.

The socio-economic crisis that overwhelmed Mongolia in the years from 1990 to 2000 provoked a population movement from the countryside to the cities and soon there was a population imbalance in the capital city as well other towns. This is the exact time when organized prostitution, or pimping, started taking place implicitly and explicitly "prostitute" almost became a profession. Since that time, young girls and women have become the victims of trafficking crimes in large numbers and the majority of prostitutes choose hotels and surrounding areas, bars and clubs, saunas and public spots as their "work field". According to police data, around 1000 prostitutes were arrested accused of prostitution in 1997, among which were 200-250 girls under the age of 18¹³.

¹¹ Ibid., p. 12.

¹² Ibid., p. 12.

¹³ Asia Foundation and CHRDR, Combating human trafficking in Mongolia and its approaches /research report/ (UB, 2005), p. 37.

As prostitution was explicitly transforming into an organized mechanism reaching young girls and students, conventional law¹⁴ was enacted, and the Criminal Code of Mongolia¹⁵ was amended and legislating the criminal of this crime to be sentenced up to 8 years with Clause 111, “Prostitution and Organizing Prostitution”, and Clause 111, “Enrolment by means of deception”.

In the new Criminal Code enacted on September 1 2002, Article 113 “Buying and selling of a human being” was inserted. The clause introduced to punish the new form of crime was not particularly appropriate; only 2 cases passed judgment in 6 years according to this code.¹⁶ Therefore, certain changes were made in the legal environment by amending the clause 113 of the Criminal code in coherence with the Palermo Protocol on February 1, 2008, and on March 26 of the same year, an explanation of this clause was made by resolution 26 of the State Supreme Court.

In addition, on May 16, 2008, the Parliament ratified the United Nations Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime.

In January, 2012 the Law on Fighting Against Human Trafficking was approved by the Parliament and is under implementation in Mongolia for the first time as result of a project conducted by NGOs. The main objective of the law is to protect the victims of the human trafficking crime, give social services, conduct prevention activities, and give court service and legal assistance.

2.2 Characteristics of human trafficking incidents

When human trafficking occurs in Mongolia, several other types of Criminal Law offense are often engaged that include forming and/or joining a criminal group; forging, stealing, hiding of identity documents; kidnapping, drugging and

¹⁴ “Mongolia Adultery and Fortification Act”, State Information, No. 12 (June, 1998): 25

¹⁵ “Mongolia Criminal Law Amendment Act”, State Information, No. 8 (April 1996): 12

¹⁶ B.Batzorig, ed, Overview of Human Trafficking in Mongolia (UB, 2010), p. 13.

transporting people abroad as well as forcing people into prostitution, begging and other types of exploitation. However, the investigation of human trafficking does not often take these types of offense into consideration¹⁷.

The Research Center of the Supreme Court of Mongolia conducted an extensive research on the subject of prostitution and sexual exploitation.

1. Identities of victims and criminals

According to the survey conducted of the victims of the above types of crime: In 2011, 35 human trafficking cases were sentenced by the court involving 112 victims. The classifications of the age of victims are as below;

There were 5 victims aged 16-18, 92 victims aged 18-22 and 15 victims aged over 22. 86% of the victims were aged 16-22 and 14% aged over 22, which shows that the victims of the crime are generally female youth. There were no records of any man being victimized. Additionally, the main factor of being victims of the crime is not having any personal formation, insecurity of individualism, being easily deceived and prior experience in prostitution.

Another fact is that it becomes difficult to detect victims and their legal caregivers due to the absence of an identification card of the victims or their families or any other registration and records about them, no particular registration of the address and no migration information, resulting that the whole investigation duration is prolonged and victims are not identified.

As of 2012, the survey on the number of criminals of human trafficking shows that out of 37 criminals, 65% -24 were female criminals and 35%-male criminals, with age of 19-30, 9 criminals, 18 criminals aged 31-35 and 18 criminals aged over 36. As for their education, higher education holders 8, incomplete secondary - 4, complete secondary - 16, basic education – 7 and primary education -2 including non-education holders – 19 and foreigners – 3.

¹⁷ Research Center of SCM, [Punishment of Human trafficking /research result/](#), (UB, 2009), p. 18.

2. Identity of geographical boundary

The geographical identity of human trafficking incidents is classified into two conditions as international and domestic trafficking which both exist in Mongolia.

A. International trafficking

Human trafficking has the feature that it circulates in several areas in the country or covers several borders of different countries in international and conventional cases. It has been observed from practical activities during case recording and the investigation process that the crimes are not just cases that can be solved by only one country. To fight against it, attempt to intercept it and conduct prevention activities, the neighboring countries help is needed. In addition to this, the two neighbor countries of Mongolia are at the center of international attention by their human trafficking incidents, narcotic drugging consumption and trafficking and other new types of crime.

The research on the incidents of human trafficking proves that about 90% of the crime is committed in foreign countries. International human trafficking is committed generally by attempts of various types of trafficking in persons including prostitution, marriage by mediation, enforced labor, child adoption and harvesting of organs. Here is a list of ways people were trafficked in the following countries;

Eliau, the border of China and Mongolia: Eliau is a large border town on the Mongolia-China border where Mongolian citizens often travel to peddle and import equipment for small- and medium-size enterprises.

Police officers, as well as women who commit prostitution and some peddlers around the border area in Zamyn-Uud reported that there are three streets in Eliau that organize prostitution.¹⁸ Moreover, during the investigation, it was revealed that

¹⁸ N.Bayasgalanbat, S.Gantulga and B.Erdenebileg, Research paper on the condition of Mongolian women committed with prostitution in Eliau, their movement, (UB, 2009), p. 8.

there are a large number of places such as night clubs, restaurant, bars, and saunas that enable prostitution by providing transportation, shelter, and other supplies.

When the victims' visa to China expires, it is common for owners of the house of prostitution to send back the victims to their home countries with little money apart from the transportation expense after having exploited the victims for prostitution. However, some of the victim girls and women see prostitution as an easy way of making money so they return to these red streets or go to other cities in China to continue prostituting after having their visa extended at the border post. Furthermore, the award of CNY 5000 given for bringing more girls to the house of prostitution becomes an incentive for a further rise in human trafficking.

According to NGOs, about 300 Mongolian women work as prostitutes in Elia¹⁹.

Beijing and other Chinese cities: Beijing city is center of trafficking and purchasing prostitutes for enforced labor in bars, saunas and night clubs and the central spot to transfer victims to other cities and countries. Currently, there is no specific survey on how many women and prostitutes have been victims of human trafficking and hostage prostitution.

After bringing victims to Beijing, traffickers usually send the girls to Inner Mongolia, Macau or to other regions of China in order to force them into prostitution in bars, saunas, houses of prostitution, massage centers or karaoke bars. The dealers and recruiters return after selling the girls; the victims are under pressure due to the complicated situation that arose because of having their passports taken, not knowing the local language, and lack of money and are forced into prostitution.

¹⁹Ibid., p. 12.

Hong Kong: The girls from Mongolia living in Hong Kong prostitute in streets or night clubs. After the case of Mongolian girl jumping off skyscraper Hong Kong authorities tightened up the documentation checks. According to survey participants, the border authorities checked on women entering Hong Kong and introduced a new stamp on passports of visitors who stayed longer than the allowed duration (14 days without visa) and if found in breach of visa, corresponding measures were taken to force them leave the country and not let them re-enter. Related to this, the number of victims in Macau and Beijing has decreased significantly²⁰.

Macau: Most of the girls in Macau work in saunas. They usually wear transparent tops or gowns so that their lingerie can be seen and perform in front of the audience. They dance in front of customers, and the customers choose from the girls. Every person has her own number for the customers' choice convenience. They spend time with the customer in the sauna or pool and provide every service the customer wishes in a special room. Saunas and massage places in Macau have preset rooms so that they do not need to go out of place. VIP rooms are designed for sex services.

According to GEC research, there are an estimated 500 Mongolian sex workers in Macau, and the majority of them are working under duress.

South Korea: Of all the marriages between Mongolian women and foreigners, over 65% are with citizens from South Korea.²¹ Some Mongolian women are trafficked to South Korea for sexual exploitation and enforced labor under brokered marriages.²²

²⁰ Interview with Ts.Sukhbaatar, Mongolia Ambassador in China, Embassy of Mongolia, Beijing, China, 12 June 2012.

²¹ D.Tuya, "Forever goodbye, I'll go foreign country, dear", Today Mongolia, 22 January 2012.

²² Trafficking in Persons Report, 2012 ed., s. v. "U.S. Department of State"

Although the family is created on the basis of their interests, the main purpose of the girls and women who are migrating to Korea for marriage is for financial interests²³.

B. Domestic trafficking

Not only abroad, but also in their own country, Mongolian men, women and children fall into the hands of traffickers. Examples of forced labor or services, slavery or practices similar to slavery among under-aged children can be seen in Mongolia quite often especially in the construction, mining and manufacturing areas. Trafficking in children for the purpose of sex exploitation has been seen more often lately within the country by creating criminal channels. Women and girls are being pushed into prostitution. An example of domestic trafficking in girls and women as a commodity is the case heard in court on 24th of June, 2009 involving 7 suspects²⁴. The primary court convicted these suspects for the crime of holding 13 women under control, forcing them into prostitution, and selling 5 women as commodities for profit. In accordance with the record, the center of domestic trafficking has been Ulaanbaatar, the capital city of Mongolia.

2.3 Methods of committing the crime of human trafficking

The following specifics are the main methods of human trafficking incidents today.

Sexual Exploitation: Mongolian Gender Equality Center published statistics²⁵ that show the number of people who became victims of sexual exploitation was: 11 in 2006, 42 in 2007, 27 in 2008, 51 in 2009, and 81 in 2010. The number of victims who could get help rose by 89% in 2009 as compared to the previous year. Victims

²³ World Vision and UNICEF, "Human Trafficking and Sexual Exploitation of Mongolian Girls and Women" Survey-Summary report

²⁴ P.Oyunchimeg, NHRC, Human trafficking and the protection of victims, (UB, 2010), p. 7.

²⁵ B.Tuul, "Anyone can become object of human trafficking", Daily News, 23 April 2010, sec. A.p. 3.

go through various processes, transported from people to people and agent to agent until they reach the end of the cycle and start being exploited. Not all cases necessarily involve violence or kidnapping, though many involve convincing, cheating and misleading.

Criminals often target women of the age between 18-25 from families that are usually suffering from domestic violence and poverty, so there would not be much searching or pursuing after their lost family member. 96 percent of the victims had been given wrong information before agreeing to go abroad about the jobs that they expected to have.²⁶

Sexual Exploitation of Children: Provision 115 of the Criminal law of Mongolia states: “Persuading or enforcing children into use of alcohol, drugs, begging and prostitution is a criminal offense punishable by law”. Questionably, no case of this type has reached the court level yet. The legal impracticality is likely the cause.

In Ulaanbaatar, there were approximately 43 children found to be sexually exploited, youngest of them being 13 years old. Most of the people who exploit children sexually happen to have been prostituted themselves. 40 percent of the girls who are forced into prostitution are treated badly, and 18.4 percent of them are even tortured or beaten up regularly. Victims who break free somehow or do not cooperate most certainly get inferior treatment and get pursued by criminal gangs²⁷.

Enforced Labor: Statistics on the number of victims of enforced labor or labor exploitation: 3 from 2003-2006, 41 in 2007, 22 in 2008, 28 in 2009 and 4 in 2010 (the number of people who approached the Mongolian Gender Equality Center for help). Not only women are victims of this crime, but men also get exploited. Labor agencies persuade individuals into working in countries such as South Korea, Czech,

²⁶ Ibid., p. 3.

²⁷ GEC, Survey, Research on sexually exploited and prostitute children, (UB, 2010), p. 12.

Turkey and Kazakhstan, and exploit their labor at an extremely low wage. However, no case has been heard in court to date.

Young children, mostly boys are captured if they have less parental attention, sent abroad using forged travel documents and end up getting forced into stealing. Several cases of this exploitation have been registered since 2002, with example of the 2 boys who approached Mongolian Consulate in Elian, China²⁸.

Women who are exploited for labor are in most cases sexually harassed and exploited. It is noted that labor exploitation is on the rise, and in the country the most common ways to exploit are the absence of contracts, not confirming employment after probation in order to exploit that time, or paying extremely low wages etc. As for the cases outside the country, it is often conducted by way of cheating and giving the false hope of having a highly paid job.

Labor exploitation is an extremely difficult crime to identify, investigate and quantify the damage, in comparison to sexual exploitation. Slavery, exploiting against debt, forcing into begging are the different types of this crime.

Marriage by Mediation: In the Marriage law of Mongolia, it legalizes the right of a citizen aged 18 to get married with a foreign citizen. However it did not cover any concept of marriage by mediation when approving the law. Nevertheless, as a result of the marriage by mediation, Mongolian women get opportunities to experience better lives by having spouses, but their rights and interests are still insecure and violated. In other words, it is related to the fact that there is nothing special in the legislation for the relationships of marriage with mediation in the case of any violation and conflict of duties and rights of the parties. Ironically, the Marriage law of South Korea allows marriage by mediation. This conflict of the laws of the two countries damages the interests of Mongolian brides working and living in South Korea.

²⁸ Government of Mongolia, First Report of Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (UB, May 2007), p. 21.

Women migrating to South Korea through marriage by mediation have lived well by getting married to good people, but it is observed that some of them are occasionally subject to human trafficking.

Once the matching of the couple is agreed, and they have met, a request to register the marriage is submitted to the General Authority for State Registration. Once the marriage is officially registered, the foreigner would go back to his/her home country and send back a visa invitation and other necessary documents, e.g. proof of inclusion of the bride in their family tree etc. Based on the documents and invitation, the visa would be issued, and the bride would leave Mongolia to their spouse's home country.

Case 1.

I met my husband at an agency. I realized after I came here that everything they said and promised was not true. Now I live with him and his father. My husband is mentally ill, and I am forced to have sex with his father. I am scared of these people, and my intention is to escape.

B, age 24, South Korea, Seoul

In many occasions, these agents forge the necessary documents, and that is apparent from the home and work address, the date of issuance of the police certificate etc. One of the contributing factors is that once the documents are ready, the marriage is registered in as quickly as one day.

In most of the cases, the victims have no choice but to agree to the terms and conditions of the marriage contract and consequently suffer from constant abuse.²⁹

The number of Mongolian citizen who married or divorced foreign nationals³⁰

²⁹ G.Ganbayasgakh, GEC, Human trafficking and Victim Protection, (UB, 2010), p. 18.

Table 1.

| Year | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|----------|------|------|------|------|------|------|------|------|------|------|
| marriage | 185 | 287 | 530 | 679 | 697 | 821 | 976 | 780 | 533 | 526 |
| divorce | 7 | 4 | 8 | 18 | 39 | 58 | 86 | 105 | 60 | 82 |

Source: Appendix to the official document with ref number 3/2501 of the General Registration Office

Adoption: Child adoption is for the rights of children and their well-being. It is a virtue favorable for parents without the ability to raise their children, orphan children and foreign citizens without children. Despite the facts that there are many children adopted by good families and living happily, it is concerning that there are some children suffering heavy labor and organ trafficking, and it is a concern that these cases have still not been included in the official surveys and reports.

Mongolian children are adopted through 2 organizations to countries abroad which are the Office of Immigration, Naturalization, and Foreign Citizens of Mongolia (OINFC) and the General Authority for State Registration (GASR). Since 1998, 218 children were adopted to citizens from 13 different countries through OINFC and, GASR statistics as of September 2010 affirms that 252 children were adopted to citizens of 21 countries. According to the Civil Rights Act and Family Law, the fact that two different organizations have authority over the decision of adoption can dilute supervision on adoption issues.

The connection between adoption and children trafficking still raises considerable controversy. The example of orphanages changing the name of

³⁰ B.Batzorig, ed, Overview of Human Trafficking in Mongolia (UB, 2010), p. 10.

children under their care indicates that a human trafficking channel may have already opened up under the name of adoption.

Stages

Incidents of the human trafficking are committed in various ways, but the three main stages are as follows;

Recruitment: Recruitment is any act, by means of threat or use of force or other forms of coercion, of abduction, fraud and deception, the abuse of power or of a position of vulnerability that is intended for human trafficking. In addition to making others join in human trafficking, any victim who has no capacity to protect himself or is abused by an empowered party to engage in human trafficking is also considered as recruitment³¹.

Human trafficking is a lucrative business. Mongolian dealers (the recruiters) get in touch and collaborate with a person or crew who deals with this business; then the person or group visits Mongolia to select the girls meeting the requirements set by partners. After this, the dealer transfers the girls abroad and gets paid. The recruiters are usually Mongolian pimps and play an important role in the trafficking by deceiving the victims.

Recruiting is done by deceiving and promising lies or fictitious information about the place and the job through media or personal networking.

Example 1.

Recruiting tall and good-looking girls as a massagist in a sauna.

Tel: 9909-9581

“Zarmedee” newspaper, 2010, №168

³¹ SCM, 12th protocol, 26 March 2008

Example 2.

Hiring self-confident, over 17 years old girls in a decent job.

Can be student.

Tel: 9923-2127

“Shuurhai zar” newspaper, 2011, №12

The dealers earn the trust of victims by promising highly paid jobs and pleasant living conditions or by paying the travel cost; however, after reaching the destination they take the passport and documents of the victims and withhold money for food and basic needs. Traffickers insist the victims do prostitution or hard labor; and the girls, having no money, are forced to accept the undesired jobs³².

Case 2.

It was my first year of university. One day after my class when I was walking with my girlfriend, a woman approached us and asked whether we do modeling and told us “...I’m taking some girls for a modeling competition abroad. Successful participants can stay there and can work as a model besides studying. There are many Mongolian girls modeling in Singapore”. She met my parents, showed us many pictures, and gained our trust. After arriving in Beijing, we took a train and then a ferry. As I had never been abroad and do not speak a foreign language, I realized where I was only after reaching the destination.

Macau, Mongolian girl, 20 years old

Those dealers are usually former victims of trafficking or middle aged women. They usually pay about 85 percent of the transportation cost and make an agreement to have it paid back once the victim starts working and earning money. They also

³² G.Ganbayasgakh, Human trafficking and the protection of victims, (UB, 2010), p. 20.

help with the preparation of passports and documentation. Basically, the victim becomes “live collateral” for dealers and they get paid for transporting the girls to their partners. This promotes the incentive for dealers to bring as many girls as possible in order to earn more money.

More than half of the victims were pimped by friends or acquaintances to a foreign country. This is related to the disrespectful and inhumane hearts of these women who dare to destroy the sacred close friendship as well as the respect and trust. They trade faith ignorantly putting others in the painful position which they went through once. The emotional suffering leads most of the victims to become cruel, and they lose their positive feelings, such as loving others and helping people.

Transporting victims: When a person, being aware that human trafficking is under way, transports the victims by any means of transportation implicitly or explicitly from one destination to another, or any assistance for that action, is considered as Transportation³³.

Depending on the destination, traffickers use a variety of transportation. As a majority of victims in Mongolia (37.8%) are sold to China, a train is widely used³⁴. To transport victims to countries other than China, airplanes are the most common way. Moreover, there are cases where victims were transported by airplane, train, ship, and even buses with financial support from the dealers.

Once they reach the destination, victims realize they were deceived and show opposition, unfortunately it is usually too late as the dealers have already taken their passports and other documents, besides due to travel expenses, the victims are already in debt of up to \$1000, so they have no choice but to accept whatever deal was made between dealer and the buyer. After paying their debt by prostituting, they try to save some money and send it to their families as their original intention was to make money while studying and they had told so to their parents. However, usually

³³ SCM, 12th protocol, 26 March 2008

³⁴ B.Batzorig, ed, Overview of Human Trafficking in Mongolia (UB, 2010), p. 20.

by this time their visa has expired, and they cannot go back to Mongolia. As mentioned before, the passports and related documents were taken by the traffickers when the victims were being transported. In practices in Mongolia, usually dealers transport the victims themselves.

Receipting victims: As for incidents of human trafficking crimes investigated by the police agency, it has been observed that the crimes are committed in active network following the physical deployments in external areas especially Elian, Beijing, Macau and Hong-Kong. Most of the victims of human trafficking have been detected in Elian and Beijing cities having undergone sexual exploitation which are proved by the evidences of the investigation and surveys by NGOs including that the crimes committed in abovementioned cities, in further, trafficking into the cities of PRC, South Korea and Russia.

As for domestic trafficking, the crimes are committed in a district trafficked to another district in Ulaanbaatar city where family members and other relatives do not know the location, hidden places for incidents.

2.4 Identifying influencing factors in trafficking

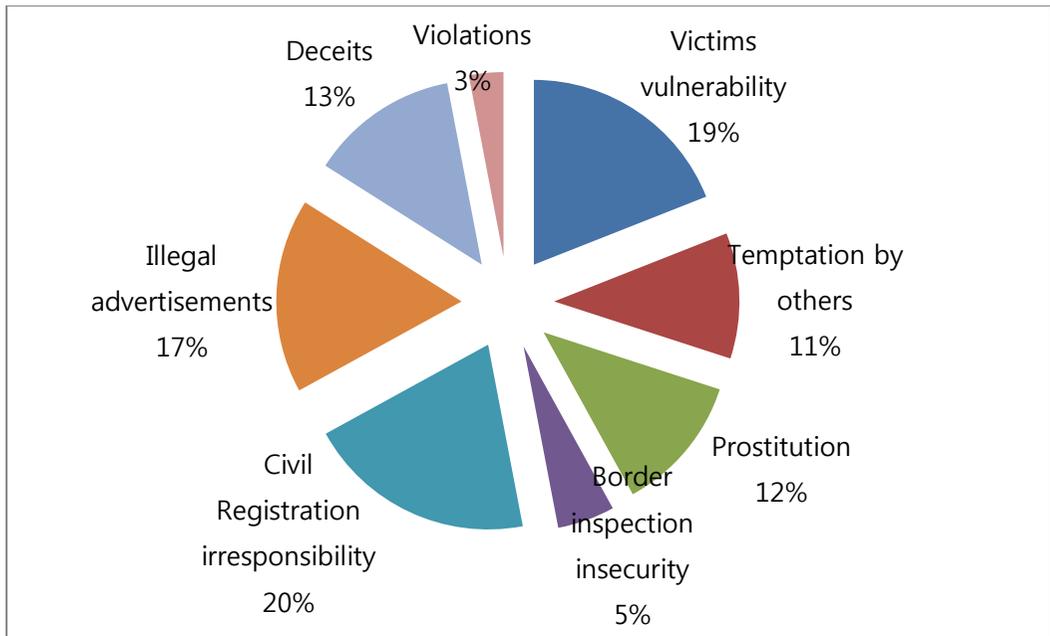
The basic causes for these kinds of crime include a lack of social and political formation, poor economic development, deficiency in the reduction of the unemployment and poverty rates, growth of women`s prostitution, regular flow of manpower due to individual interests of living and working abroad resulting the cases of illegal visas and passports, growth of marriage with foreign citizens, as well as no maturity of the legal environment managing abovementioned relations and no proper punishments and sentences imposed on the criminals.

I agree with the fact from the report of the National Law Institute in 2009 that it is necessary to avoid mentioning as general factors, not “specific” reasons of criminal cases as poverty, unemployment and social situations. The Research Center

of the State Supreme Court raises the main factors of the crime based on a survey conducted on victims as follows;

Favorable conditions to human trafficking³⁵

Graphic 1.



Source: NLI, GEC, *Resolution of human trafficking cases. Survey report.*

The Civil Registration Service, on the matter of issuing identification, services malfunctioned because they were without proper supervision and issuing identification through acquaintances to the customers.

- For example, there are some cases that the birth certifications, civil identification passports and foreign passports are issued to the people other than the owners. This proves that there chains of acquaintances and illegal activities within the Civil Registration. It has been detected that human trafficking criminals take

³⁵NLI and GEC, Resolution of human trafficking cases, Survey report. (UB, 2009), p. 5.

advantage of victims not having any proper identification and use it as a main tool to transport them abroad.

Illegal advertisements: The main reasons and incentive conditions to recruit the victims of human trafficking are the unregulated advertisements and disadvantage of victims (for example, looking for jobs). “Jobs abroad with high pay” is a strong incentive to victims and gives a high potential to be deceived. In other words, illegal advertisements and uncertain information is not properly inspected and security activities and the criminals are not deterred by any laws.

For instance, it has been proven that one of 5 women that become victims of human trafficking are recruited by advertisements³⁶ saying “Mediation service for high paid jobs recruiting tall and attractive girls under 25”.

As of 2012, there were 126 daily newspapers and 113 TV channels (of these, national media -16%, Ulaanbaatar city- 39% and the rest in rural areas)³⁷ There are 72 radio channels in Mongolia; Ulaanbaatar city -26 and rural areas- 45.³⁸

The survey detected that TV and radio channels and newspapers do not inspect and are not responsibility for advertisements because of the profit they make from them.³⁹

TV chat: A tool making profits for the Mongolian television channels is the TV CHAT. TV CHAT advertises many services related to human trafficking and pornography no matter if it is day or night. Television channels post a notice on the broadcast that the organizations giving advertisements are to be liable for its reality, which is saying they are not liable regarding the advertisements they show on the programs.

³⁶ World Vision and UNICEF, “Human Trafficking and Sexual Exploitation of Girls and Women” survey-Summary Report, (UB, 2005), p12.

³⁷ E.Khurelbaatar “Meeting of Mongolian and Chinese Press”, Social Mirror, (UB, 2012), p. 4.

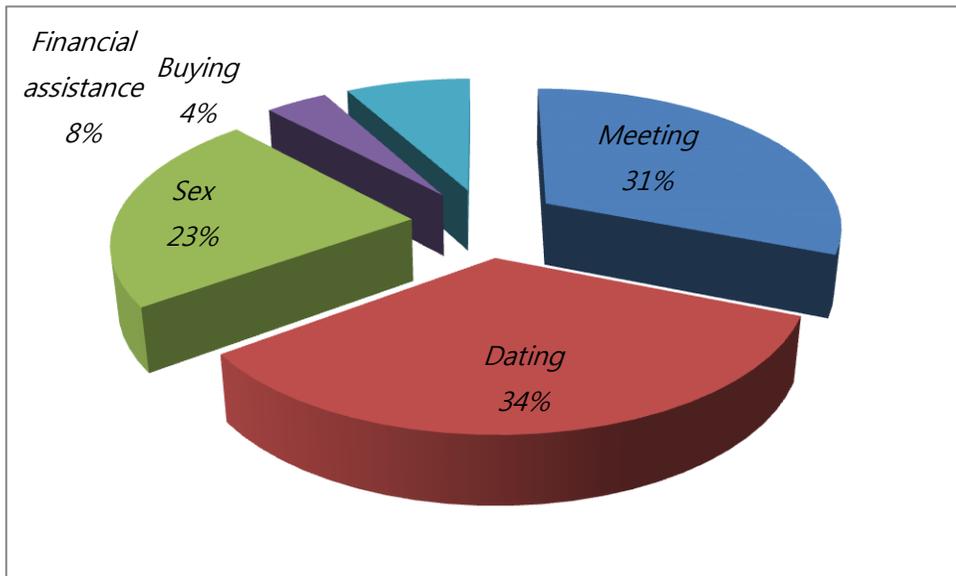
³⁸ Ibid., p. 4.

³⁹ HSPSC and NLI, Report of the survey on advertisement influence on human trafficking, (UB, 2009), p. 12.

It is obvious the channels earning several million tugriks (Mongolian national currency) from TV chats do not want to lose this financial resource, so they accept “broadcasting” messages provoking crimes in society such as calling for illegal activities, advertising pornography and tempting people into prostitution⁴⁰.

Contents of chat messages on TM and TV8 channel⁴¹

Graphic 2.



Source: Human Rights and Development Center

The press and media which are regular and active in the TV market in Mongolia consist of about 15 television channels. As of the first half of 2011, there were 24 television channels and 9 pay television channels officially registered with the Ministry of Law and Internal Affairs. Currently, we have 241 means of press and media including newspaper-144, magazines-36, radio-27, television channels-24, pay channels-9 and agency-1.

⁴⁰ HRDC, Legal Analysis in legal environment for advertising, (UB, 2007), p. 5.

⁴¹Ibid., p. 6.

According to a survey, the fact that some texts' format changed frequently and were sent many times raises predictions about human trafficking cases hidden behind them.

Deceived by others and violated victims: The ways victims of human trafficking cases are commonly recruited are through violation and deception according to the records of criminal cases⁴². The records demonstrate that the suspects and criminals for these kinds of crimes were themselves victims once before. The victims of sexual exploitation in a foreign country deceive others and bring them to be the next victims to get rid of their "bosses", and then these new victims are violated and provoked to be prostitutes, which is detected by the statements and reports by the victims and witnesses.

Prostitution: According to a survey, prostitute girls have a high probability of being the victims of human trafficking.⁴³ A survey conducted among prostitutes under 25 shows that they willingly accept offers to work abroad.⁴⁴ 16.5% of participants in the survey said that they have already had undergone human trafficking somehow and were sold by Mongolian mediators, close friends, relatives, foreigner and other customers into trafficking. Additionally, 67% of them had offers to find other girls and women for their employers.

Neglected children: The children are at risk to be exploited more than adults. According to statistics, there were 227 children who ran away from their homes and were neglected by their parents over a year, 198 children neglected by their parents, wandering streets, but had not run away from their homes and 90 children under risk

⁴² B.Batzorig, ed, Overview of human trafficking in Mongolia, (UB, 2010), p. 44.

⁴³ GEC, PTRC at NUM, and ILO, Risks of children and young people working in the service sector in some towns and border checkpoints to fall victims of labor and sexual exploitation, study of women, engaged in prostitution outside the service sector, (UB, 2005), p. 34.

⁴⁴ Asian Foundation and GEC, Trafficking in Mongolia: risks, vulnerability, harms. Asian foundation, (UB, 2006), p. 15.

of running away from their homes due to family violations, such as poor drunken parents.

Young children are trafficked for the purpose of exploitation such as begging in streets, harvesting of organs and forced labor. Unfortunately, there is no information or statistical record about the children related to these types of crime. It is only by word of mouth and crimes are committed in hidden ways.

Case 3.

We are 7 of us in our drain tunnel. Our leader was 14 years old. It has been 2 years since we last seen our leader after he was was taken by Chinese person and put in fancy clothes. After several days after he took our leader, we saw him and asked about our leader, but he pretended he did not know anything and just ran away from us. We heard from other group that they saw our leader take a train to China with two Chinese people...

“Daily news” newspaper

2011.06.14

CHAPTER THREE
**TRAFFICKING OF HUMAN BEINGS FROM A
HUMAN RIGHTS PERSPECTIVE**

3.1 Human Rights Analysis of Trafficking

An agreement on human rights becomes effective only once a country joins it and becomes a signatory of the agreement. The country thereafter is obliged to reflect the provisions of the agreement into their laws and legislation. In accordance with the agreement, the government takes responsibility to make it effective. The agreement of human rights is an official written document that is formally authorized by the signatures of the ruling officials of the country.

On the other side, although national laws are all written down, they are still a collection of law provisions and articles. However those written laws should actually be effective in real life. However, it seems that the written laws just reflect human rights but they are not realized in life.

There is no justification for the government to say it has completed all its obligations of exercising human rights just by uniting into the agreement for human rights and approving it with signatures. However it is the most essential to exercise those principles as a defense of human rights. Furthermore, the effectiveness of human rights is not just a matter of approved laws and legislations, but a matter of perception through the minds of the general public. Particularly, it lies more with the criminal laws and its procession.

The government limits certain opportunities of invading general human rights, in particularly; inviolable rights, privacy and freedom are limited on behalf of laws. The head in charge of implementing this power is the police agency. As long as all personnel and officials within framework of criminal process respect human rights consistently and admire its principles with sincerity in their minds and considerations, then it becomes a priority as lawyers for protecting human rights and

preventing any conflicts against it.

The latest action taken by the international association on issues for fighting against human trafficking is the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children from these types of crimes.

However this UN protocol is not sufficient to cover the general concept of human trafficking on the international stage in spite of its attempt to intercept human trafficking in intensive ways. Notwithstanding the abovementioned issues, the human trafficking has the ability to change into another social difficulty depending on economic development of the country. According to what was described in the UN protocol, the definition of human trafficking interprets the meaning as the trafficking of humans in ways of enforcing, deceiving, luring victims by inappropriate usage of the ruling power.

The exploitation is described in a quite wide range including forcing humans to prostitution, sexual exploitation, unwanted labor, service, slavery and illegal transplantation, which all require response activities such as sentencing human traffickers, protecting victims and enabling opportunities of temporary citizenship and civilization. Briefly, the primary action in response to human trafficking is to consider it as a severe crime, resting the issues of enabling citizenships of victims and taking protective actions to be executed domestically by the country through its legal regulations and common sense.

3.2 Human Rights Framework and Trafficking

Although the term “Human trafficking” is new, the scope of it is not limited. Human mutation happened in ancient times. Dennis Altman raises a concept that the change of the human gender was followed by social revolution and industrialization. Under the framework of public views and opinions, the perspective of human trafficking has significant importance of Altman`s concept.

The migration of millions of people in search of economic prosperity escaping civil wars and environmental changes demolishes the margins and borders of this globalized world. In relation to the abovementioned migration's influence on the international economy, the existence of the human trafficking is explained by the social-economic changes derived from globalization.

At the international legal level, human trafficking has been a public topic for over 100 years. As for the USA, it has a long history ranging from Spanish dominance to the repression by European colonists of native inhabitants. It was popular even during the 19th century, the golden generation of the Revolution of Industrialization to transport Japanese, Chinese and Korean women for organized marriages and also some international projects such as the Panama channel were considered as they significantly influenced incidents of trafficking women and forcing them into prostitution.

The first international legal tool for protecting human rights and addressing human trafficking was the prohibiting of the trafficking of white women, which was developed by the National League in 1904. Following this, the International Convention put in place a prohibition of the trafficking of white women. The negotiation in 1904 formulated that the human trafficking of for prostitution is an ethical issue of slavery; whereas the provision in the convention in 1904 and 1910 indicates that it is worthy to demolish "white slavery" as prostitution cases. After World War I, the International Convention for the "Suppression of the Traffic in Women and Children" was developed in 1921 in addition to the definition of National League 1904 and 1910. The convention on demolishing trafficking in women of all ages was developed in 1993. This convention in 1993 addressed the issue of organizing prostitution activities as a crime.

It defined the crime as a case of pushing women into prostitution without any acceptance from the women against their interests. In the UN convention in 1949,

the defining of human trafficking as crime and the standards against human trafficking were determined and used for the following 20-30 years.

Human trafficking was hidden during the Cold War, but revived at the end of the 1980s with the transformation of the Soviet Union following globalization. At the beginning of the 1990s, human trafficking became a pressing issue in society. The revision of this crime is related to the spread of the transnational crimes in the western countries (money laundering, marijuana/drug trading, arms trading, trafficking humans and the harvesting of human organs). The main reasons of being a victim of human trafficking are vulnerability, number of unemployed, easy job hunting and the poverty of women.

The victims of the human trafficking are hostages deceived by criminals after crossing borders with difficulties in different conditions, pay and identification. Also, the criminals take advantage of the victims by isolating them and submitting them to continuous tortures. By this aspect, human trafficking differs from other types of organized crimes which enable just one-time profits.

The main elements of the UN protocol provides that it is important to charge human traffickers with crimes, protect victims, take preventions and build strong cooperation between countries. The provisions charge countries with the duty that “all provisions should be adhered”. Additionally, there are some provisions determining that the cases mentioned in the definition should be charged with aiding human trafficking and/or human trafficking itself should be sentenced and punished and cases with inappropriate solutions and/or a one-sided judgment by the government should have penalties imposed.

Countries around the world have implemented activities for protection from human trafficking in classifications as follows; 1) information dissemination, 2) rehabilitation for victim`s psychology, social and physical recovery, 3) protection sheltering, law counseling, information, 4) health and psychological assistance, and 5) further employment and educational training.

At the extent of countries around world and regional areas, it is considered that numerous international documents have reflected of necessary activities to be performed to prevent from human trafficking regarding cooperation activities for these preventions. It is indicated herein that “Countries shall create social-economic opportunities for carrying out general surveys on human trafficking, disseminating information, conducting a wide range of public promotions and fighting and preventing human trafficking”.

There are a large number of countries working upon establishing special programs and contracts in order to fight against these human trafficking. In particularly, the number of victims is significantly high in Asian countries compared to the countries in other continents. Related to that there, are more diligent attempts by governments of some Asian countries, especially South Asian countries, to fight against these types of crimes. An example of this is the “Mekong Agreement” by the governments of Thailand, Cambodia, Vietnam, Burma and Laos which implement an agreement at the government level for the prevention and protection of victims from human trafficking. Additionally, the “Memorandum” which was established between the Indonesian and Malaysian governments, indicates that the inspection activities shall be taken at the immigrant workers’ workplaces for the purpose of enforcement and prevention of prostitution.

The government of Australia, the founder and manager of the “Bali Mission” against transnational organized crimes of these types, carries out activities for developing regional projects against human trafficking, improving community awareness, giving instructions for powerful organizations and gives assistance to victims.

Human rights organizations have worked enthusiastically at the international level by making strong attempts to intercept crimes of human trafficking, decreasing the number of traffic, protecting victims, rehabilitating victims back into general life of the society, fighting against human traffickers committing these types of crimes

and charging strict punishment and penalties on the state officials and workers involved. The countries around the world work mostly in ways of establishing memorandums and agreements in regional areas to fight against human trafficking.

As for Mongolia, there is a need, in relation to the existence of these types of crimes, to improve public awareness about the crimes, organize prevention activities at the government level, create substantial assistance to the victims, establish centers for law counseling, improve the skills and knowledge of the law organization staff, make efficient partnership activities for state and non-government organizations, implement and clarify law articles against human trafficking and get strong evidence on the criminals.

In the law of Mongolia, it reflects the organized crime as for the first time in 1996 by the provision stating that “trading humans into foreign countries for prostitution purposes” (111.1), as follow in 2002, a new provision “Human trafficking and purchasing” (113) and in 2008, “transporting, sheltering, receiving humans trafficked in addition to trafficking”. In 2005, the government of Mongolia approved the “National program for protecting children and women from human trafficking and sexual exploitation”. Rather than thanking the government of Mongolia, the appreciation should be submitted to the training, information dissemination, lobby and advocacy strategies conducted by the Asian Foundation, World Vision, UN Children Foundation, Gender Equality Center and initiatives of other international civil society organizations for the sake of risk groups under potential to the human trafficking.

Since 2001, Mongolia has been classified as a transmitter, but after cases have been recorded trafficking Mongolian girls to the PRC, Macau, Hong-Kong, South Korea, Singapore, Taiwan, Japan, Malaysia and European countries it has been put on to the trafficker list. Moreover, there have been unofficial sources of informing that Mongolia will be listed as a reliever as well soon. Since the two cases recorded in Mongolia in 2001, today it has reached over 300 cases, which are unofficial

statistics. The number of cases in Mongolia is identified dynamically. According to a sociological survey, the real number of human trafficking crimes in society is four times higher than the official statistics. In this way, the number of cases might be up to 1200 at minimum. For instance, the survey conducted by the police organization last year provides findings that over 1000 girls are prostituting in Macau, Beijing, South Korea and Singapore, whereas unofficial source reports that there are over 200-300 girls in Elian city, 500 in Macau and 300-500 girls in Beijing prostituting in night clubs, saunas, massage centers, hotels and streets, in which about 70 percent are victims of human trafficking.

3.3 Obligations and Accountability of Government

3.3.1 Legislation

The government is responsible to protect human rights for its people and punish individuals and any state officials who breach these rights, including state administration officials, border policemen and officials in charge of immigration. All governments have the duty to respect, satisfy, protect and support human rights. All protection of the rights of humans should be done in any circumstance without any discrimination and the government has the responsibility to adopt and follow international and domestic legislation. In regards to this, the existing legislation in Mongolia as of today can be divided into international and domestic categories.

A. International Law

1. International Treaties

Mongolia, as of today, has joined about 50 international human right agreements and conventions⁴⁵. Of the international agreements and conventions dealing with human trafficking, Mongolia acceded to the “UN convention on the Elimination of All forms of Discrimination Against Women of 1979” in 1981, UN

⁴⁵ Source: Ministry of Foreign Affairs

Children Right's Convention in 2000 and "Protocols On The Involvement Of Children In Armed Conflict" and "Protocols On The Sale Of Children, Child Prostitution And Child Pornography" in 2002, additionally, the "Convention Against Transnational Organized Crime" and its supplementing protocols including the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children", "Protocol against the Smuggling of Migrants by Land, Sea and Air", and the "Protocol against Illicit manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition" in 2008.

2. *International Agreements and MOU*

It is more effective to work in cooperation with foreign countries about human trafficking issues because they are committed nationwide. Although Mongolia expressed that it has same perspective as other countries in fighting human trafficking, there is only one international agreement between the governments of Mongolia and Macau on reducing and intercepting this crime. In addition to this, there is the MOU established between Police office of Erlian city and the Police department of Zamiin-Uud as an agreement between institutions on reducing and intercepting human trafficking incidents.

Mongolia and Macau: The government of Mongolia established an agreement with the Macau Special Administrative Region of the PRC to exchange information on human trafficking crimes and related law implementations to cooperate to fight human trafficking in October, 2010. According to the agreement, the parts discussed issues of holding the confidentiality of victims of human trafficking, taking specific protection measures and prevention actions, organizing group and individual training, protecting victim's rights, returning to the home country and reintegrating them into society.

It is highly appreciated that part the agreement to issue identification to the

victims in as short time as possible due to the fact that most victims of human trafficking lack any passport or identification because they were seized, smuggled or lost.

Moreover it reflects that in any circumstance the victim shall not be arrested or jailed in relation to the other criminal cases related to the human trafficking, such as immigration issues or prostitution⁴⁶.

Mongolia and China: The MOU was initiated on November 13, 2009 between the police department of Elian city and the police department of Zamiin-Uud city on cooperation to combat trafficking in persons. According to the MOU, they agreed to conduct annual meetings and consulting, exchange news and information and give mutual assistance.

In accordance with this agreement, the police department in Elian city started operating telephone number 111 and it is staffed by 3 police officers in shifts. The report of 2011 shows that 15 women out of 25 victims in 2010 and 4 women out of 16 victims in 2011 have been taken back to their home country from the PRC with the help of the police department.

Other countries in cooperation to render legal assistance

Although there are no significant agreements in relation to human trafficking between other governments, there are two state law inspection organizations which have established 25 agreements with 19 countries.

B. Domestic law

This section introduces the legal framework of Mongolia within the field of fighting human trafficking. The crime of human trafficking is regulated by the

⁴⁶ Agreement between The Government of Mongolia and The Government of the Macao Special Administrative region of the People's Republic of China on Cooperation to combat trafficking in persons, Article 14, Section 1a.

criminal laws and in accordance with its provisions. Criminal law regulations will be detailed in the next chapter. Currently, there are over 40 laws and rules effective in Mongolia in relation to the prevention of human trafficking through state control.

This research work is based on the conclusion of studying these laws and procedures in total through comparing and analyzing the consistency and influence on the practice of court penalties and criminal case reports, investigation, prosecution, decisions of the closure with the effective laws and other legal acts. For example, Law of Family (for regulating relationship with foreign citizens and child adoption), Law against Fornication (prostitution, abusing, seduction, prostitution activities and intermediating for prostitute intentions as the “Advertising fornication” defines the items for reading, listening and watching through publishing, books, novels, movies, records and tapes including the sexual relations and the sexual parts of humans in order to make sexual temptation), Law on Immigration (for regulating registration of citizens checking in and out border and inspection relationship), Law of Children without Supervision, Law of Mongolia on Sending Labor Force Abroad and Receiving Labor Force and Specialist from Abroad, Law of Donor and Donation, Law of Advertisement, etc.

3.3.2 Criminal Law

A. Criminal Law Provisions

In Mongolia, the legal fight against human trafficking has been considered to take place since 2000.

The Criminal Law of Mongolia has been amended and approved 3 times in years between 2000 to 2012 and the table below shows the comparison how it defines human trafficking cases and the penalties on criminals.

Length and nature of sentences

Table 2.

| | Criminal Code, Article 111, 2000 | Criminal Code, Article 113, 2002 | Criminal Code, Article 113, 2008 |
|-----------------|--|--|---|
| Offensive cases | 111.1 To jail up to 4 years in cases of deceiving and enrolling humans with making profits from prostitution | 113.1 To fine by 51-250 folds of the minimum amount of labor fare or jail up to 3 years in cases of trafficking or purchasing humans | 113.1 To fine by 51-250 folds of the minimum amount of labor fare or jail up to 5 years in cases of violating humans, threatening to offend, deceiving, taking advantage of vulnerability, as well as enrolling others in committing criminal cases, transporting, sheltering and accepting to commit cases in order to make profits and conduct exploitation |
| Serious cases | 111.2 To jail up to 3-8 years in cases of crime committed in groups with | 113.2 To jail up to 5-10 years repeating cases of human trafficking, trafficking more than | 113.2 1 To fine by 51-250 folds of the minimum amount of labor fare or jail up to 5-10 years in cases of |

| | | | |
|--------------|-------------------------|--|--|
| | previously agreed terms | 2 humans or donating under aged persons by committing in groups or by constipation | trafficking more than 2 humans or donating underage persons, using ruling power in inappropriate ways or committing repeated crime in groups with previously agreed |
| Severe cases | | 113.3 To jail up to 5-10 years in cases of committing permanently the cases of human trafficking and trading humans over borders in organized ways and causing damages to human bodies | 113.3 To jail or give sentence up to 10-15 years in cases of trading humans over borders in organized ways in groups or systemic network and causing damages to humans |

C. Prosecutions and convictions

Statistics for human trafficking prosecutions and convictions began in 2000. These figures are not only for human trafficking, but also for offences related to or potentially involved in the human trafficking process, such as sexual exploitation, procuring sexual services, living on the earnings of prostitution, and maintaining a brothel.

According to the research by the National Research Centre of the State Supreme Court on human trafficking and organized prostitution and inducing others

to engage in prostitution in recent 5 years (2006-2010) consist of 51 human trafficking cases with 71 suspects, 129 victims and 82 cases of criminalization of exploitation and prostitution with 92 suspects and 59 victims; those are currently registered and examined under police organizations. The following table shows the details:

Table 3.

| Year | Human trafficking (Criminal Code, Article 113) | | | Criminalizing of prostitution, organizing prostitution slavery (Criminal Code, Article 124) | | |
|--------------|--|-----------|------------|---|-----------|-----------|
| | Cases | Suspects | Victims | Cases | Suspects | Victims |
| 2006 | 8 | 10 | 25 | 4 | 4 | 2 |
| 2007 | 10 | 12 | 22 | 14 | 17 | 17 |
| 2008 | 11 | 15 | 11 | 42 | 47 | 24 |
| 2009 | 14 | 21 | 53 | 11 | 12 | 9 |
| 2010 | 8 | 13 | 18 | 11 | 12 | 7 |
| Total | 51 | 71 | 129 | 82 | 92 | 59 |

Source: State Supreme Court, Research Center Data. UB, 2011

3.3.2 Governance

1. National Program

The government has developed and implemented two national programs against human trafficking crimes.

A. The Government developed a “National program on combating human trafficking and protection of especially children and women from using them with a

purpose of sexual exploitation” in 2005.⁴⁷ This program is being implemented in 3 stages until 2015 (the first stage in 2006-2007, second stage in 2008-2011, third stage in 2012-2014)⁴⁸ The budget of this program implementation shall be provided by state budget, local budget allocation, donators and international implementing projects, programs, reliefs, donations, benefits accumulated by state and non-government organizations, economic entities and general citizens and external and domestic investment for child`s well-being and protection. The aim of the program is to prevent people from human trafficking, increase community knowledge and understanding, create updated legal environment, and improve the skills of law implementers and social workers to work with children and women and increase participation of state and non-government organizations and general public.

Currently, there is no permanent national body to be responsible for anti-trafficking work. The management council gathers every year to take supervision on this program implementation, however, according to the observers; it is not efficient and has no proper connection between state organizations about human trafficking issues. In regards to the improving the program, the issues about human trafficking were discussed at the meeting of the National Security Council of Mongolia in March, 2011.

B. In October, 2011, the “National program for eliminating intolerable forms of child`s labor” was updated and approved. Although the national program has made effort to make agreements with non-government organizations and solve financial issues of making connecting relationships of the agencies in order to fulfill services for the victims for the objectives of the program, the government has not completed it by given sufficient budget funds to implement the planned activities.

⁴⁷ Government of Mongolia, National program on combating human trafficking and protection of specially children and women from using them with a purpose of sexual exploitation, 2005 <<http://www.legalinfo.mn/annex/details/203?lawid=922>>

⁴⁸ B.Batzorig, ed, Overview of human trafficking in Mongolia, (UB, 2010), p. 17.

2. Government decrees and resolutions

In July, 2010, the government established a police department consisting of four personnel at the State Investigation Agency of General Police Office. The scope of the department is limited by the fact that human trafficking takes place over borders and is of a sexual exploitation nature, and the department has never had sufficient funding since its establishment to carry out its activities completely.

In January, 2011, by a government decree, a foundation for rendering assistance to the victims and Mongolian citizens damaged by human trafficking in foreign countries was established, however this decree is not effective, with no victims receiving assistance or benefits to date. In addition to this, there are no methods or mechanism to repatriate Mongolian citizens returning home.

In 2012, a new draft law against human trafficking recommended the establishing of a council for the prevention of human trafficking in order to optimize the government`s effort to fight human trafficking. Currently, this council has not been established yet.

An intermediate government agency council to regulate activities against human trafficking has been established and this council met four times in 2011 and established working NGOs against human trafficking.

3. Trainings and seminars

Before approving the program “National program on combating human trafficking and protection of especially children and women from using them with the purpose of sexual exploitation”, the government had never organized any training or seminars for the people and officials of the state organizations. However since the program was approved, it was recorded in the 2011 government report that there were over 30 textbooks developed, about 300 trainers trained, and over 11 thousand people had taken the training.

The department of the Police Office for combating organized crime has held

several trainings for local area police staff in regards to investigating human trafficking crimes. In September, 2011, the Governor`s office of the capital city conducted trainings for over 30 prosecutors, in relation to human trafficking crimes in Mongolia and the PRC, with a budget equal to USD 1,600.

3.4 Obligations and Accountability of NGOs

The government of Mongolia has implemented certain actions for the prevention of human trafficking through partnerships with NGOs, international organizations and foreign donators. Relevant officials have taken actions by disseminating handouts illustrating cautions about human trafficking and necessary contacts by attaching them to passports and train tickets. To expand these actions, these handouts have been disseminated to Mongolians traveling overseas.

In Mongolia, the NGOs and civil societies, rather than government organizations, are carrying out significant works over a wide range and play a significant role in fighting human trafficking crimes. These organizations are classified into domestic and foreign NGOs, out of those, three NGOs (The Human Security Policy Studies Center, Gender Equality Center and Center for Human Rights and Development) have played an active role in the fight against human trafficking. As for international organizations, the activities are not individual, but in partnerships with domestic NGOs in implementing collaborative projects.

The prevention programs focus mainly on advocacy work aiming at informing the targeted population (especially women and children) on migration and trafficking⁴⁹. There are many forms of information, education and communication activities⁵⁰.

The funding and partner organizations have implemented 7 projects with 1 to 7 years of duration with the cost of 4.1 million dollars in the field of fighting human trafficking since 2005.

⁴⁹ SCOM, Combating Human Trafficking Programme in Mongolia, (UB, 2010), p. 8.

⁵⁰ *Ibid.*, p. 8.

Table 4.

| | | |
|---|--|-------------|
| 1 | Asian Foundation | \$800,000 |
| 2 | UNICEF | \$224,000 |
| 3 | International Labor Organization | \$240,000 |
| 4 | World Vision | \$85,000 |
| 5 | International Migration Organization | \$625,000 |
| 6 | Swiss Agency for Development and Cooperation | \$2,000,000 |
| 7 | Others | \$126,000 |
| | Total | \$4,100,000 |

Source: Report on human rights and freedoms in Mongolia. NCHR., 2008

1. Domestic organizations

A. “The Human Security Policy Studies Center”

“The Human Security Policy Studies Center” (NGO) implemented officially a complex project named “Against Human Trafficking” in accordance with the agreement established between Mongolia and Federation of Switzerland in May, 2008 in order to intensify the fight against human trafficking.

Under the framework of the project implementation, a number of actions have been taken as follows;

First. To improve the legal environment for the fight against human trafficking and to make improvements for that;

Within this objective, as a result of research and negotiations to draft an

independent law, a draft law supervised by a human trafficking law specialist was introduced to the Parliament of Mongolia and ultimately approved.

The project involved the participation of government organizations, NGOs and individuals. In particular, it involved the active cooperation of people from the Parliament, National Human Rights Commission, the Ministry of Foreign Affairs, the Ministry of Legal and Internal Affairs, the Ministry of Education, Culture and Science, General Police Office, General Intelligence Office, State Investigation Office and National Law Institute, as well as NGOs, including the Gender Equality Center, Mongolian Student Union, Local Initiative, National Children Right Center, Human Right Development Center, Women Leadership Foundation, Victim`s Right Research Center, Mongolian Female Lawyer`s Union, Child Protection Center and Women`s Hope Union. Within the project, 12 research works in total have been completed.

Second. To increase the mainstream community`s understanding in protection from human trafficking and improve capacity building for the prevention of related crimes:

Within this objective, subject contents have been integrated into the curriculum of legal subjects starting from this new academic year to prevent adolescents and youths from being victims of human trafficking. “The Human Security Policy Studies Center” (NGO) organized consultative meetings with the title “Fighting against Human Trafficking” in cooperation with the national Human Right Commission and the President`s Office.

B. Gender equality center

The gender equality center is a non-profit and non-government organization to serve society and has carried out various activities in field of human rights protection since 2002. The activities started running in 2003 as the result of a case of human trafficking to South Korea.

The center implemented a project called the “Prevention and protection of

human trafficking” with the support of the Asian Foundation, which started in June, 2007. The goal of this project is to sustain a confidential telephone hotline for the prevention, protection and detection of crimes related to human trafficking, moreover to expand and develop prevention from human trafficking in other ways.

Main activities:

- Improving assistance and service to the victims and their families
- Training for women who are going to marry foreigners
- Implementing a program called “Direct support to the victims of human trafficking” in cooperation with the International Migration Organization since 2007
- Operating “Confidential telephone hotline number”: 1903
- Implementing the program “Child Protection” with the goal to prevent and protect children from human trafficking crimes and cooperate with government and nongovernment organizations
- Implementing a gender equality program to promote gender equality within communities and improve the legal environment.
- Implementing a program to help the victims of human trafficking return to their home country

C. Center for human rights and development

The Center for Human Rights and Development is a non-profit NGO established by the initiatives of human right activists and lawyers and researchers in 1998⁵¹. The center has carried out three main programs;

1. Program against human trafficking
2. Human rights advocacy program
3. Community based development program

This center is the first NGO to analyze the legal environment and incidents of

⁵¹GES, About us, Dec 2012, <http://chrd.org.mn/index.php?option=com_content&view=category&layout=blog&id=2&Itemid=28&lang=mn>

human trafficking in Mongolia starting from 2000 and has implemented independent programs against human trafficking since 2002.

Main activities:

- To conduct research and training on current situation of human trafficking in Mongolia
- To enhance the legal environment to fight human trafficking and develop it to the international standard
- To give legal and social assistance and service to victims to protect their rights
- To create and expand partnerships with the countries where Mongolian citizens travel and where many victims of human trafficking exist
- To develop books and manuals necessary to fight against human trafficking and disseminate published handouts
- To make relationships between state and nongovernment organizations

Project implementations:

- “Strategic advocacy protecting victims and witnesses of human trafficking” (2010-2012)

Supporting organizations: State Department, the United States of America, US Lawyer`s Union

D. Other domestic nongovernment organizations

By an unofficial account, there are about 30 nongovernment organizations carrying out activities against human trafficking in addition to the abovementioned three organizations⁵². However, most of these organizations carry out activities limited to organizing a little training and expressing their status by giving interviews to the press and media. Some of them participate actively by getting involved in activities with the main organizations mentioned above and giving necessary support to them such as Equal Step NGO, National Children Right Center, ECPAT

⁵² SCOM, Combating Human Trafficking Programme in Mongolia, (UB, 2010), p. 8.

(Trafficking of Children for Sexual Purposes), Network of Mongolia, Adolescent Development Center, Human Right-Safe Environment Foundation and so on.

2. International Organizations

International organizations in Mongolia do not carry out independent activities fighting against human trafficking. Instead, they cooperate with government organizations and the NGOs of Mongolia by implementing projects, conducting trainings and organizing research work and seminars. These include:

1. The Asian Foundation
2. The Swiss agency for development and cooperation
3. World Vision
4. The Canada Fund
5. USAID
6. International Migration Organization
7. UNICEF
8. International Labor Organization
9. Australian Youth Ambassadors for Development
10. Canadian International development agency

CHAPTER FOUR
**ASSESSMENT OF EFFIECIENCY OF RESPONSE
TO THE TRAFFICKING IN MONGOLIA**

4.1 Implication of Legislation

It has been observed in the research that Mongolia has fulfilled its obligations called on by international agreements and approved draft law and developed several programs in order to regulate the social relationships related to prevention actions and to combat human trafficking, but creating the mechanisms for the full implementation of the actions called for by international treaties and conventions against human trafficking, the coordination, special duty, official publication for public access is a pressing issue in Mongolia.

During research, it was observed that the actions for the inspection on law implementation at the level of state organizations have been done in detail although there are still some clear steps to improve laws to combat human trafficking.

As of today, existing laws and legislation in effect on human trafficking and regulations combating crimes and breaches of those laws are not advanced; moreover a lack of their consistency makes it difficult have a functional effect on matters related to human trafficking.

The actions of detecting crimes of human trafficking and its origins and conditions, taking preventions and eliminating its damages require consistent cooperation and understanding between state organizations as well as state organizations and social organizations.

For example, child adoption is regulated by the Law of Family and legal acts including “Child adoption procedures for foreign citizens” which was approved by the decree number 100/32 in 2001 with the cooperation of the Minister of Laws and Legislation by the marriage law and the Minister of Social Welfare by population development. Even though the law provides detailed indicators of conditions on

which procedures enables adoption for foreign citizens or which forbids the adoption, but no further inspection on the child, a visit to the home country, meeting with birth parents or meeting with government organizations takes place. Therefore, the duties related to protect the rights of adopted Mongolian children and conduct inspections should be laid with the diplomatic representative office of Mongolia in foreign countries including proper information and applicable allocations.

4.2 Inefficiency of Criminal Law

According to the research, the provisions of the law on human trafficking in criminal laws have been updated and advanced within a certain period. However instead of any decrease in amount of human trafficking, there is a tendency that the number of people convicted of human trafficking and sentenced by the court will increase more than now. It is likely impossible to regulate all relationships only by criminal investigations and punishment by laws including human trafficking, preventing it, intercepting, detecting and identifying the origins and conditions of the crime, protecting victims and ensuring human rights.

In Mongolia, the current mode of operation is limited to the criminal approach, which focuses on criminal sanctions. Durkheim states that “penal law prescribes only sanctions and says nothing about the obligations to which they relate”⁵³. In contrast, restitutory law is concerned with obligations, rights and duties between individuals.⁵⁴ The criminal law should regulate issues of rehabilitation, agreements with criminals and compensation for the damages, not only regulating relationships with the intent of protecting victims.

In contemporary jury practice, there are only a few cases of compensation for the mental damage that were calculated and given to the victims of a crime but there is no case where compensation was given to victims of human trafficking. However, there is one case where criminals negotiated an amount of compensation with the

⁵³ Sharyn L.Roach Anleu, The role of civil sanctions in social control: a socio legal examination, Crime Prevention Studies, Vol 9, 1998, p. 22.

⁵⁴ Ibid., p. 22.

victims and paid the mental damage compensation before judicial instance. From the studied cases, there were many victims who claimed mental damage compensation. However, the claims were fully ignored during the trial processes.

Table 5.

Compensation facts

| | Materialistic damage | Mental damage |
|---------------------|----------------------|---------------|
| Claimed damages | 16 | 6 |
| Compensated damages | 2 | 0 |
| Non paid damages | 14 | 6 |

Up until now, there is no law for protecting the victims, nor any financial or procedural mechanism to lay damages. In Mongolia, the activities of satisfying the safety and protection for victims and witnesses in criminal crimes, compensation for damages and rehabilitations for them have not been performed to the appropriate level, which negatively influences the detection of human trafficking crimes, and makes favorable conditions for the criminals. This means to that it would be more effective implement the laws only if more attention is taken on the issues of protection for victims by actions including training and educating investigators, prosecutors, judges and lawyers in charge of inspecting and solving these kind of crimes, organizing trainings to improve their professional skills, creating favorable environments for victims under investigation and establishing rehabilitation centers and shelters for victims.

In the Criminal law of Mongolia, evidence proving that the victim is committed to prostitution enforced by others is required, however the opportunity of collecting evidences for the crime is limited, in other words, there is need to prove the evidence by taking investigation overseas. This kind of action is not practical for criminal investigations. Therefore it is necessary to take further action on the matter, which soon will be an important factor in solving crimes and intercepting incidents

of the crime. To accomplish this, the cooperation between the consulate office of the Embassy and the police organization is significantly essential.

Many of the crime prevention programs are initiated by state officials, require public funding and involve changing relations between criminal justice personnel and other agencies responsible for obtaining compliance to building or health and safety codes, for example.⁵⁵

4.3 Assessment of government activities

The Trafficking in Persons Report 2009 by the US State Department mentioned that “The Government of Mongolia has insufficient initiative on the issue of protection of rights of human trafficking victims and still relies completely on services provided by NGOs and international organizations to trafficking victims.”⁵⁶

It can be said that Ministry of Legal and Internal Affairs, Ministry of Foreign Affairs, Ministry of Social Welfare and Labor, Ministry of Education and Culture, Science, responsible for the program implementation did not do any significant work in this field. The Council on program implementation was set up on May 2, 2005 by order of the Minister of Social Welfare and Labor and its first meeting was organized on September 3, 2008, which shows the attitudes of the Ministries and their officials to implementation of the program.⁵⁷

It negatively influences the implementation of the program that the main subjects and state officials to implement government control are irresponsible and unenthusiastic about their work. Although the necessary funds to implement the national program in the state budget have been provided, the state officials do not show enthusiasm on issues of human trafficking crime due to the fact that there is no

⁵⁵ Ibid., p. 22.

⁵⁶ U.S. Department of State, “Trafficking in Persons Report 2009”, (Washington, D.C.:GPO, June 2009), p.34.

⁵⁷ Report on human rights and freedoms in Mongolia, NCHR, 2008

specific task in their job description. Additionally, the corruption issues of state officials in law implementation are still at a serious level resulting in a hindrance in combating human trafficking.

There is no case of any action has taken place in an effort by the state to investigate and inspect corrupted state officials in relation to the crimes of human trafficking. Besides the fact that corruption is still spreading through the state organizations, the new personnel for the posts of prosecutors, judges and law implementing officials are not experienced and trained enough to solve even a small part of human trafficking.

To prevent human trafficking, the consistent cooperation between domestic organizations and law administrative organizations of neighboring countries is required. To achieve these requirements, certain actions and measurements should be taken to prevent personnel working at the border from any corruption and bureaucracy and strengthen border inspections at all costs. Moreover, control need to be taken over the means of transportation over borders and take measurements and government inspection agencies on the activities.

It shows that there is a need to pay special attention on the cases related to the subjects in ruling power on the issuance of passports and border crossings in Mongolia. Private identification should be highly confidential and completed with high standards without any possibilities to make illegal amendments, copies or recycling. It is one of the issues for Mongolia to satisfy confidentiality and the high quality of these types of identification.

Generally, the subjects in primary stages of power are state officials who issue permissions to the trafficking of humans at the check-in and check-out of the border. One of the intercepting actions for human trafficking can be carefulness and vigilance of these officials. Prevention of human trafficking is not only organized nationally within the country at its own stages, but also there are more cooperation activities between countries in same regions and at international levels. For example,

there is a national networking organization “Mekong subregion project to combat human trafficking in children and women”, named after the Mekong river, involving five South Asian countries along the river; Thailand, Laos, Cambodian, Vietnam and Burma, which is implemented by the cooperation agreements between the countries for intercepting the trafficking of young girls and women from these countries. As for Mongolia, it has not joined into any cooperation network like this, but it needs to work in cooperation with its two neighboring countries further and with other countries having more occurrences of human trafficking, with more enthusiasm and initiatives.

Additionally, Mongolia has not registered women victims of prostitution overseas or citizens returning home country after being in slavery from overseas. The number of victims has been increasing due to the lack of sufficient specialized officials on human trafficking, which can be evidence of that there is a poor supervision mechanism of the above mentioned problems.

4.4 Effectiveness of NGOs

Governments attempt to unify and centralize various forms of regulation in their quest to manage the population. In this process, legal techniques increasingly are directed toward setting up procedural mechanisms of a variety of systems of surveillance. This entails incorporating nongovernmental organizations quest for crime control.⁵⁸ Governments may wish that third party to assist with law enforcement and victim protection. The participation of NGOs is also expected to increase the accountability of governments towards their citizens.

The main findings from the research show that the role of public organizations in Mongolia have worked and are significantly effective through applying civil control by carrying out promotions for the public, giving information and rendering emergency assistance to the victims rather than conducting criminal sanction

⁵⁸Sharyn L.Roach Anleu, The role of civil sanctions in social control: a socio legal examination, Crime Prevention Studies, Vol 9, 1998, p. 22.SharynL.RoachAnleu, 1998, p30.

methods such as sentencing and punishing criminals of human trafficking. The research shows that the participation of the NGOs on dealing with human trafficking has increased significantly compared to the state organizations since the “National program on combating human trafficking and protection of especially children and women from using them with a purpose of sexual exploitation” was put into implementation. Thanks to the training and seminars by the NGOs among the people, much effort has been performed effectively including that the general understandings on human trafficking has been improved, a protection mechanism for victims completed and the victims sent back to their home country receive psychological support and assistance.

One type of civil control can be promotional information for the prevention of human trafficking to be broadcast on TV and other means of media and handouts and booklets about surveys conducted on human trafficking disseminated to the people.

Meanwhile, it appreciated that a draft law on combating human trafficking was submitted to the Great Khural by the NGOs in the field and was approved in 2012.

CHAPTER FIVE

CONCLUSION

5.1 Future Prospect

Combating human trafficking is still a relatively new work area in Mongolia and there is still need for further research to better understand the issues of human trafficking in Mongolia. Transnational human trafficking is hazardous to the national security, sustainable development and society of countries. These organized crimes require a great deal of cooperation and partnership between countries, especially neighboring countries, regarding the prevention, detection, investigation and interception of the crimes committed. Therefore I would like to do detailed research on how other countries address issues of the crime and make a contribution to implement the best practices on the prevention of the crime in Mongolia. In particular, it is important to study the experiences of other countries and their accomplishments on combating human trafficking. I hope this research work I completed analyzing human trafficking incidents in Mongolia may give potential for further research and research work.

5.2 Recommendations

Recommendations on this subject to the government of Mongolia will be to improve the consistency of state organizations and inspect law implementation for the effective outcomes of decreasing the amount of human trafficking incidents and preventing people from being injured by these types of crimes.

One. Within the framework of intensifying activities against human trafficking:

1.1. To enhance the structure and management of state organizations to fight human trafficking crimes and hold prevention activities, increase manpower, train specialized officials and send them abroad to build capabilities by getting experience from foreign countries;

1.2. To explore opportunities of assigning a police organization representative at the Embassy of Mongolia in foreign countries;

1.3. To improve the connections and consistency of legal organizations, state and non-government organizations and publicize accurate information if necessary and to create conditions for working in cooperation in all possible cases under existing laws and legislation:

Two. Within the framework of preventing human trafficking:

2.1. To make restrictions on films, and give information by the means of press and media about violations, libertines and immorality as it negatively influences the psychology of society, to carry out publishing policies favorable to families and children and to increase the liability of the publishers;

2.2. To reflect on the essentials of prevention and fight against these kind of crimes by introducing courses in the field of law and law implementation into the curriculums of the secondary schools and universities and institutes

2.3. To gather and disseminate free and accurate information for the prevention of human trafficking crimes by the means of press and media

5.3 Conclusion

Surveys from various agencies in Mongolia and information sharing with authorities reveal the fact that human trafficking is drastically increasing. Even though there is some regulation combating human trafficking, it is difficult to obtain active involvement from main government organizations.

As a result of this research work, I concluded that the laws and legislation of Mongolia cannot combat human trafficking and prevent human rights. However this raises the question, “What are actually effective laws and legislation?” The answer includes several stages. From the point of view of civil control, the laws themselves should affect the citizens. For this matter of law implementation, the government is responsible to build their effectiveness and an implementation mechanism. The final

stage lies with the government to implement the laws through state officials, judges and the police.

Although there are sufficient number of laws and legislation in relation to human trafficking approved in Mongolia, their implementation and regulation for the cases and punishment of the criminals is not clear. There are a great many obstacles to intercept crimes and decrease incidents in systematic and effective ways.

The combat actions against human trafficking and prevention should be regulated by the government, not only based on International organizations funding, initiatives of NGOs, general citizens and state officials. The government should work responsibly by paying more attention and use specific management to eliminate the reasons and source of the crimes and implement prevention activities. This means that there should be a proper relationship of rights and duties.

For this, one of the duties of the government is to conduct activities to eliminate the destructive consequences of human trafficking crimes and rehabilitate those affected by the crimes. However there is no activity conducted by the state organizations to combat human trafficking and take action with a detailed plan. It is necessary to take action in every unit of administration, districts and the capital city of the country regarding infrastructure and funding for implementing objectives of a national program to protect children and women from human trafficking and sexual exploitation. A well-established mechanism by the government is necessary to organize related training and involve administrative officials in the training.

An agreement on cooperation in terms of combating human trafficking has been made with only two countries and a few other agreements with other countries regarding legal partnerships. Therefore it is necessary to cooperate in close relationships with the Russian Federation, PRC, Japan, South Korea and Thailand on combating human trafficking and prevention activities, because the response actions are limited to the nations doing the investigation on human trafficking when there are transnational crimes.

The advantage of the government control is that it is not limited by the law implementation, but it can give its outcome through families, friends and social groups for the victims. This is called civil control which has been observed in research to be taking place today in some extent by NGOs. It is demonstrated in the research that rather than the government, the participation and enthusiasm of the NGOs is quite high and effective, therefore this participation should be appreciated, supported and stimulated by the government through funding. By expanding the cooperation with NGOs, there will be a strong foundation of intensifying activities for advocacy for the society.

In conclusion, the government of Mongolia should pay more attention on building strong s control over combating and preventing human trafficking and creating consistency in state organizations and with state officials in implementing agencies about their participation and job description.

국문초록

인신 매매 사건은 범죄조직이 다국적 네트워크를 적극적으로 만듦을 시작하여 더 많은 복잡한 형태를 취하고 있으며 세계적으로 매년 증가하고 있습니다. 이 문제는 전 세계적인 주목을 받고 있으며, 국가는 다양한 범죄를 방지하기 위한 공통의 목표를 국내외적으로 협력하여 인신 매매의 범죄를 사전에 감지하고 강력한 유죄를 선고 할 필요가 있습니다.

몽골은 지속적으로 인신 매매에 관한 여러 국제 조약을 맺으며 인신 매매에 맞서 싸울 세계 지역 사회 앞에 의무를 수행하고 있습니다. 국가가 인신 매매에 높은 취약성을 갖는 것으로 간주되기 때문에, 지난 몇 년 동안 사전에 감지하여 방지 즉 이 범죄를 주 규제 정책과 특정 조치의 틀에 준하여 뿌리 뽑기 위해 노력하고 있습니다. 사회의 경제적 어려움, 특히 실업과 빈곤은 국민에게 부정적인 동기를 부여하고, 그들이 나라를 떠나 외국에서 공부해야 한다는 인식이 몽골의 현재 상황에 맞추어 있으며, 쉽게 외부 및 국내의 검증되지 않은 기관에 현혹됩니다. 이로 하여금 비자 발급, 취업 및 국제결혼 등의 뒤에 그들의 이익 탐욕 목적을 위한 인신매매가 이루어 집니다. 이 범죄 행동은 인권의 심각한 문제입니다.

피해자의 대부분은 취약한 시민과 여자, 어린이 이며, 이는 국가와 시민의 안전에 심각한 문제를 야기시키고 수 년 동안 지속적으로 증가하여 국가에 부정적인 영향을 미칩니다. 따라서 정부는 이 문제의 법 구현을 통해 검사를 강화하기 위한 정책을 실시해야 합니다, 단지 범죄의 추가 손해 및 사건을 통제하고 감소시키기 위한 법률 초안이 아닌,

적극적으로 지역 사회의 참여와 지원 NGO들에게 동기를 부여해야 합니다.

이 연구 작업은 인권과 관련된 국가 법률과 법이 인권을 보호하고 이러한 범죄와 싸워야 하는 문제, 그리고 효과적인 메커니즘과 이러한 법률의 이행을 만드는 데 필요한 요소 및 여부의 문제에 대해 설명합니다.

주요어: 인신 매매, 몽골, 인권, 국제 인신 매매, 국내 인신 매매, 정부 통제

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