

What is Trafficking in Persons?

Sec. 3(a) of R.A. 9208 defines "Trafficking in Persons" as follows:

"The recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, 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 which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph."

What are the Elements of Trafficking in Persons?

Based on the definition there are three (3) elements, namely:

Acts

The recruitment, transportation, transfer or harboring, or receipt of persons.

Means

Threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

Exploitative Purpose

At a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.



What if the victim consents or has knowledge about the trafficking?

The consent or knowledge of the victim to trafficking does not exempt or mitigate the criminal liability of the offender. It is not a material fact that can be raised as an issue in the case of trafficking in persons. Thus, the introduction of any evidence during trial that the victim consented or had full knowledge of the trafficking is irrelevant to the case.



What is the distinction if the trafficking victim is an adult or a child?

If the trafficked person is a child, the **means** used by the offender to traffic the child is irrelevant. Child trafficking is committed even if the offender **does not employ** threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the child, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over the child.

What is a "Child?"

According to Sec.3 (b) of R.A.9208, a child refers to "a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition."

OTHER RELATED TERMS

What is Prostitution?

According to Sec. 3(c) of R.A. 9208, prostitution refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

What is Pornography?

According to Sec. 3(h) of R.A. 9208, pornography refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activity or any representation of the sexual parts of a person for primarily sexual purposes.

What is Forced Labor and Slavery?

According to Sec. 3(d) of R.A. 9208, forced labor and slavery refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.



Can persons who buy or engage the services of a prostituted person be penalized?

Sec. 11 penalizes any person who buys or engages the services of trafficked persons for prostitution. The **first offense** is punishable with 6 months community service as may be determined by the court and a fine of P50,000.00. The **second and subsequent offenses** are punishable with 1 year imprisonment and a fine of P100,000.00.

What acts and omissions are penalized under R.A. 9208?

Acts of Trafficking under Sec. 4 is punishable with a penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00).

Citation Acts Constituting the Crime

Sec. 4 (a)

- a) The offender recruits, transports, transfers, harbors, provides, or receives a person
- b) The act/s is done by any means, including offer of domestic or overseas employment, training or apprenticeship
- c) The person is intended to be used for prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage

Sec. 4 (b)

- a) The offender introduces or matches any person to a foreign national under the pretext of marriage
- b) The introduction or matching is for money, profit or material, economic or other consideration
- c) The real purpose of the introduction or matching is to acquire, buy, offer, sell or trade the woman to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage

Citation Acts Constituting the Crime

- Sec. 4 (c) a) The offender proposes marriage or got married with the person, whether real or simulated

- b) The real purpose of the marriage is to acquire, buy, offer, sell or trade the fiancée or spouse to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage

- Sec. 4 (d) a) The offender undertakes or organizes tours or travel plans

- b) The offender's tours or travel plans are for the purpose of utilizing or offering persons for prostitution, pornography or sexual exploitation

- Sec. 4 (e) a) The offender maintains or hires a person

- b) The person maintained or hired is engaged in prostitution or pornography

- Sec. 4 (f) a) The offender adopts or facilitate the adoption of a person

- b) The adopted person is intended to be exploited in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage

- Sec. 4 (g) a) The offender recruits, hires, adopts, transports or abducts a person

- b) The offender uses threat or use of force, fraud, deceit, violence, coercion, or intimidation
- c) The offender intends to remove or sell the organs or body parts of the person

- Sec. 4 (h) a) The offender recruits, transports or adopts a child

- b) The child is intended to be engaged in armed activities in the Philippines or abroad

What circumstances constitute Qualified Trafficking in Persons?

When a person commits violation under Section 4 and any of the circumstances enumerated here in Section 6 are present, this increases the penalty to life imprisonment and a fine of not less than Two Million Pesos but not more than Five Million Pesos:

- a. The trafficked person is a child.
- b. The adoption is effected through the Inter-Country Adoption Act of 1995 (Republic Act No. 8043) and the adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.
- c. The act is committed by a syndicate or in large scale.

- d. The offender is an ascendant, parent, sibling, guardian, or a person who exercises authority over the trafficked person, or when the offense is committed by a public officer or employee.
- e. The trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies.
- f. The offender is a member of the military or law enforcement agencies.
- g. By reason or an occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation, or is afflicted with HIV or AIDS.

As a rule, no person charged with an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal proceeding. Thus, Qualified Trafficking in Persons is generally a non-bailable offense.

What acts promote the trafficking in persons?

Acts that Promote Trafficking in Persons under Sec. 5 of R.A. 9208 is punishable by imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand (P500,000.00) but not more than One million pesos (P1,000,000.00).

Citation

Acts Constituting the Crime

Sec. 5 (a)

- The offender is the owner, lessor or sub-lessor of any house, building or establishment
- The offender knows that the property is being used for the purpose trafficking in persons

Sec. 5 (b)

- The offender produces, prints and issues or distributes unissued, tampered or fake counseling certificates, registration stickers and certificates of government agency
- The falsified or tampered documents are necessary as proof of compliance with government regulatory and pre-departure requirements

Sec. 5 (c)

- The production, printing and issuance or distribution is for the purpose of promoting trafficking in persons
- The offender advertises, publishes, prints, broadcasts or distributes or causes such by any means, including the use of information technology and the internet of any brochure, flyer, or any propaganda material
- The brochure, flyer or propaganda material promotes trafficking in persons

Citation

Acts Constituting the Crime

Sec. 5 (d)

- The offender, any public official or private individual, assists in the conduct of misrepresentation or fraud
- The misrepresentation or fraud facilitates the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons
- The misrepresentation or fraud is for the purpose of promoting trafficking in persons

Sec. 5 (e)

- The offender is a public official or private person who facilitates, assists or helps in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports
- The person/s assisted is/are in possession of unissued, tampered or fraudulent travel documents
- The facilitation, assistance or help is for the purpose of promoting trafficking in persons

Sec. 5 (f)

- The offender confiscates, conceals, or destroys the passport, travel documents or personal documents or belongings of trafficked persons
- The confiscation, concealment or destruction is in furtherance of trafficking, or to prevent them from leaving the country or seeking redress from the government and appropriate agencies

Sec. 5 (g)

- The offender benefits, financially or otherwise, from the use, labor or services of a person
- The person is held under a condition of force labor, servitude, slavery.
- The offender knows that the persons are held under such conditions of forced labor, servitude, slavery.

If a case for violation of R.A.9208 is filed in court, will this exclude the filing of other criminal or civil actions against the offender?

The filing of a case for violation of R.A.9208 does not exclude the filing of a complaint and prosecution of other offenses punishable by law. Thus, it the act also constitutes a violation under other laws, it can be prosecuted independently and simultaneously with the case.

Other laws that may be relevant include the following:

- Migrant Worker's Act
(Republic Act 8042)
- Mail Order Bride Law
(Republic Act 6955)
- Revised Penal Code Penalizing White Slavery
(Art.341, RPC)
- Special Protection for Children Against Abuse, Exploitation and Discrimination Act
(Republic Act 7610, as amended by Republic Act 9231)
- Passport Act
(Republic Act 8239)
- Inter-country Adoption Act of 1995
(Republic Act 8043)
- Domestic Adoption Act of 1998
(Republic Act 8552)

What protection and services can victims/survivors of Trafficking in Persons avail of under the law?



Trafficked persons are recognized as victims. They are entitled to the following protection:

- ▶ Trafficked persons shall not be penalized for the commission of crimes directly related to the acts of trafficking or for obeying order of traffickers.
- ▶ When the trafficked person institutes a separate civil action for the recovery of civil damages he/she shall be exempt from the payment of filing fees.
- ▶ Respect for the right to privacy of the trafficked person. Any information that tends to establish the identity shall not be disclosed to the public.
- ▶ Trafficked persons shall be entitled to the benefits of the Witness Protection Program
- ▶ Victims of cross-border trafficking are considered "Overseas Filipino in Distress" and may avail of the legal assistance created under the Migrant Worker's Act
- ▶ Repatriation



Government agencies are mandated to provide the following services:

- Emergency shelter or appropriate housing
- Counseling
- Free legal services
- Medical or psychological service
- Livelihood and skills training
- Educational assistance

What agency is tasked to coordinate and monitor the implementation of the law?

The Inter-Agency Council Against Trafficking (IACAT) is tasked to coordinate and monitor the implementation of the law. It is composed of:

Chairperson
Secretary of the Department of Justice

Co-Chairperson
Secretary of the Department of Social Welfare and Development

Members

- Secretary of the Department of Foreign Affairs
- Secretary of the Department of Labor and Employment
- Administrator of the Philippine Overseas and Employment Administration
- Commissioner of the Bureau of Immigration
- Director-General of the Philippine National Police
- Chairperson of the National Commission on the Role of Filipino Women
- **Three (3) NGOs, who shall be composed of:**
 - One representative from the women's sector
 - One representative from the overseas Filipino workers
 - One representative from the children's sector

Does Republic Act 9208 have rules and regulations to implement its provisions?

On September 17, 2003, the **Inter-Agency Council Against Trafficking (IACAT)**, through Council Resolution No.1, Series of 2003, approved and adopted the **RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9208, OTHERWISE KNOWN AS THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003**.

It provides for the detailed implementation of the provisions of the law, including the following:

- ▶ Specific roles and functions of national government agencies tasked to implement programs and services to address trafficking in persons
- ▶ Roles and responsibilities of local government units
- ▶ Reporting procedure for suspected/alleged trafficking incidents
- ▶ Procedure for the interception, arrest and investigation of traffickers
- ▶ Procedure for the rescue, recovery and repatriation of victims
- ▶ Guidelines for the rehabilitation and reintegration of victims
- ▶ Procedure for the prosecution, civil forfeiture and recovery of civil damages