

RETURN AND REINTEGRATION OF HUMAN TRAFFICKING VICTIMS FROM AUSTRALIA

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The return and reintegration process is a commonly under-represented consideration across policy and literature concerning trafficking in persons. It is often distinct or absent from the core anti-trafficking themes of prevention, protection, and prosecution. This article explores the nature and quality of the programs and processes under which victims of trafficking in persons are returned and reintegrated from Australia. It examines victim demographics, including the countries to which victims most commonly return, as well as key principles that govern successful return and reintegration. Further, the article analyses the mechanisms that manage how victims in Australia are currently prepared for their return home and explores interactions with foreign reintegration and rehabilitation assistance schemes available to victims upon their return. To this end, an analysis of the Australian situation against international best practice principles informs responsive policy change and law reform recommendations.

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1. Introduction

The return, reintegration, and rehabilitation of trafficking victims add a dyadic and at times complex dimension to the trafficking in persons phenomenon in the Australian context. As such, the objective of this article is to map, unpack, and critically examine the nature and quality of the programs and processes under which victims of trafficking in persons are returned from Australia and reintegrated into their home country.

First, the article examines the demographic of human trafficking victims in Australia. Second, it outlines the key international law and best practice principles of victim return and reintegration set out in the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*¹ and supplemented by relevant guidelines, model laws, legislative guides, and ‘toolkits’. Theoretical dimensions and academic commentary are also articulated and analysed. Third, based on this analysis, the article explores the mechanisms and systems currently available to victims of trafficking in persons in Australia (namely the Support for Victims of People Trafficking Program) and reciprocal foreign reintegration systems abroad. The article concludes with a set of recommendations for law reform and policy change.

2. Background and Significance

Various objectives underpin and validate the canvassing of available return and reintegration mechanisms in Australia. On a macro level, the return and reintegration of victims has become a recent policy priority of the Australian Government in its broader commitment to combat trafficking in persons via the Commonwealth *Anti-People Trafficking Strategy*.² Currently, themes of prevention, protection, and prosecution dominate the concepts and contents of anti-trafficking campaigns,³ whilst supplementary and dependent themes of rehabilitation and reintegration remain less pronounced.

The proper observance of appropriate rehabilitation and reintegration mechanisms guarantees, in general terms, the longitudinal safety and wellbeing of victims and their community whilst simultaneously re-securing human rights and safeguarding against re-victimisation, reprisal or retaliation.⁴ Furthermore, a holistic victim-oriented return and reintegration approach can inform and enhance the policy based focus on prevention, protection, and prosecution — rather than detach from them and dilute their value. In the wake of a national review of return and reintegration mechanisms and processes, an emphasis and understanding upon international best practice principles in relation to the Australian return and reintegration schemes ostensibly serves to strengthen this proposition, regardless of whether the reviewed approach is human rights, victim, or industry/demand based.

¹ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, opened for signature 15 Dec 2000, 2237 UNTS 319, Annex II [hereinafter *Trafficking in Persons Protocol*].

² Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 32, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

³ US Department of State, *Trafficking in Persons Report 2009* (Washington, DC: Department of State 2009) 62.

⁴ Moushola Desyllas, ‘Critique of the Global Trafficking Discourse and US Policy’ (2007) 34(4) *Journal of Sociology and Social Welfare* 57–79. See Office of the High Commissioner on Human Rights, *Recommended Principles and Guidelines on Human Rights and Trafficking in Persons* (2002) art 18, available at www.ohchr.org/Documents/Publications/Traffickingen.pdf (accessed 20 Oct 2010).

A persistent finding in research that explores the theoretical dimensions of the return, reintegration, and rehabilitation process is the pervasiveness of an observed linear trajectory in the trafficking narrative.⁵ Much of the available research notes three discrete temporal stages in the trafficking experience from initial 'safety' in the country of domicile, to 'exploitation' in the host country, and back to 'safety' in the country of origin. Further, cursory observations of the phenomenon in the media frequently identify the physical repatriation of the victim to their country of origin or domicile as the definitive 'end' of the trafficking process altogether.⁶ This, however, is commonly not the case in practice. Recent Australian cases, such as 'Operation Turquoise' where victims moved between Thailand and Australia on multiple occasions to assist authorities,⁷ illustrate the fracturing of this narrative in day-to-day experience.

Associated sociological theories of secondary victimisation⁸ also suggest that as a practical consequence of viewing and acting upon the phenomenon via the linear narrative, victims grow vulnerable to a significantly heightened risk of re-victimisation, retaliation or reprisal. The literature suggests that this predisposition is primarily caused by the victim assuming a long term self-identification as a victim, leading to a diminished sense of resilience and civic participation. This further exacerbates the need for long-term rehabilitation that focuses directly upon the individual needs of the victim post repatriation.

Demand for a robust, malleable, and interdependent national and international framework in relation to trafficking in persons in the global context is commonly recognised as the most appropriate way to curb the pervasiveness of this phenomenon.⁹ The International Centre for Migration Policy Development (ICMPD) identifies transitional and transnational spaces created and harboured by strict political borders as the most vulnerable for trafficking in persons proliferation.¹⁰ Consequently, key non-binding international best practice literature, particularly the United Nations Office on Drugs and Crime (UNODC) guidelines, recognise strong and pervasive bilateral and multilateral partnership, dialogue, and convergence as an imperative dimension to any campaign against trafficking in persons.¹¹

Models of return and reintegration pivot centrally upon political borders and international law during physical victim repatriation. The majority of international streamlined return and reintegration mechanisms via the *Trafficking in Persons Protocol* use discrete labels such as

⁵ See for example, Marie Segrave et al, *Sex trafficking: international context and response* (Cullompton: Willan Pub., 2009) 160; Yvonne Rafferty, 'Children for sale: Child trafficking in Southeast Asia' (2007) 16 *Child Abuse Review* 401–422; Melissa Ditmore, 'Morality in new policies addressing trafficking and sex work', paper presented at IWPR's 7th *International Women's Policy Research Conference*, June 2003, available at www.iwpr.org/pdf/Ditmore_Melissa.pdf (accessed 20 Oct 2010); Fiona David, *Trafficking of Women for Sexual Purposes* (Canberra, ACT: Australian Institute of Criminology, 2008).

⁶ See for example: Maris Beck, 'Bought and Sold', *The Age (Melbourne)*, 12 Mar 2009, 19; Australian Broadcasting Corporation, 'Sex slaves rescued' from Sydney brothels', *ABC (Sydney)*, 7 Mar 2008; Natalie O'Brien, 'Trafficked, then left waiting by the roadside', *The Australian (Sydney)*, 6 Dec 2008.

⁷ *R v Sieders and Yotchomchin* [2007] 4 DCLR(NSW) 255; *Sieders v R* [2008] 72 NSWLR 417.

⁸ Rebecca Campbell & Sheela Raja, 'Secondary victimization of rape victims: insights from mental health professionals who treat survivors of violence' (1999) 14(3) *Violence and Victims* 261–275.

⁹ UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), available at www.unhcr.org/refworld/docid/3f1fc60f4.html (accessed 20 Oct 2010). See also, Anne Gallagher, 'Developing an Effective Criminal Justice Response to Trafficking in Persons: Lessons' (2008) 18 *International Criminal Justice Review* 318–343.

¹⁰ ICMPD, *Anti-trafficking training for front line law enforcement officials, part one: background reader* (2006), available at [www.anti-trafficking.net/333.html?&tx_icmpd_pi2\[document\]=591&cHash=b924d5382e141224f85d92b6413ef976](http://www.anti-trafficking.net/333.html?&tx_icmpd_pi2[document]=591&cHash=b924d5382e141224f85d92b6413ef976) (accessed 20 Oct 2010).

¹¹ UNODC, *Trafficking in Persons: Global Patterns* (Vienna: UNODC, 2006) available at www.unodc.org/pdf/traffickinginpersons_report_2006-04.pdf (accessed on 20 Oct 2010)

'the sending state' and 'the receiving state' to logistically construct and facilitate the repatriation process. As such, a critical examination of the programs and processes under which victims of trafficking in persons are returned and reintegrated from Australia offers insight into current strengths and opportunities in the creation of stronger bilateral and multilateral partnership and more holistic anti-trafficking campaign convergence.

3. The Scale of the Problem

Whilst Australian Government sources state that 'there is no evidence of any large scale [trafficking] problem in Australia',¹² scholarly research reveals that attempts to estimate figures still vary greatly in their assessment of the scale of the problem.¹³ Some sources suggest that the number of victims who report their victimisation or come to the attention of the authorities may be as low as five percent.¹⁴

3.1 Victim demographics and experiences

Reports by the Australian Federal Police (AFP) note that the majority of victims of trafficking in persons in Australia are from Southeast Asian nations or the Republic of Korea (South Korea). In official reports and other literature, Thailand is repeatedly singled out as the principal source country.¹⁵ Indonesia and Malaysia appear to be the second and third main countries of origin. Smaller numbers have also arrived from PR China, Hong Kong, and the Philippines.¹⁶ There have been only isolated cases of victims trafficked from non-Asian countries.¹⁷

The great majority of victims of trafficking in persons in Australia are found working in the sex industry. This includes legal, as well as illegal brothels.¹⁸ There is no significant evidence of persons being brought into Australia for forced labour in sweat shops or other forced employment.¹⁹

Multiple reports document the unsafe working conditions for trafficked women, the risk of infection with sexually transmitted diseases, poor and unsanitary accommodation, instances of

¹² Senator Chris Ellison, then Minister for Justice and customs, as referenced in Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No 28 2002-03 (Canberra, ACT: Department of the Parliamentary Library, 2003) 5.

¹³ See further, Andreas Schloenhardt et al, 'Trafficking in Persons in Australia: Myths and Realities' (2009) 10(3) *Global Crime* 224 at 225–228.

¹⁴ Toni Makkai '2003 Workshop on trafficking in human beings, especially women and children, 12th Session of the Commission on Crime Prevention and Criminal Justice', Vienna, 15th May, as cited in Judy Putt, 'Trafficking in Persons to Australia: A Research Challenge' (2007) *Australian Institute of Criminology Working Paper No 338*, 3.

¹⁵ US Department of State, *Trafficking in Persons Report 2008* (Washington, DC: Department of State 2008) 61

¹⁶ Australia, Attorney-General's Department, *Australia's Strategy to Combat People Trafficking*, (Canberra, ACT: Attorney-General's Department, March 2007) 3 (copy held by authors); AFP, *Annual Report 2006-07* (Canberra, ACT: AFP, 2007) 25; AFP, *Annual Report 2004-05* (Canberra, ACT: AFP, 2005) 32; AFP, *Annual Report 2003-04* (Canberra, ACT: AFP, 2004) 37.

¹⁷ AFP, *Annual Report 2005-06* (Canberra, ACT: AFP, 2006) 3; cf Mark Phillips, 'Sex slave shame unveiled', *The Mercury* (Hobart), 24 Mar 2004.

¹⁸ Queensland, Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* (Brisbane, Qld: CMC, December 2004) 26.

¹⁹ Elaine Pearson, 'Australia', in, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Bangkok: Global Alliance against Trafficking in Women, 2007) 28 at 29, available at www.gaatw.net/index.php?option=com_content&task=blogcategory&id=0&Itemid=179 (accessed 20 Oct 2010).

imprisonment, physical and sexual violence, and forced drug use.²⁰ Trafficked women are also usually bound to their traffickers by a verbal agreement frequently referred to as debt-bondage. This 'contract' obliges women to work for the brothel-owner until the debts for the journey to Australia and their accommodation have been paid off. These so-called 'contract girls' usually enter into the agreement with the traffickers prior to their arrival in Australia, though the contract and the associated debt are sometimes transferred between different traffickers.²¹ From the available information, the fees charged by traffickers in Australia range between \$12,000²² and \$50,000.²³ Several reports confirm that women are required to pay off their debt by working a set number of jobs (up to 500-800). On average it takes the women between six to eight months to pay off that debt, usually by working six or seven days a week and often more than ten hours per day.²⁴ This lends support to the observation that victims of trafficking are 'used' by their traffickers for a finite period of time and that there is often a rapid 'turnover' of women.²⁵

3.2 Data

Only very limited data is available about the number of trafficking victims in Australia who return to their country of origin. The Office for Women, a branch of the federal Department of Families, Housing, Community Services, and Indigenous Affairs, funds and oversees the Victims of Trafficking Care Program (VotCare). In 2009, the Department compiled a data sample of potential outgoing trafficking victims between 2004 and 2009. The sample represents all 131 victims who used VotCare services during that period, but does not isolate the number of victims who did not engage in the Return and Reintegration Scheme under the Program or, more significantly, victims who do not engage in the Program at all (that is remained undetected).²⁶

The data confirms several basic demographics, including the fact that almost 90 percent of victims who receive support and subsequent return and reintegration were women subject to sexual exploitation. The remaining victims in the sample represent victims who experienced other forms of exploitation. No minors appear in the sample. The data also confirms that Thai nationals constitute 55 percent of returning victims, whilst South Koreans accounts for 18 percent and Malaysians for 11 percent. The remaining countries collectively account for only 16 percent.²⁷

Further, the data examines the geographic distribution of victim contact with VotCare in Australia, from engagement to repatriation. New South Wales and Victoria account for 94

²⁰ Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude* (Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004) paras 2.40–2.46; Linda Brockett & Alison Murray, 'Thai Sex Workers in Sydney', in R Perkins et al (eds), *Sex Work and Sex Workers in Australia* (Sydney, NSW: UNSW Press, 1994) 191 at 197.

²¹ Marnie Ford, *Sex slaves and legal loopholes* (Melbourne, Vic: Project Respect, 2001) 15.

²² Linda Brockett & Alison Murray, 'Thai Sex Workers in Sydney', in R Perkins et al (eds), *Sex Work and Sex Workers in Australia* (Sydney, NSW: UNSW Press, 1994) 191 at 192.

²³ Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.17.

²⁴ Marnie Ford, *Sex slaves and legal loopholes* (Melbourne, Vic: Project Respect, 2001) 15.

²⁵ Linda Brockett & Alison Murray, 'Thai Sex Workers in Sydney', in R Perkins et al (eds), *Sex Work and Sex Workers in Australia* (Sydney, NSW: UNSW Press, 1994) 191 at 192.

²⁶ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 31, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

²⁷ Ibid.

percent of the geographic distribution.²⁸ This concentration is validated by other reports that reveal that the majority of human trafficking cases detected in Australia thus far occurred in Sydney and Melbourne, in addition to two reported cases in Queensland. Elsewhere it has been noted:

While this may be reflective of the population concentration in Australia's two main urban centres — and the size of their local sex industry — it is likely that trafficking in persons also occurs in other parts of Australia, albeit on a smaller scale which, in turn, makes it more difficult to detect.²⁹

4. International Best Practice

Principles of best practice in relation to return and reintegration of victims of trafficking in persons stem from a broad range of international law instruments, non-binding guidelines, and academic literature. Such holistic principles, whilst not streamlined and thus not available for immediate and cohesive implementation by States, are imperative in ensuring the welfare and best interests of victims and their communities.

Strictly construed, binding international law, namely the *Trafficking in Persons Protocol*, represents the requisite benchmark. Here, Article 8 establishes a brief and rudimentary foundational model for logistical repatriation and rehabilitation best practice.³⁰ Building upon this basic framework, supplementary non-binding international guidelines detail and establish requirements for a more comprehensive implementation of repatriation and rehabilitation best practice.³¹ Overarching and underpinning all such principles are theoretical accounts and critiques of best practice that operate in jurisprudential, sociological, and criminological contexts. Such doctrines assist in establishing constructive recommendations for reform.

4.1 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children

The *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol)* represents the only binding international legal instrument ratified by Australia that contains some provisions relevant to return and reintegration of human trafficking victims.

Article 8 *Trafficking in Persons Protocol* creates several obligations for receiving countries seeking to repatriate victims of trafficking in persons to their home country. Obligations for the sending country, that is the victim's country of origin or habitual residence, are limited in comparison.

Article 8(1) requires that the country of origin shall facilitate the return of the victim without undue or unreasonable delay. Article 8(2) *Trafficking in Persons Protocol* requires that the State Party returning the victim must have due regard for the safety of the victim and for the status of any legal proceedings relating to the trafficking. This provision relates to the timing of any return of the victim. It recognises that decisions to return a victim of trafficking in persons require a consideration of two factors. First, the safety of the victim must be paramount in the decision to repatriate. Accordingly, 'it may well be best for the return of the victim to his or her home State to be delayed in order to allow at least some aspects of [the physical, psychological, and social] recovery process to have been completed.'³² Second, States must consider the

²⁸ Ibid, at 30.

²⁹ Andreas Schloenhardt et al, 'Trafficking in Persons in Australia: Myths and Realities' (2009) 10(3) *Global Crime* 224 at 245.

³⁰ See Section 4.1 below.

³¹ See Section 4.2 below.

³² David McClean, *Transnational Organized Crime* (Oxford: Oxford University Press, 2007) 347.

status of victims of trafficking in persons who are of assistance to criminal proceedings in the host State prior to their repatriation. In the case of child victims of trafficking in persons, States should also consider whether repatriation of the child is in the best interests of the child. Further, prior to their return, States must identify a suitable relative or guardian who has agreed and is able to take responsibility and offer care and protection for the child.³³

Article 8(2) of the Protocol further mandates that the repatriation of the victim 'shall preferably be voluntary'. While the Protocol does not prohibit compulsory repatriation against the known wishes of the victim, it calls on Signatories to abstain from applying force in order to compel victims to return to their home country. 'There is something offensive in the notion that a victim, compelled by illicit force to move to another State, should then be compelled, albeit by legitimate force, to move once again', notes one commentator.³⁴ Article 8(2), however, does not place any specific obligation on the State Party returning the victim.³⁵

The *Trafficking in Persons Protocol* also obliges State Parties to cooperate in the course of the return proceedings. Upon request of the receiving state, states of origin shall verify whether the trafficked person is a national or had the right to permanent residence at the time of entering the receiving state and, if the person has no proper documentation, issue the necessary travel or other documents to enable the person to travel and re-enter its territory, Article 8(3), (4) *Trafficking in Persons Protocol*.

When juxtaposed against detailed non-binding guidelines, the Protocol requirements appear undeveloped. This is largely explained by historical developments that precede the inception of the *Trafficking in Persons Protocol*. Prior to 2000, the international legal setting placed significant emphasis upon purely curtailing the proliferation of trafficking in persons for the purposes of sexual exploitation.³⁶ Consequently States were not obliged to adopt a holistic approach to rehabilitation as no formal recognition of trafficking in persons for other exploitative purposes existed. Thus, Article 8 *Trafficking in Persons Protocol* reflects the basic considerations of return and reintegration before the year 2000.³⁷

Focus on the 'Receiving State'

Whilst the *Trafficking in Persons Protocol* recognises the repatriation process as one that commands a measure of international cooperation and interdependency, logistics are largely framed in the context of the receiving State.³⁸ As such, broader opportunities to establish multilateral international cooperation and convergence of policy remain absent.

³³ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (New York, NY: UN, 2004) 290.

³⁴ David McClean, *Transnational Organized Crime* (Oxford: Oxford University Press, 2007) 347–348.

³⁵ UN General Assembly, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions; *Addendum: Interpretative notes for the official record (travaux préparatoires) of the negotiations for the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, UN Doc A/55/383/Add.1 (3 Nov 2000) para 73.

³⁶ See further, Andreas Schloenhardt & Corin Morcom, 'All About Sex?! The Evolution of Trafficking in Persons in International Law' (2011) [forthcoming].

³⁷ See also synergies between Articles 7, 9, and 10 of the *Trafficking in Persons Protocol* concerning the availability of visas and extension of the initial bridging visa to 90 days; Article 11 which provides a reflection period of more than 30 days; Articles 12, 13, and 14 which require repatriation to not offend non-refoulement principles, and; Article 15 concerning the right to asylum.

³⁸ Janet Phillips, *People Trafficking: An Update on Australia's Response*, Research Paper No 5 2008–09 (Canberra, ACT: Parliamentary Library, 2008) 13, available at www.aph.gov.au/library/pubs/rp/2008-09/09rp05.pdf (accessed 20 Oct 2010); AFP, *Annual Report 2006-07* (Canberra, ACT: AFP, 2007) 9.

The Protocol's provisions largely view repatriation as synonymous with full rehabilitation of human trafficking victims. To that end, Article 8 requires States to facilitate, cooperate and accept the return of victim nationals (Article 8(1)) with regard to the victim safety (not just those who participate in criminal investigation or proceedings) (Article 8(2)). Here, a victim's status must be verified and relevant travel, identity, residency, and immigration documentation must be provided to the receiving State without delay or prejudice (Article 8 (3), (4)). Further, the method of repatriation and transfer of the victim is left to the discretion of States themselves and the mercy of international relations and bilateral dialogue. The *Trafficking in Persons Protocol* provides no plan of action or intervention for situations of non-agreement between States.

Key omissions under the Protocol

Article 8 *Trafficking in Persons Protocol* omits any recognition of potential emotional and/or physical distress of the victim throughout the return and reintegration process. Moreover, unlike the *Protocol against the Smuggling of Migrant by Land, Air, and Sea*,³⁹ the *Trafficking in Persons Protocol* contains no specific provisions to prevent the refoulement of victims of trafficking. The principle of non-refoulement is expressed in the *Convention relating to the Status of Refugees*⁴⁰ and a number of other international human rights treaties.⁴¹ It seeks to ensure that a person must neither be expelled nor returned ('refouled')⁴² to 'the frontiers of territories where his [or her] life or freedom would be threatened'.⁴³ A country is in breach of this non-refoulement obligation if its authorities fail to properly identify and protect persons who are entitled to the benefits of refugee status.⁴⁴ The *Trafficking in Persons Protocol* makes no specific mention of these principles, but it does emphasise that the victim's return should, insofar as possible, be voluntary.

Further the Protocol avoids any emphasis upon using a holistic return and rehabilitation process for the purposes of prevention and curtailing re-victimisation or the trafficking phenomenon as a whole. Adding to this, the Protocol omits any overt identification of a point or process that marks the end or success of the return and reintegration process.

The *Trafficking in Persons Protocol* is also silent regarding any chaperone or third party assistant in the repatriation of the victim across the border. As such, under a strict interpretation of the Protocol, victims are assigned high autonomy — and thus risk — in their own repatriation and essentially approach immigration and the technical legal handover independently and in isolation (but for any notice given to immigration officials). Here, further complexities arise if the victim wishes to remain anonymous and suppress any identification as a victim of trafficking in persons which they may elect to do under certain domestic policies.

Human rights considerations

But for any inferred or implied reference to the protection of the human rights of the victim throughout the process of repatriation under Article 8 (that is adherence to the principles of non-

³⁹ Article 19, UN General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime*, UN Doc A/55/383 (2 Nov 2000) Annex I. The text has also been reprinted in (2001) 40 ILM 335.

⁴⁰ 189 UNTS 150 [hereinafter *Refugee Convention*].

⁴¹ Article 7 International Covenant for Civil and Political Rights (ICCPR), 993 UNTS 3; Art 45 1949 Geneva Convention relative to the Protection of Civilians in Time of War, 75 UNTS 287; Art 3(1) 1984 Convention against Torture and other Cruel or Degrading Treatment or Punishment, 1465 UNTS 85; Art 22 Convention of the Rights of the Child, 1577 UNTS 3.

⁴² Article 31 *Refugee Convention*, 'save on grounds of national security'.

⁴³ Article 33 *Refugee Convention*.

⁴⁴ See further, UNODC, *Basic training manual on investigating and prosecuting the smuggling of migrants* (New York, NY: UN, 2010) Module 9: Human Rights, 6, available at www.unodc.org/unodc/en/human-trafficking/publications.html (accessed 27 August 2010).

refoulement),⁴⁵ the framework under the *Trafficking in Persons Protocol* remains focussed upon logistical considerations rather than a victim rehabilitation or human rights oriented model.

From an international law perspective, the *International Covenant on Civil and Political Rights (ICCPR)* and *Universal Declaration of Human Rights (UDHR)* are directly applicable to the treatment and return of victims but are not expressly referenced in the Protocol. For example, the *ICCPR*⁴⁶ and the *UDHR*⁴⁷ specifically condemn slavery and servitude, with servitude covering slavery-like practices including economic exploitation, debt bondage and servile forms of marriage. The *Supplementary Convention on the Abolition of Slavery* and commentary attached to the *ICCPR* designate trafficking in persons as a category of 'servile status'.⁴⁸ Consequently, individual States are relied upon in the development of return and rehabilitation schemes in relation to proper observance of the human rights of the victim via broader international human rights instruments.

4.2 Non-Binding International Best Practice

A plethora of non-binding international best practice guidelines have emerged since 2000 to complement the provisions under the *Trafficking in Persons Protocol*. The broad motivation for these guidelines is to ground the Protocol framework in principles of holistic rehabilitation, to create synergy with prevention and protection, and to encourage the multilateral convergence of policy and approaches in the best interest of the victim. The following sections explore the themes and recommended obligations present under key non-binding international best practice.

4.2.1 Physical and Emotional Welfare of the Victim

Various guidelines base recommendations upon the premise that international best practice commands an understanding of the inherent physical and psychological challenges faced by victims of trafficking in persons and the use of the reintegration process to empower the victims' own initiative in their long term rehabilitation. This is essentially a victim-oriented framework.

For example, UNODC's *Toolkit to Combat Trafficking* calls for States to underscore psychological, family-related, health, legal, financial and community reintegration considerations in pre and post repatriation support services.⁴⁹ The Toolkit suggests that a comprehensive risk assessment is the most capable instrument to address these considerations in both States.⁵⁰ Here, recommended key factors that should influence the provision of comprehensive victim support should include:

- Counselling assistance with a specific focus on potential or existing shame, alienation, depression or trauma;

⁴⁵ Articles 12, 13, and 14 *Trafficking in Persons Protocol*.

⁴⁶ Article 8(1) and (2) *ICCPR*: '[n]o one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited' (art 8(1)); 'no one shall be held in servitude' (art 8(2)).

⁴⁷ Article 4 *UDHR*: '[n]o one shall be held in slavery; slavery and the slave trade shall be prohibited in all their forms'.

⁴⁸ Article 1 *Supplementary Convention on the Abolition of Slavery, The Slave Trade and Institutions and Practices Similar to Slavery*; Michael Nowack, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl, Arlington, VA: NP Engel, 1993) 199-201; Marc Bossuyt, Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights (Dordrecht: M Nijhoff, 1987) 164.

⁴⁹ UNODC, *Toolkit to Combat Trafficking in Persons* (Vienna: UNODC) 2009; available at www.unodc.org/documents/human-trafficking/HT-toolkit-en.pdf (accessed 20 Oct 2010).

⁵⁰ *Ibid*, at 125

- Consideration of changes to familial dynamics and the probability of social acceptance (that is if earnings had been sent home or not);
- Available vocational opportunities upon reintegration;
- Addressing any long term illness or disease (that is HIV/AIDS);
- Issues of fear or resent for authority that may leave victims more predisposed to re-victimisation.⁵¹

Such predisposition to re-victimisation has been documented in reference to Australia and has increased significance in this context of best practice. Whilst an empirical indication of the level of predisposition returning victims from Australia face in being re-victimised does not exist, it is a common conception in qualitative accounts of repatriated victim experience. Galma Jahic and James Finckenauer suggest that cases of re-victimisation account for a 'significant fraction' of cases that remain undetected as the ability to re-victimise implies an ability on behalf of the perpetrator to arrange a series of constant trafficking and exploitation enterprises undetected.⁵²

Conversely, it could also be argued that the lack of empirical indication in recognised cases of re-victimisation exists only due to its low frequency. Evidence submitted to the Australian parliamentary *Inquiry into Trafficking of women for Sexual Servitude* in 2004 highlights re-trafficking as a real possibility, particular where women work on second or subsequent sex contracts in Australia:

From my contacts in South East Asia, in the Mekong region particularly, it appears that a lot of the women are not able to be successfully repatriated on the programs that are available because they do not really lead to any general increasing acceptance of the women repatriating to their home communities. So there is really no place for them when they go back.⁵³

4.2.2 Protection against Abuses of Human Rights

Guidelines on Human Rights and Trafficking in Persons issued by the United Nations Office of the High Commissioner on Human Rights (UNHCHR) stress that access to fundamental human rights should be visibly available at all stages of the return and reintegration process.⁵⁴ The crux of the human rights based concerns advanced by these Guidelines appeal to issues of victim consent in the process of repatriation. Victim consent must be all pervasive from initial contact with authorities and the victim must be kept aware of the nature of each phase of the process (with use of an interpreter if necessary).

Such recommendations come in response to situations of non-participation by victims. Whilst in the first instance this remains antithetical to goals of incorporated and comprehensive rehabilitation, it also lends itself to potentially arbitrary decisions on behalf of the victim, particularly if the victim does not wish or consent to repatriation.

Additional human rights based international best practice recommendations concern:

- Primary health care and shelter that is not contingent upon co-operation with authorities;
- Unlimited access to consular and diplomatic services;
- Protection from harm, threat or intimidation by traffickers and others;
- Full warning and disclosure as to the difficulties inherent in protecting identity;

⁵¹ Ibid, at 137-165.

⁵² Galma Jahic & James O Finckenauer, 'Representations and Misrepresentations of Trafficking in Persons' (2005) 8 *Trends in Organized Crime* 24-40.

⁵³ Referenced in Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude* (Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004) 19.

⁵⁴ Office of the High Commissioner on Human Rights, *Recommended Principles and Guidelines on Human Rights and Trafficking in Persons* (2002) art 18, available at www.ohchr.org/Documents/Publications/Traffickingen.pdf (accessed 20 Oct 2010).

- Sustainable housing and vocational assistance that improved civic engagement and capacity;
- Informing victims expressly of their rights at all stages (including the right to seek asylum).⁵⁵

4.2.3 Recommended Domestic Protocol Policy Implementation

UNODC, in conjunction with UN.GIFT, the United Nations Global Initiative to Fight Trafficking in Persons, has published a set of model laws against trafficking in persons that are based on the obligations and principles of the *Trafficking in Persons Protocol*.⁵⁶

In relation to Article 8 *Trafficking in Persons Protocol*, Article 33 of the *Model Law against Trafficking in Persons* recommends that the 'sending' State should engage in active policy and programs and a comprehensive risk assessment to ensure safety of victim until received.⁵⁷ Here,

[the] risk assessment should take into consideration factors such as the risk of reprisals by the trafficking network against the victim and his or her family, the capacity and willingness of the authorities in the country of origin to protect the victim and his or her family from possible intimidation or violence, the social position of the victim on return, the risk of the victim being arrested, detained or prosecuted by the authorities in his or her home country for trafficking related offences (such as the use of false documents and prostitution), the availability of assistance and opportunities for long-term employment. Non-governmental organisations and other service agencies working with victims of trafficking should have the right to submit information on these aspects, which should be taken into account in any decision about the return or deportation of victims by the competent authorities.⁵⁸

4.2.4 Rights Based Approaches and Bi-lateral and Multilateral Agency

The UN.GIFT *Vienna Forum Report*, published in 2008, emphasises a rights based approach on behalf of the victim as the most appropriate and sustainable best practice model.⁵⁹ This process calls for the training of authorities in the sensitivity and importance of effective return and reintegration strategies that empower the victim. This rights based approach further seeks victim integration and participation in the inter-country dialogue and the process of long term rehabilitation. In particular, the *Vienna Forum Report* recommends resilience and capacity skill building exercises and workshops to instil help-seeking behaviour within the victim in the hope of avoiding re-victimisation.

The International Organisation for Migration (IOM) *Handbook on Direct Assistance for Victims of Trafficking in Persons* also evaluates and recommends victim oriented best practice principals.⁶⁰ IOM functions as an ancillary to the Australian Government through its assistance with return and reintegration programs overseas. This is also in partnership with AusAID, Australia's development aid agency. The Handbook focuses particularly on victim consent and on diluting the 'sending'/'receiving' dichotomy as a means of building pragmatic bi-lateral and

⁵⁵ Ibid, Guidelines 1, 6.

⁵⁶ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (Vienna: United Nations, 2009).

⁵⁷ Ibid, at 31.

⁵⁸ Ibid, at 79-80.

⁵⁹ UN.GIFT, *The Vienna Forum Report: a way forward to combat trafficking in persons* (New York, NY: 2008) available at www.un.org/ga/president/62/ThematicDebates/humantrafficking/ebook.pdf (accessed 20 Oct 2010).

⁶⁰ IOM, *The IOM Handbook on Direct Assistance for Victims of Trafficking in Persons* (Geneva: IOM 2007) 1, available at www.humantrafficking.org/uploads/publications/CT_20handbook_cover.pdf (accessed 20 Oct 2010).

multilateral co-operation for the global curtailment of trafficking in persons. The IOM Handbook principally recommends:

- Victim consent at all stages via an open dialogue with a translator where applicable;
- The compilation of extensive reintegration plans and recommendations detailed by the 'sending' country and perused by the 'receiving' country prior to physical repatriation;
- Partnership with a Non-Governmental Organisation (NGO) to perform as an intermediary in the repatriation/transfer process as well as pre and post departure liaising between States;
- Immediate temporary arrival assistance (including housing, finances etc.);
- Negotiation of the 'sending' States reintegration plan/recommendations facilitated by a constant process of send and response between States to open dialogue;
- The use of micro-enterprise in harbouring vocational opportunities and civic participation for victims;
- Establishing streamlined processes and bi-lateral agreements between popular States or within popular regions;
- Case follow-up by 'sending' State.⁶¹

IOM's *Handbook on Direct Assistance for Victims of Trafficking in Persons* also includes a consideration of best practice for the return and reintegration of trafficked children.⁶² Under this regime, decisions are principally guided by considerations of the best interest of the child in an attempt to identify effective agreements and procedures for collaboration for full rehabilitation.

5. Australian Assessment

5.1 Background and Entry to Program

The Australian Government's Support for Victims of People Trafficking Program (the Program) is designed to assist persons who have been trafficked into Australia and who are aiding the investigation or prosecution of trafficking and sexual servitude.

The Office for Women describes the Program as 'demand driven' and closely linked to the visa framework.⁶³ It responds primarily to AFP investigations in conjunction with the Commonwealth Director of Public Prosecutions.⁶⁴ Victims can also be referred to the Program via hospitals, immigration officials, non-government organisations, or — as appears to be most common — foreign embassies and consulates in Australia.⁶⁵

The Support for Victims of People Trafficking Program aims to assist with the Government's priority of combating trafficking in persons through successful prosecution by providing 'appropriate support and assistance' to persons 'who are prepared to assist with the investigation or prosecution of perpetrators' and have been granted a relevant visa.⁶⁶ The

⁶¹ Ibid, at 53.

⁶² Ibid, at 60.

⁶³ BSIL Southern Edge, *Victims of Trafficking Care Program (VotCare Program)* (2008), available at www.southernedge.com.au/page/votcare_program.html (accessed 27 Jan 2009).

⁶⁴ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 29, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

⁶⁵ Ibid.

⁶⁶ BSIL Southern Edge, *Victims of Trafficking Care Program (VotCare Program)* (2008), available at www.southernedge.com.au/page/votcare_program.html (accessed 27 Jan 2009).

Program also aims to improve the skills of victims of trafficking, so as to assist their ability to reintegrate upon return to their home country.

From the inception of the Program until January 2009, the Program has been carried out by the contractor BSIL Southern Edge, which is a registered training organisation.⁶⁷ Since February 2009, the Australian Red Cross is contracted to carry out this work.⁶⁸

The Support for Victims of People Trafficking Program is open to all victims of trafficking, irrespective of gender or the nature of their trafficking situation.⁶⁹ Child victims will be supported for up to 48 hours under the support scheme and then will be transferred to the relevant state or territory child protection agency.⁷⁰

Eligibility for the Support for Victims of People Trafficking Program is tied to Australia's People Trafficking Visa Framework, with levels of available services varying depending on the type of visa held by the applicant. Trafficked persons gain entry to the Program after being granted one of Australia's visas for trafficked persons and witnesses (the Bridging Visa F, the Criminal Justice Stay Visa, and the Criminal Justice Entry Visa). The granting of these visas is conditional on the willingness of the participant to assist with any relevant criminal investigation into trafficking offences.⁷¹

Victims whose substantive assistance in criminal prosecution and investigation has ceased, are automatically referred to the Program. Victims who elect to pursue a Protection Visa appear to be initially governed by the administrative processes of asylum seeking. If such an application is denied but a victim is still recognised as a victim of trafficking in persons, the victim presumably retains a right to access the Support for Victims of People Trafficking Program. Mechanisms are also in place to identify and refer victims of trafficking in persons (from the Department of Immigration and Citizenship (DIAC) to the AFP) who are initially placed in mandatory detention or immigration transit accommodation facilities.

5.2 Victims of People Trafficking Program (Return and Reintegration Scheme)

The Return and Reintegration Scheme under the Support for Victims of People Trafficking Program represents an attempt by the Australian Government to streamline the return and reintegration processes. The Scheme coordinates the return and reintegration process and has further established regionally specific mechanisms that focus on States with high rates of return, such as Thailand which accounts for over 50 percent of returns under the Scheme since 2004.

The basic structure of the Return and Reintegration Scheme can be broken down into five key stages.⁷²

⁶⁷ Fiona David, *Trafficking of Women for Sexual Purposes* (Canberra, ACT: Australian Institute of Criminology, 2008)16.

⁶⁸ Australian Red Cross, *Case Workers - Support for Victims of Trafficking* (2009) available at www.redcross.org.au/nsw/employment-caseworker-trafficking.htm (accessed 20 Oct 2010).

⁶⁹ Australia, Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) [1], available at www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf (accessed 27 Jan 2009).

⁷⁰ Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, ANAO Audit Report No.30 2008–09 (Canberra, ACT: ANAO, 2009) [72].

⁷¹ See further, UQ Human Trafficking Working Group, *Australia: Visas for Victims of Trafficking in Persons* (200), available at www.law.uq.edu.au/human-trafficking-victim-support (accessed 20 Oct 2010).

⁷² Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 32, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-ID](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-ID)

The immediate safety and welfare of the victim is first assessed upon entry to the Return and Reintegration Scheme (which operates as part of the broader Program). In many cases this assessment is superficial as the victim is emerging from another, parallel stream of victim support under the Program. This phase attempts to bring victims to the same state of psychological and physical capacity to engage in the Scheme.⁷³

Second, the victim is informed of her/his rights under the Scheme and the process of repatriation, including the need for the victim to voluntarily accept every stage of the return process with a 'full and unambiguous' understanding of potential risks (that is that a request to remain anonymous as a victim of trafficking in persons to immigration officials and the 'receiving' State can be observed but not guaranteed).⁷⁴

The victim is then referred to an individual case manager who conducts a comprehensive risk assessment of the viability of return including:

- Any potential prosecutions the victim may face and whether the return is consistent with the principle of non-refoulement;
- The intensity of social stigma/shame associated with their return to their community;
- Regional NGOs and programs networks that the victim can contact in relation to finance, health, housing, counselling and vocational options;
- The travel based logistics of their return and arrival;
- Delivering the receiving State with an Australian designed comprehensive rehabilitation plan for their perusal;
- A request for travel and identification documents that confirms the victim is a national of the receiving State;
- Observing any ongoing requests of the victim and conveying any associated risk to the victim;
- Ensuring the victim can recognise situations of potential re-victimisation, and;
- Arranging a liaison to travel with the victim.⁷⁵

The fourth stage involves the physical process of repatriation, potentially in partnership with a third party liaison (depending upon the outcome of the risk assessment).⁷⁶

Following this, the Australian Government also attempts to make regular contact with relevant authorities in the receiving State concerning any ongoing skills based training and support being received by the victim. It also functions as an opportunity to ensure that the agreed plan of rehabilitation and reintegration is accessible to the victim and is producing pragmatic results.

The Australian Government has posted AusAID representatives in various locations to formally supervise this review, particularly in Thailand. Regardless, there is little the Australian Government can enforce once the victim is repatriated. The long term reintegration and rehabilitation is ultimately left to the discretion of the receiving State which commonly has low or unstable infrastructure.

Australia has purported to take a more pre-emptive approach to the probability of low infrastructure and good governance in the receiving State in an attempt to avoid a default in the contour of the victim's rehabilitation.⁷⁷

C+Annual+Report_WEB.pdf/\$file/IDC+Annual+Report_WEB.pdf (accessed 20 Oct 2010).

⁷³ Ibid.
⁷⁴ Ibid.
⁷⁵ Ibid.
⁷⁶ Ibid.
⁷⁷ Ibid.

In July 2009, amendments to the *Migration Regulations 1994* (Cth) in relation to victims of trafficking in persons implemented a compulsory 20-day intermission and transition period between formal discharge from the Return and Reintegration Scheme and physical repatriation.⁷⁸ DIAC assert that the rationale for this amendment is to provide time for the Scheme to formalise the requirements of Article 8 *Trafficking in Persons Protocol* and the accompanying five stages detailed above.⁷⁹

5.3 Associated Foreign Reintegration and Rehabilitation Systems

The Australian program operates two demographic specific projects funded by AusAID in partnership with overseas countries. These projects are delivered through IOM as an ancillary to the Australian Government.

5.3.1 The Return and Reintegration of Trafficked Women and Children Project

The Return and Reintegration of Trafficked Women and Children Project,⁸⁰ now in its second phase, aims to strengthen intergovernmental cooperation (particularly in relation to Article 8 *Trafficking in Persons Protocol*) and cooperation with NGOs. In light of the social stigma commonly associated with victims of trafficking in persons as well as feelings of shame and distrust in authority figures, victim support is not assigned but rather offered for the victim to take.⁸¹ This also aims to encourage greater civic capacity.

The project is part of a broader international initiative coordinated by the United States which purports to streamline international processes (hence the inclusion of children which remain currently of very limited relevance in the Australian context).⁸² The project is centrally delivered by IOM. Under IOM, AusAID is responsible for 'enhancing [the] capacity of referral agencies to support and reintegrate suspected victims of trafficking who return to their country of origin in Asia; enabling the monitoring of the reintegration process; and facilitation of investigation and/or prosecution of traffickers'.⁸³ The AusAID focus is upon relations with Laos, Myanmar, Thailand, Vietnam, and Cambodia.⁸⁴ It is noteworthy that South Korea and Malaysia are presently not included, although these countries account collectively for about 40 percent of returning victims from Australia.⁸⁵

⁷⁸ Australia, DIAC, 'Changes to the People Trafficking Framework' (1 July 2009) available at www.immi.gov.au/legislation/amendments/2009/090701/lc01072009-08.htm (accessed 20 Oct 2010).

⁷⁹ Ibid

⁸⁰ AusAID, 'Anti Trafficking Activities' (2009) available at www.usaid.gov.au/country/antitraffick.cfm (accessed 20 Oct 2010).

⁸¹ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 32, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

⁸² Andreas Schloenhardt et al, 'Trafficking in Persons in Australia: Myths and Realities' (2009) 10(3) *Global Crime* 224 at 228.

⁸³ Australia, AusAID, 'People Trafficking Matrix' (2008) 3, available at http://www.usaid.gov.au/publications/pdf/people_traff_matrix.pdf (accessed 20 Oct 2010).

⁸⁴ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 41, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

⁸⁵ Ibid.

The main focus of the project pivots around referral and assistance cohesion. It requires governments to compile handbooks and databases of regional NGOs that can assist with flagship support services for victims to access upon return. Underpinning this process is the aim to establish more robust bi-lateral partnerships between Australia and Sub-Mekong Region States.

5.3.2 Regional Pilot Project for Returning Victims of Trafficking from Australia to Thailand ('The Thai Returnee's Project')

The Thai Returnee's Project is a bilateral pilot project managed by IOM, AusAID, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), and the AFP that attempts to respond to the high number of trafficking victim returning from Australia to Thailand (representing 55 percent of victims repatriated from Australia).⁸⁶ The Project has streamlined the negotiation process between Australia and Thailand reducing the high resource burden individual case management places upon the Office for Women.

The Project specifically targets victims who are willing to cooperate with Australian authorities but expressly wish to not be identified by the Thai Government as a victim of trafficking in persons. Some of these victims fear that, in the absence of institutional assistance, upon return they may be treated as criminals, either for prostitution or illegal migration, and also fear additional problems of employment or other forms of reintegration.⁸⁷

In recognising the potential hazard repatriation without long term access to reintegration and rehabilitation support or partnership with Government presents, IOM offers a nominal grant of money to the victim (the equivalent of one month's rent). The number of victims receiving support via this method has varied from 8 in 2005 to 18 in 2007.⁸⁸ The provision of this grant is conditional upon the victim contacting a specified NGO upon return to Thailand.⁸⁹ The rationale justifying this approach stems from the sensitive nature of social and familial dynamics in home communities and the impact of positively identifying the victim within the community as a victim via regular support contact.⁹⁰ As noted below, this approach does not sit well with Article 8(2) *Trafficking in Persons Protocol* which requires States to make support non-contingent upon cooperation with the government or NGOs.

5.3.3 Reintegration Systems in Malaysia and South Korea

Reintegration systems in Malaysia and South Korea, which account for the second largest cohort of returning victims from Australia, usually operate on a needs basis, depending on the number of victims requiring return assistance. In comparison to Australian partnerships with Thailand, this response is considerably less pronounced.

⁸⁶ Ibid, at 32.

⁸⁷ Asia Foundation, *Reintegration Assistance for Trafficked Women and Children in Cambodia – A Review* (2005) available at www.childtrafficking.com/Docs/asiafoundation_250806.pdf (accessed 20 Oct 2010).

⁸⁸ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 42, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

⁸⁹ Melinda Sutherland, 'The AusAID Response to Human Trafficking in Southeast Asia' (2007) 95, available at www.une.edu.au/asiacentre/PDF/No19.pdf (accessed 20 Oct 2010).

⁹⁰ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 42, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

From a broader policy perspective, the Malaysian Government mechanisms purport to focus upon individual initiative by the victim in the recovery process. Broad and non-specific education/vocational/financial assistance programs are available with some specific programs encouraging microenterprise.⁹¹ These programs are principally run out of two shelters funded by the Ministry for Women, Family, and Community Development. Whilst victims are allotted judicial processing in a Magistrates Court within 24 hours of repatriation which will qualify them for victim specific services, returning victims are highly susceptible to re-victimisation by traffickers operating at formal border points such as the Malaysian-Indonesian border in Borneo. As discussed below, victims approach these formal border points from Australia essentially independently and autonomously.

The South Korean Ministry for Gender and Equality have established two shelters and 26 victim support delivery facilities for internally displaced people. Programs assisting returning victims of trafficking in persons from abroad are run in conjunction with these facilities. The South Korean Government also offer free legal advice to all trafficking victims.⁹²

Further and more detailed information about reintegration and rehabilitation assistance provided Malaysian and South Korean government sources are presently not available, hence it is not possible to offer a more detailed assessment of the comprehensiveness and adequacy of these systems.

5.4 Assessment against International Best Practice

The previous section shows that return and reintegration programs for victims of trafficking in persons in Australia are only rudimentary developed and it is not possible to identify a systematic, comprehensive policy on this issue.

The following sections assess the current mechanisms against the international best practice principles and standards articulated in international law and other international guidelines explored in Section 4 above. The focus here is on Australian programs and processes as opposed to reciprocal mechanisms abroad.

5.4.1 Compliance with Protocol requirements

The nature of binding international best practice under the *Trafficking in Persons Protocol* provides in and of itself a general shortcoming or barrier to comprehensive and full rehabilitation of the victim. Consequently, the Return and Reintegration Scheme under the Support for Victims of People Trafficking Program meets binding international best practice. Specifically, the five stage approach within the Australian Victims of People Trafficking Program (Return and Reintegration Scheme) goes above and beyond the coordination of basic repatriation required under the Protocol.

The *Trafficking in Persons Protocol* particularly emphasises that the repatriation process commands a measure of international cooperation and interdependency in the movement towards multilateral convergence. To this end, Australia implicitly retains a responsibility as a developed and institutionally stable destination country to use its capacity to strengthen the intergovernmental nature of the process. The five stage approach under the Victims of People Trafficking Program (Return and Reintegration Scheme) attempts to meet such obligations via the design and recommendation of comprehensive, individually tailored, long term rehabilitation

⁹¹ US Department of State, *Trafficking in Persons Report 2008* (Washington, DC: Department of State 2008) 175.

⁹² *Ibid*, at 157.

programs for the victim upon return which are perused by the receiving State. As a comprehensive analysis that covers each stage of the Return and Reintegration Scheme in detail has yet to be produced by FaHCSIA and are unavailable for perusal, an assessment of whether this process represents a nuanced rather than token and superficial attempt to appease implicit obligations under the Protocol is unable to be articulated.

The obligation to operate return and reintegration assistance programs interdependently across political borders is also being achieved in an elementary sense via the Thai Returnee's Project. Furthermore, the AFP has liaison officers posted in many countries in East and Southeast Asia who can potentially assist in the streamlining of support mechanisms. In this sense, Australian programs and processes are advancing towards the holistic best practice envisaged by the *Trafficking in Persons Protocol* and articulated by non-binding models, particularly insofar as the Thai Returnee's Project attempts to disassemble the 'sending' and 'receiving' State dichotomy.

On the other hand, the Australian Government has yet to articulate the process of negotiation that would occur when open and available diplomatic dialogue is unavailable. The present omission of such a mechanism could be attributed to the low frequency of victims entering the program who return to countries other than Thailand, Malaysia or South Korea.

In summary, current Australian processes and programs generally satisfy a strict construction of best practice under the *Trafficking in Persons Protocol*.

5.4.2 Compliance with non-binding best practice models

The extent to which the broader and more comprehensive models of best practice recommended by supplementary guidelines and materials are addressed by Australia's Victims of People Trafficking Program (Return and Reintegration Scheme) is less observable. In general the literature here commands a greater recognition of holistic rehabilitation measures and inter-governmental cooperation that are oriented upon the victim.

Potential criticisms of the Return and Reintegration Scheme emerge firstly in relation to themes of physical and emotional welfare and protection against abuses of human rights which appear extensively in the literature. The individual case management and constant liaison with the receiving State under the five stage approach in the Return and Reintegration Scheme seemingly provides a foundation for integrated return processes and systems to develop and expand. Despite this, the actual physical repatriation process is still burdened by discrete constructions of political borders in the process of repatriation and victims commonly approach immigration in their home country independently. Third-party or NGO liaisons are only offered in particular circumstances.

As such, erroneous risk assessment prior to repatriation initiated by the Australian Government results in the potential risk that the victim will face persecution or complications upon arrival in their home country without any safeguards or third party assistance. The risk is significantly magnified when the victim elects to remain anonymous as a victim of trafficking in persons or if the victim has retained low self-confidence, capacity or a sense vulnerability following their exploitation experience. Here, although the Australian Government has technically discharged its binding obligations under the Protocol, the rehabilitation of the victim is in considerable jeopardy. Whilst the individual case manager in Australia does assist in the provision of ostensibly comprehensive services to prepare the victim for their return and where possible places the victim in contact with the receiving State, no reliable policies or mechanisms can be relied upon to ensure the victim is repatriated successfully and without detriment to their wellbeing. This concern then essentially rests upon an assessment of the capabilities of the independent case manager role under the Support for Victims of Human Trafficking Program.

In response, rights based approaches and bilateral agreements (such as the Thai Returnee's Project) that characterise non-binding international best practice models have offered partial consolation. The *Guidelines on Human Rights and Trafficking in Persons*, *UN Training Manual for Combating Trafficking*, and UN.GIFT's *Vienna Forum Report* all emphasise the importance of facilitating a comprehensive dialogue between States in ensuring the protection of the victim's human rights. Here, bilateral partnership and the streamlining of repatriation processes can greatly assist in avoiding any default to the detriment of the victim. Although no specific evidence of complications in the return of victims under the Victims of People Trafficking Program (Return and Reintegration Scheme) is presently available, it remains important to consider the quality of the individual case management provided under the Scheme. Recommendations made below are aimed at bilateral agreements that use a victim oriented rights based approach to prevent any further burden upon the victim.

It is also possible to critique the streamlined return and reintegration processes with Thailand from a human rights perspective, particularly the contingent provision of financial assistance to returned victims who elect not to be identified by the Thai Government upon return. Concern can be expressed over this method of service delivery in relation to models of best practice, particularly Article 8(2) *Trafficking in Persons Protocol* which requires all victims to have access to the provision of support regardless of any choice to reject any formal cooperation with a State. That said, it could also be argued that as the victim has elected not to seek support the victim has enacted their right to act voluntarily and independently. Here the existence of any positive duty initiated by the State to ensure the victims immediate safety creates an ambiguity in the balance between a victim's right to direct their own rehabilitation and what the State may consider in the best interests of the victim, hampering effective support service delivery. In any event from a macro perspective, the Thai Returnees Project presents a solid attempt at a comprehensive streamlined bilateral agreement.

In summary, the Victims of People Trafficking Program (Return and Reintegration Scheme) presents a ventured attempt to appease non-binding international best practice models that recognises holistic rehabilitation measures and inter-governmental co-operation that pivots upon the interests of the victim. The ambiguities highlighted above suspend to some extent the full protection of victim participation in their rehabilitation as well as stable and reliable streamlined mechanisms for return under such best practice.

5.4.3 Assessment of Foreign Return and Reintegration Systems

The adherence of foreign policies and programs relating to the return and reintegration of victims of trafficking in persons to best practice models are less easy to dissect. At the very least, the major source countries to which victims return (in the Australian context mainly Thailand) adhere to the narrow best practice standards under the *Trafficking in Persons Protocol* insofar as they facilitate the physical repatriation and accept the returning victim. In contrast, in relation to the non-binding best practice models identified earlier, States such as Thailand are undertaking selected initiatives but still fall short of full adherence to these standards.

Interviews conducted by Marie Segrave with Thai victim returnees suggest that the quality of reintegration assistance is significantly hampered by a limitation of resources, particularly in overcrowded shelters where the provision of rehabilitation services as well as skills based training workshops to increase civic capacity are conducted in cohorts of up to 40.⁹³ Despite not being in the holistic best interest of the victim, shelters have attempted to focus on vocation and employment related support services. In turn, less emphasis has been placed on mental health and welfare services in the anticipation that victims will become self-sufficient and guide their

⁹³ Marie Segrave et al, *Sex trafficking: international context and response* (Cullompton: Willan Pub., 2009) 251.

own reintegration and rehabilitation, independent from the Government.⁹⁴ This is generally noted by NGO directors in Thailand:

I guess being a victim is okay if it gets you something, but here it doesn't get you anything, it gets you put in a government rehab where you are taught to sew, and know income and then you are sent back [...].⁹⁵

We would like to see, like I said, more [of these] peer-to-peer support groups and NGOs [...] to give better contact with some of these returnees until they have confidence in their own situation, then I think we can realise a better, true reintegration than what happens now.⁹⁶

6. The Way Forward: Reform and Recommendations

Based on the analysis in earlier parts of this paper, a number of policy and law reform recommendations can be made in order to advance current programs and practices towards integrated, pragmatic, and sustainable models of international best practice. Simultaneously, the following recommendations seek to accommodate for the emergence of victim narratives that deviate from the linear structure concentered in the *Trafficking in Persons Protocol*. Australian case law confirms that it is difficult to make generalisation about the experiences and needs of victims of trafficking in persons as, put simply, no two cases are the same.

From the outset, it should be noted that earlier analysis suggests that an overhaul of the Australian Government's Support for Victims of People Trafficking Program and wider policy setting is not warranted in light of the current Return and Reintegration Scheme's shift towards a rights based, victim oriented, bilateral approach. Consequently the recommendations seek to encourage and incubate the proliferation of this approach, and design a blueprint for new practices, in particular for application with countries other than Thailand.

6.1 Incorporating Non-Binding International Best Practice

Australia's Support for Victims of People Trafficking Program (including the Return and Reintegration Scheme) have largely incorporated the more holistic rights-based and victim-oriented models expressed in non-binding best practice material elaborated above. Adding to this, the continued improvement and vision of these programs and processes are based upon the same rights based rehabilitation principles framed by theories of 'pro sex work'. Here, the 'pro sex work' perspective advocates a need to distinguish sex work from trafficking. Laura Agustin highlights this need to discriminate by arguing that 'while selling sex may be a rational choice for some, governmental and charitable anti-trafficking initiatives [around the world] rarely discriminate between those who would prefer sex work and those who have been wronged'.⁹⁷ Here, abuse or exploitation directed towards (migrant) sex workers stand as additional and not inherent in the status quo 'prostitution experience'.⁹⁸ Hence, through the lens of the 'pro sex work' perspective, sexually exploited trafficking victims require assistance that then supersedes this status quo. Whilst the application of this approach is beneficial under the Program, the Australian Government, reciprocal governments, and associated program implementation stakeholders (such as IOM) require a consolidated model of best practice as a reference point if the proliferation of bilateral arrangements is to be successful.

⁹⁴ Ibid.

⁹⁵ Ibid, at 183.

⁹⁶ Ibid, at 185.

⁹⁷ Laura Agustin, "The Myth of the Migrant" (2007) 14, available at www.sexworker.org.au/uploads/documents/RED14pages11to20.pdf (accessed 15 May 2010).

⁹⁸ JG Raymond, *Guide to the New UN Trafficking Protocol* (2003) 8, available at http://action.web.ca/home/catw/attach/un_protocol.pdf (accessed 20 Oct 2010)

Absent any likely amendments to the *Trafficking in Persons Protocol*, at present, a formal domestic recognition of non-binding best practice principles appears more feasible. The consolidation of non-binding best practice principles into a standard set of guidelines could, for instance, be published by the federal Attorney-General's Department.⁹⁹ The Attorney-General's Department is the most pragmatic publisher not only as a judicial and executive reference point for domestic issues on access to justice and human rights but also as the chair of Australia's national Anti People Trafficking Interdepartmental Committee. The Department is indeed currently developing a set of formal guidelines for NGOs who are working in conjunction with victims of trafficking in persons.¹⁰⁰

It is recommended that such formal guidelines be extended to include non-binding international best practice principles for NGOs, State, Territory, and Federal Governments to function as a broader point of reference in the wake of the Governments review of the 'Anti People Trafficking Strategy'.¹⁰¹ Here, the guidelines would represent a concrete reference point, albeit non-binding, for policies and programs that assist victims of trafficking in persons. This would consequently assist in procuring an integrated, holistic approach to service delivery.

6.2 A Blueprint for Bilateral Arrangements

Existing Australian victim support programs and victim return and reintegration schemes appear to fall short of full compliance with international best practice models in the implementation of bilateral agreements and holistic victim oriented rehabilitation systems. Four main areas appear to be of concern. These include:

1. The continued ambiguity and risk of victims who approach political borders and immigration independently;
2. The non-transparency of processes available for victims who either elect to seek permanent residency in Australia or wish not to cooperate with either the Australian or foreign Government (raising the issue of potential involuntary return);
3. The general inability of foreign infrastructures to accommodate long term serviced based rehabilitation and support, and;
4. The validity, given Article 8(2) *Trafficking in Persons Protocol*, of making the allocation of financial aid provisions to returned Thai victims who do not wish to be identified by the Thai Government contingent upon contact with an NGO upon return.

In addressing these concerns and working towards the development of streamlined bilateral agreements with other popular return States such as South Korea and Malaysia, it would be desirable to design a blueprint for bilateral arrangements concerning processes relating to the return and reintegration of victims of trafficking in persons, which build on the current Victims of People Trafficking Program (Return and Reintegration Scheme). Once such a model has been developed, Australia should seek to negotiate the establishment of bilateral agreements with South Korea and Malaysia.

⁹⁹ Similar to other guidelines currently published on the Attorney-General's website in relation to trafficking in persons; see Australia, Attorney-General's Department, 'People Trafficking' (2010) available at www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking (accessed 20 Oct 2010).

¹⁰⁰ Ibid.

¹⁰¹ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 32, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

6.2.1 Assisting those who seek permanent residence in Australia or resist repatriation

The blueprint offered here purports to offer a new stream of assistance to identified victims who seek permanent residence in Australia via a permanent protection (class XA) visa.¹⁰² To be granted a protection visa, the trafficking victim must prove that he or she satisfies Australia's protection obligations under the *Convention and Protocol relating to the Status of Refugees*.¹⁰³

Incoming victims into the Program should be made aware of this option immediately. This, in the first instance, creates an incentive for victims to come forward to authorities.

Here, a separate stream of assistance should be provided to these victims who remain in Australia indefinitely that include the support services provided to victims of trafficking in the Criminal Justice visa stream throughout the process of applying for permanent residence (that is the long term services, such as financial aid and regular counselling, offered to victims who remain in Australia after detection to assist in criminal proceedings).

The individual's status as a victim of trafficking in persons should be considered as part of the application. In response to this new process, policing and enforcement agencies should take greater care in properly identifying individuals as victims of trafficking in persons to avoid any ill use of these amendments to apply for permanent residence.

Whilst this option is currently available to victims of trafficking in persons in Australia, victims intercepted by law enforcement authorities still run the risk of being identified as unlawful non-citizens. The Anti People Trafficking Interdepartmental Committee even notes an anecdotal case example of a woman who married an Australian citizen under the Criminal Justice visa scheme in order to obtain permanent residence.¹⁰⁴

The blueprint also offers direct entry into this new stream of assistance if a victim is unsuccessful in an application for permanent residency, to ensure appropriate services tailored to victims of trafficking in persons offered in the repatriation process are still available to the victim. By facilitating a formal process of application for permanent residence in a transparent and accountable manner as part of the support offered to victims upon interception by the Government, any final determination of repatriation will appear less arbitrary in its adherence to due process.

6.2.2 Streamlining the Provision of Initial Assessment and Support

It is recommended that stages 1 and 2 of the Five Stage Approach under the current Victims of People Trafficking Program (Return and Reintegration Scheme) remain unchanged as they satisfy a strict interpretation of best practice required by the *Trafficking in Persons Protocol*. It could be suggested that the Scheme attempt at the earliest possible time to establish contact with the receiving State to ensure the highest level of cooperation in the return and rehabilitation process.

¹⁰² Australia, DIAC, 'Seeking Protection' (2010) available at www.immi.gov.au/refugee/seeking_protection.htm (accessed 20 Oct 2010).

¹⁰³ Section 36(2) *Migration Act 1958* (Cth).

¹⁰⁴ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 32, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-ID C+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-ID C+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 20 Oct 2010).

6.2.3 Consolidating a Process of Liaison in Negotiations and Physical Repatriation between States

It is further recommended to commission an agency independent of both the Australian and receiving Governments (such as IOM) to formally assist in the physical repatriation of the victim. The purpose here is to offset the current ambiguity and risk associated with victims approaching political borders and immigration authorities independently. This agency should be able to respond to a request of a victim to remain anonymous as a victim of trafficking in persons upon return to their country of origin. This could be achieved in the process of designing individual return and reintegration plans in partnership with foreign governments and rehabilitation service providers abroad.

This article recognises the need for victim participation as part of a victim rights based model in establishing the role of the third party. Consequently, the victim should be crucial to the dialogue prior to repatriation as to the role of the third party as a liaison in the process. Here, the third party could potentially assist the victim in accessing immediate financial, legal and housing support upon re-entry into the receiving State or remain with the victim if they re-enter a State that does not have a bilateral arrangement with the Australian Government and the victim then faces unanticipated persecution.

Depending on the negotiated role of the agency, it may also assist in the provision of the Thai Returnee's nominal monetary grant for victims who remain anonymous, removing the human rights concerns associated with making financial assistance contingent upon cooperation with a Thai NGO.

The agency, if resourced properly, could also assist the individual case managers in liaising between countries, particularly the deliverance of travel and identity documents, and the negotiation of repatriation logistics and a long term rehabilitation plan for the victim based upon the support the victim has already received under the Support for Victims of People Trafficking Program. The addition of the agency also allows for the work of the individual case managers to have further reach in terms of implementation once the victim is repatriated by working with foreign support service providers and the recommendations of the Australian case manager. Facilitation of a smoother long term rehabilitation process for the victim then becomes more accessible (in comparison to the limited reach of Australian authorities abroad under current mechanisms which only allow for observation of rehabilitation rather than assistance in its implementation).

The high resource burden associated with contracting and establishing a permanent agency ancillary to the Government to facilitate the return and reintegration of victims has to be recognised. The employment of a third party, however, also has the potential to minimise or extinguish the five key concerns raised earlier.

6.2.4 Microenterprise as a model of Foreign Reintegration and Rehabilitation

Finally, it is recommended to adopt models of microenterprise to assist foreign countries with less developed infrastructure and resources to design individually tailored reintegration and rehabilitation assistance. Microenterprise represents the establishment of a small, self sustaining, independent business that delivers basic services using low overheads. The beneficial use of microenterprise in the process of reintegrating trafficked victims back into their communities is documented in social work and criminological literature.¹⁰⁵ The use of

¹⁰⁵ Andrea M Bertone, 'Sexual trafficking in women: International political economy and the politics of sex' (2000) 18(1) *Gender Issues* 4–22; Chris Beyrer, 'Shan women and girls and the sex industry in Southeast Asia: Political causes and human rights implications' (2001) 53 *Social Science and Medicine* 543–550; David Hodge, 'Sexual Trafficking in the United States: A Domestic Problem with

microenterprise as a model may assist in formalising the approach of governments such as South Korea which aim to assist in the provision of vocational and skill based training support in order for victims to direct their own emotional rehabilitation given a lack of resources. The benefits associated with microenterprise include:

- Vocational training for the victim;
- A method of independent financial support;
- A sense of ownership over reintegration;
- A sense of worth and capacity which can assist mental rehabilitation;
- A contribution to the community which can offset any alienation or stigma, and;
- An inherent protection from vulnerability to industries or work susceptible to re-victimisation.

Consequently, it is recommended that the Australian Government streamline the current service provision to victims under the Scheme via the amendments detailed blueprint for bilateral agreements above. Further, it is recommended that the Government seek to establish such bilateral agreements with Malaysia and South Korea, and amend the current Thai Returnee's Project where applicable. This blueprint represents a starting point for the Australian Government to respond to shortfalls identified in earlier parts of this article.

7. Conclusion

This article underscores the dyadic and evolving nature of victim return and reintegration in the Australian context. In doing so, it demonstrates the integral and fundamental nature of nuanced return and reintegration processes as part of the wider commitment to combat trafficking in persons. The Australian Government has undertaken a more proactive role in engaging holistic and bilaterally responsible policies in the best interests of the victim and their rights. This active role must continue to progress via regular standards and policy review.

Whilst largely adherent to victim oriented, rights based discourses, Australian mechanisms still demand improvement, particularly in concreting certain and accountable methods of repatriation across political borders. To this end, the recommendations made in this article aspire to mend and streamline the current Australian approach to form a blueprint for other countries to model from. Whilst any reference to return and reintegration in the literature as a key element of the trafficking in persons phenomenon is likely to remain infrequent (in comparison to themes of prevention, protection and prosecution), it is imperative to guarantee effective methods of rehabilitation that supplement the broader mandate.

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