

## **Laws and Regulations**

**Supreme People's Court, Supreme People's Procuraterate, Ministry of  
Public Security and Ministry of Justice**

**Notice to print and distribute *Opinions on Severely Punishing Trafficking  
in Women and Children according to Law***

To all the Higher People's Courts, People's Procuratorates, Departments (Bureaus) of Public Security, Departments (Bureaus) of Justice of all provinces, autonomous regions and municipalities directly under the Central Government, the Courts-Martial and Military Procuratorates of the People's Liberation Army, the Production and Construction Corps Branch of the Higher People's Court of Xinjiang Uigur Autonomous Region, People's Procuratorates, Bureaus of Public Security and Bureaus of Justice of Xinjiang Production and Construction Corps:

In order to increase judicial protection of the legal rights and interests of women and children, and to severely punish the crimes of trafficking in women and children according to law, we hereby print and distribute *Opinions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Severely Punishing Trafficking in Women and Children according to Law*. Please implement it conscientiously and fully.

Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice

15 March 2010

In order to increase judicial protection of the legal rights and interests of women and children and fully implement China's National Plan of Action on Combating Trafficking against Women and Children, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice give the following opinions on severely punishing the crimes of trafficking in women and children according to the relevant provisions in the Criminal Law, the Criminal Procedures Law and other relevant laws and judicial interpretations:

### **1. Overall requirements**

1. To severely combat trafficking according to law to ensure social harmony and stability. Since combating trafficking in women and children started nationally in 1991, a large number of cases of trafficking in women and children has been solved and handled and offenders severely punished according to law. In 2008, courts nationwide decided 1353 cases of trafficking in women and children, representing a 9.91% increase from 2007; 2161 offenders were sentenced and their sentences had legal effect, representing an 11.05% increase year-on-year. Of those who were sentenced, 1319 were sentenced to more than 5 years of fixed-term imprisonment or life imprisonment or death, representing a 10.1 % increase from 2007; the proportion of heavy penalties was 61.04%, or 45.27% higher than the proportion of heavy penalties in all the criminal cases of the same period. In 2009, courts nationwide decided 1636 cases of trafficking in women and children, representing a 20.9% increase from 2008; 2413 offenders were sentenced and their sentences had legal effect, representing an 11.7% increase year-on-year. Of those who were sentenced, 1475 were sentenced to more than 5 years of imprisonment or life imprisonment or death, representing a 11.83 % increase from 2008.

However, it must be clearly acknowledged that, due to various reasons, the rising trend of trafficking in women and children in certain areas in recent years has not been effectively suppressed. This type of crimes seriously infringe on the personal rights and interests of women and children, resulting in numerous family separations and even ruined families, thus seriously endangering social harmony and stability. The Supreme People's Court, the Supreme People's Procuratorate, public security organs and judicial administrative departments shall, on the basis of maintaining the people's immediate rights and interests and ensuring social harmony and stability, make further efforts to severely combat trafficking in women and children to resolutely and effectively suppress its rising trend.

2. To focus on coordination and cooperation to form an effectively joint force. The Supreme People's Court, the Supreme People's Procuratorate and the public security organs shall each carry out its own duties and responsibilities, support and coordinate with one another to increase the quality and efficiency of case handling together and to guarantee the consistency of the legal and social effect of cases handled. Judicial administrative departments shall provide proper legal aid to the relevant cases to protect the legal rights and interests of the parties involved. Justice departments in all areas shall unify ideological

understanding to further improve coordination in relevant crime areas and inter-departmental cooperation and to strive to form an integrated joint force to severely punish trafficking in women and children according to law.

3. To correctly implement policies and ensure effectiveness of case handling. Trafficking in women and children often involve numerous persons and steps. Hence, it is necessary to follow the policy of tempering justice with mercy and the basic principle in criminal law of punishment in accordance with crime, to take into account the position of the offenders in joint offences, their roles and the danger that they pose in order to correctly pass sentences according to law. The ringleaders, organisers, repeat offenders, offenders responsible for trafficking in multiple victims, or recidivists in criminal syndicates shall be targeted and firmly punished by law. Persons whose crimes are serious and who shall be given severe penalties or even the death penalty shall be resolutely dealt with according to law. It is important to eradicate the “buyer’s market” so as to suppress trafficking in women and children from its root. Persons who buy trafficked women and children and who shall be investigated for criminal responsibility shall be dealt with according to law. At the same time, persons who meet the criteria for lenient punishment shall be dealt with leniently by law after taking into consideration the facts, nature, circumstances and the degree of harm caused, in order to encourage offenders to repent and make a fresh start.

## **2. Jurisdiction**

4. The justice department located in the place where trafficking in women and children occurs shall have jurisdiction over the case according to law. The locations of the crime of trafficking in women and children include the sending, transiting, and receiving places of trafficking and all the places en route. If it is more appropriate for the justice department located in the place where the suspects or defendants reside to have jurisdiction, it may have such jurisdiction accordingly.

5. Where a number of justice departments all have jurisdiction over a case, jurisdiction shall fall within that which accepted and heard the case first. Where there is a greater number of suspects, defendants or trafficked women and children or where the case takes place in multiple locations, the case may be handed over to the justice department where the main criminal activities took place, or where the main suspects or defendants reside.

6. Where a relatively fixed number of suspects or defendants have carried out criminal activities separately in the sending, transiting and receiving places of trafficking and where the area of crime is more widespread and that a centralised jurisdiction over the case may be difficult, it is possible for the justice departments in the sending, transiting and receiving places of trafficking to have separate jurisdiction over crimes conducted by different offenders in the sending, transiting and receiving places of trafficking.

7. Where jurisdiction is disputed, interested parties shall negotiate to solve the dispute within the statutory period in line with the principles of swift and thorough investigation of facts, timely rescue of trafficked women and children as well as the ease with which to initiate legal proceedings and adjudication. Where negotiation fails, the dispute shall be reported to the superior organ of both parties to determine the jurisdiction.

Where jurisdictional dispute arises in a case where investigation is already underway, the organ with which the case is filed shall not cease investigation pending the final determination of jurisdiction by the superior organ.

### **3. Filing a Case**

8. Public security organs shall immediately file a criminal case and start investigation if one of the following situations arises and after checking that the case falls within the jurisdiction:

- (1) upon receiving a report, accusation or tip-off involving trafficking in women and children;
- (2) upon receiving a report of a missing child or a missing girl between the age of 14 and 18;
- (3) upon receiving a report of a missing woman of 18 years or above;
- (4) upon discovering a child vagrant or beggar who may have been trafficked;
- (5) upon discovering a purchase of women and children and which shall be investigated for criminal responsibility;
- (6) other situations where trafficking in women and children may have taken place.

9. Public security organs shall first of all take emergency measures upon discovering trafficking suspects or trafficked women and children during operation, regardless of whether the case falls within their jurisdiction. If the case falls within their jurisdiction after checking, the case shall be filed and investigated according to law; if it does not fall within their jurisdiction, it shall be transferred on a timely basis to the public security organ that has the jurisdiction.

10. The Supreme People's Procuratorate shall strengthen supervision of the filing of cases of trafficking in women and children in order to ensure that all cases are filed and investigated.

#### **4. Evidence**

11. Public security organs shall comprehensively collect according to law all evidence which can prove the suspects' guilt or innocence and the degree of seriousness of their crimes.

Special attention shall be paid to collecting proof of depositing or withdrawing money in the buying and selling of women and children, telephone call lists of suspects, transportation tickets, DNA identification of trafficked children, relevant surveillance video recordings, electronic information and other objective evidence.

Collection of evidence shall be timely to avoid change in circumstances with the passage of time and loss of evidence.

12. Public security organs shall give great attention and further strengthen the building and improvement of DNA database. Blood samples shall be taken and examined of the parents of missing children or of children suspected of being trafficked on a timely basis. Through the national DNA database, scientific proof is provided to solve crimes and assist trafficked children to return home without delay.

13. Units in all the places involved in handling cases of trafficking in women and children shall improve coordination and cooperation. Relevant judicial departments shall cooperate closely where investigation and evidence gathering need to be carried out in other places; active support shall be given where further supplementary investigation and verification need to be carried out.

#### **5. Determining the Nature of a Case**

14. Suspects and defendants participate in many of the steps of trafficking in women and children; only the steps where facts have been investigated and verified and reliable and sufficient evidence are available can the facts pertaining to these steps be ascertained according to law.

15. Persons who kidnap children for the purpose of selling or selling children after picking them up in the streets falls within the provision of section 2, article 240 of the Criminal Law and shall be dealt with under the offence of trafficking in children.

Those stealing infants or abducting children for the purpose of raising them but afterwards selling them shall be dealt with under the offence of trafficking in children.

16. Those selling one's own children for the purpose of obtaining illegal profit shall be dealt with under the offence of trafficking in women and children.

17. It is necessary to rigorously differentiate between selling one's own children under the pretence of giving them up for adoption and the customary practice of giving children up for adoption. The key difference centres on whether the actor intends to obtain illegal profit. This shall be comprehensively determined based on such facts as the background and reasons for giving children up, whether any money is received and the amount of money received, whether the receiving party intends to raise the children and whether the receiving party has the ability to raise the children.

A case involving one of the following conditions can be considered to involve selling one's own children and shall be punished for the offence of trafficking in women and children:

(1) Bearing children for the purpose of obtaining illegal profit and the children are sold immediately after being born;

(2) Giving up one's own children to another knowing that the receiving party does not intend to raise the children or disregarding whether or not the receiving party intends to raise the children;

(3) Giving up one's own children to another in order to receive large sums of money which clearly do not represent "nutritional fees" or "gratitude fees".

(4) Other behaviours which sufficiently reflect that the actor possesses the intent to obtain illegal profit by giving up children for adoption.

Instead of intending to obtain illegal profit, parents who privately give up their children to others to be raised due to hardships or who are influenced by the preference of boys to girls and who receive a small amount of "nutritional fees" or "gratitude fees" are engaged in the customary practice of giving children up for adoption and shall not be punished for the offence of trafficking in women and children. Parents may be punished for the crime of abandonment in cases where the children's mental and physical health have been seriously damaged due to being privately given up and where other serious circumstances are involved which fulfil the criteria for the crime of abandonment. The public security organs can give administrative penalties according to law in cases where the circumstances and the harm caused to children are not serious.

18. Those trafficking in women to give them to certain venues and thereby causing trafficked women to be forced into prostitution or to engage in other sexual services shall be punished for the offence of trafficking in women.

The managerial personnel who collude with the offenders are deemed accomplices under the offence of trafficking in women; where both the crime of trafficking in women and the crime of organised prostitution have been committed, the heavier penalties apply.

19. Workers from medical institutions, social welfare institutions or other units who sell children under their care and treatment shall be dealt with under the offence of trafficking in children.

20. Those buying women or children knowing that they are trafficked victims and where one of the conditions listed below are involved shall be punished for the offence of buying trafficked women and children; where several offences are conducted, these persons shall be given combined punishment for several offences:

(1) Violating the wishes of trafficked women and children and obstructing them from returning to their original place of residence after buying them;

(2) Obstructing the rescue of trafficked women and children;

(3) Illegally depriving trafficked women of or restricting their physical freedom under aggravated circumstances, or raping, injuring, humiliating or abusing trafficked women and children;

(4) Re-purchasing the trafficked women and children who have been rescued, or purchasing multiple trafficked women or children;

(5) Organising, tricking or forcing women and children who have been bought to engage in such illegal activities as begging, hard labour, stealing, pyramid marketing or prostitution;

(6) Causing severe injuries, death or other serious consequences to women and children who have been purchased;

(7) Other serious conditions are involved.

Those coming forward to public security organs or other relevant units to report the case before being prosecuted and who are willing to allow purchased women to return to their original places of residence, or returning purchased children to their families, or handing over purchased women or children to public security, civil affairs, women's federation organs and organisations and who have not committed serious offences, may not be investigated for their criminal responsibility.

## **6. Joint Crimes**

21. Persons who provide health certificates, birth certificates or other assistance to others knowing that the latter engage in trafficking in women or children shall be treated as an accomplice to the crime of trafficking in women and children.

Those providing household register certificates, birth certificates or other assistance to others knowing that the latter engage in buying trafficked women or children shall be treated



as an accomplice to the crime of purchasing trafficked women and children. However, this does not apply to buyers who have not been investigated for criminal responsibility.

Determination of whether there is “prior knowledge” shall be made based on a comprehensive examination of witness testimonies, declarations and pleas of the suspects, defendants and other parties to the case, person-times of assistance rendered, and whether such assistance seriously infringed on the relevant rules, regulations, systems and workflows.

22. Those who provide middleman services to others using the convenience or knowledge of the trafficked persons’ conditions through their work in the medical care, social welfare and other areas of work, while knowing that the latter engage in child trafficking shall be dealt with as an accomplice to the crime of trafficking in children.

23. With regards to accomplices to the crime of trafficking in women and children, principal offenders should be clearly differentiated from accomplices based on each of the defendants’ division of labour, position and role, the number of participants and the number of times of participation, and the share of spoils.

Those who organise, lead or direct one or several steps of a case of trafficking in women and children, or who actively participate in illegal activities such as abducting, kidnapping, buying, selling, transporting, or transiting women and children and who play a major role shall be deemed a principal offender.

Those providing information of the trafficked women and children or other relevant identification documents or engage in middleman services, and who play only supplementary or secondary roles and do not profit or profit little from the crime may generally be deemed an accomplice.

No differentiation needs to be made between principal offenders and accomplices in cases where the positions and roles of each of the defendants are not clear.

## **7. Single and Multiple Crimes**

24. Those trafficking in women and children and raping the trafficked women and children, or tricking or forcing the trafficked women and children into prostitution shall be punished for the offence of trafficking in women and children.

25. Those trafficking in women and children and intentionally killing, injuring, molesting and humiliating the trafficked women and children, thereby constituting additional crimes, shall be given combined punishment for multiple offences.

26. Those trafficking in women and children or buying trafficked women and children, and organising or inciting the trafficked or purchased women and children to commit crimes shall be given combined punishment for the offence of trafficking in women and children or the offence of buying women and children as well as the offence of organising or inciting crimes.

27. Those trafficking in women and children or buying trafficked women and children, and organising or inciting the trafficked under-aged women and children to commit thefts, frauds, robberies, blackmails or other activities against security administration shall be given combined punishment for the offence of trafficking in women and children or the offence of buying women and children as well as the offence of organising under-aged persons to engage in activities against security administration.

## **8. Application of Penalties**

28. Heavy penalties shall be given according to law to ringleaders of criminal syndicates engaging in trafficking in women and children, principal offenders, multiple offenders, persons involved in stealing babies or kidnapping children under serious circumstances, persons involved in selling women or children overseas under serious circumstances, persons involved in repeated trafficking in women and children and causing injuries or deaths or under other serious circumstances; death penalties shall be given according to law where the circumstances of the crime are particularly heinous.

Those engaging in trafficking in women or children and who intentionally kill, injure, molest or humiliate the trafficked women or children shall be given combined punishment for multiple offences and shall be punished severely by law.

29. To deal with offenders of trafficking in women or children, attention shall be paid to using property-oriented penalties and realistically increase their implementation to strengthen the special prevention and general prevention impact of the penalties.

30. Offenders of the crime of buying women or children who also engage in illegal activities against the women or children or using them as tools of profit shall be punished severely according to law.

Those buying women or children who have not engaged in damaging, abusive behaviours against the women or children or who have formed stable family relations through marriage, but who still need to be investigated for criminal responsibility shall be dealt with leniently; those who meet the criteria for suspension of sentence shall be given suspended sentences according to law.

Those buying women or children where the circumstances are minor may be exempted from criminal penalties according to law.

31. Where several members of the family or relatives jointly participate in selling one's own children or engage in "buying wives" or "buying children", criminal responsibility shall be investigated for those most responsible based on a comprehensive examination of the motives, the roles each of the actors play in the crime and other circumstances. Where the circumstances are clearly minor and the harm is not great, they are not deemed to be crimes and need not be investigated for criminal responsibility according to law; public security organs may give administrative penalties where necessary.

32. Lenient penalties, lesser penalties or no penalty may be given to persons who meet the criteria for lenient punishment by law such as being accomplices, voluntary surrendering, or doing meritorious services.

Offenders who have not engaged in damaging, abusive or other illegal activities against trafficked women or children, or who may help the rescued women or children, or who meet other criteria for lenient punishment can be given lesser punishment accordingly by law.

33. Where the circumstances require both severe and lenient penalties, the decision as to whether to deal with the defendants severely or leniently shall be made after comprehensively examining the methods of trafficking in women or children, the number of women or children trafficked or purchased, the impact of the harm, the subjective malice, danger and other elements of the defendants, together with the occurrence of similar type of crimes and the public security situation in the area.

## **9. Foreign Crimes**

34. To further increase combating transnational and cross-border trafficking in women. Strengthen bilateral or multi-lateral anti-trafficking exchange and cooperation internationally, and enhance rescue work of transnational and cross-border trafficked women and children. Actively exercise the rights and fulfil the obligations set out in the international treaties concluded by or entered into by China, and request or provide judicial assistance to effectively suppress transnational and cross-border trafficking in women and children.