

CHAPTER 2

MOTIVATION

The broad variation of trafficking in persons across regions and cultures means that there can be no uniform answer to the question “What causes trafficking?”

Understanding Global Slavery: A Reader

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Is it important to consider why human trafficking exists in the 21st century? Certainly, economic and social inequalities in a society, country or region are causes; but there are many other factors in play and these will vary according to the trafficking activity and location. One of the main factors identified in comparative studies conducted in many countries, is the lure of urban cities and the “bright prospects” of a supposedly lucrative job, offering better living conditions and a good income for the victim.

Many researchers and writers have sought to identify the root causes of human trafficking, such as, discrimination notably against children and minorities, violence and security issues related to armed conflicts, but these can only partly explain why human beings end up in the hands of traffickers, kept in debt bondage and in servitude. Kevin Bale,¹ states that “there can be no uniform answer to the question. What causes trafficking?” Before explaining the possible causes of human trafficking he remarks that, “In any case of trafficking, there is a unique set of causes” (Bales, 2005) In addition to this Carrier Scott, in his writing identifies several causes of trafficking by saying, “the causes are said to be exploding population, increasing power differentials between the rich and poor, corrupt governments, failed states and

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television, which function like a huge suction machine, a black hole, pulling people away from shrinking farms and into swollen cities.” (Scott, 2006)

He further explains why people are willing to risk everything to find a better opportunity, “It starts as a migration, a children’s crusade for some of that stuff to bring home. They leave the village and give themselves up to the sky of luck; they take a chance...and it ends, too often, with young people being bought and consumed and thrown away like a candy bar and its wrapper.” (Scott, 2006)

There is a link between human trafficking and cheap labor. Cheap laborers are likely to be illegal immigrants who have no documents required to access any kind of employment, therefore, any job opportunity that comes along they take the chance not knowing the risk of being exploited. “This is also a cause: the desire, the pull for more cheap bodies, whether they are put to work in garment factories and paid 15 cents an hour for 90 hours a week, or thrown onto Thai fishing boats and fed methamphetamines for a few years then shot and thrown overboard, or sold into prostitution or domestic services in Sweden, the United States, or Saudi Arabia. The supply and the demand, the push and the pull, are inseparable.” (Scott, 2006) Are the countries of origin, which are mainly the emerging or least developed countries to be blamed for the supply of human trafficking alone or are the destination countries that have a high demand for cheap labor also responsible? Does pressurizing the country of origin, to limit the transit of the victims minimize the problem of human trafficking? Both the supply side and demand side need to revise the responses and strategies when it comes to the matter of cheap labor.

The case of Sonia aged 34, not her real name, cited in a report by ECPAT² was a victim of trafficking who was lured to South Africa from Mozambique. She was promised a job as a domestic worker earning \$166 a month. She was educated up to grade 5 and had previously firmly believed making such a large income was impossible. Considering the amount of money offered she accepted the job and was smuggled from Mozambique to South Africa by crossing the border. Sonia and the other people being smuggled with her were arrested by the border police but the traffickers arranged their release by bribing the officers. At last in South Africa, she

² Ecpat International: Is an International non profit organization set up with the main mission to combat trafficking and fight against child prostitution.

worked as a domestic worker but was never paid and was exploited because of her status as an illegal worker. (Ayisi, 2007)

There is similarity between migrant workers and trafficking victims. Both often leave behind unemployment, low wages and are seeking better opportunities. The main difference between the two is that migrant workers have a lower risk to later abuse, as they are given the opportunity to move whereas trafficked victims are mainly illegal migrants and rarely achieve their goal for a better future.

Sonia's example demonstrates that regardless of the cause of human trafficking with all its regional or national variations the common factor to all forms is that no individual intends or consents to becoming a slave, they leave home willingly after being lured by the trafficker for what they believe to be a better opportunity, for the life they wish for or to escape civil war or domestic abuse, but no matter what their personal motivation or circumstances, they have not knowingly or willingly consented to leave their home to work unlimited hours for no pay or poor living conditions; to end their life as a slave. The trafficker commits a terrible crime placing their victims in servitude.

A. Why Human Trafficking is a Human Rights Issue.

“Even when abolished, slavery leaves traces”

Office of the High Commissioner on Human Rights (UNHCHR)

Human trafficking is not a new phenomenon; it has been highlighted internationally as an issue that causes harm to every state. Over 200 years ago human beings were regularly sold into slavery to pay for debts or for profit. It was finally internationally abolished in 1926, when the League of Nations approved the Slavery Conventions and declared slavery illegal. Later, this was reinforced with the formation of the United Nations and the birth of the Universal Declaration on Human Rights in 1948, Article 4 of which provides: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” A year later, the Convention for the Suppression of the Trafficking in Persons and

Exploitation of the Prostitution of Others was adopted. This convention prohibits any person from procuring, enticing, or leading away another person, for the purposes of prostitution, even with the other person's consent. (Free the Slave)

The above are historic constitutional landmarks but slavery has survived into modern times. The forms may have changed, but not the substance. In India, there is an ongoing problem with numbers of children being used as slaves to produce carpets, silk and glassware. In Africa, on the Ivory Coast, young boys are trafficked and sold to work on cocoa plantations, where conditions are inhumane and they never receive payment for their work. (The Office to Monitor and Combat Trafficking in Persons, 2005) Similarly with the fishing industry in Ghana, children are sold by their parents to fisherman and forced to work seven days a week, in unsafe conditions. In Nepal young girls are bonded into slavery in brick producing kilns. In Brazil, children work as slaves to produce charcoal and suffer substantial physical and mental health problems. (The Office to Monitor and Combat Trafficking in Persons, 2005) In war torn Sierra Leone, the lucrative diamond trade uses slaves, especially children, for mining the diamonds which are later cut or polished by child slaves in India. Often rich countries suffer shortages of local labor. Places like Dubai, therefore have a need for migrant workers and unscrupulous agents source large numbers of 'workers' for Dubai construction sites. These 'workers' are often unpaid and employed in slave like conditions as forced labor.

Today human trafficking is one of the most urgent global human rights issues. Reports from different sources emphasize human trafficking as being an urgent global issue mainly because of the growth of the crime and human rights abuses, which ultimately have impacts on every state. Therefore, human trafficking demands greater co-operation between states, international organizations and community groups if it is ever to be eradicated. It has been declared a human rights abuse issue for many decades but still continues to grow. In the last 50 years, the United Nations has been at the forefront of the fight to combat the issue with various initiatives; it has adopted various resolutions, conventions, declarations, programs of actions, seeking co-operation at an international level to spur nations to act together to find the best solution to this global problem.

Meanwhile, a meaningful step was taken by the international community in December 2000, when the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Crime, was adopted by the assembly. (Ecpat International, Thailand Country Profile) The signing of this Protocol signaled the recognition and acceptance by the international community that human trafficking is more than merely an issue about smuggling migrants across borders. It is defined in the broadest way as encompassing all types of people movements, documented or undocumented for slavery purposes, whether forced labor within a given country or outside it, and across all kinds of industries and sectors. Despite this progress, the Protocol does not go far enough, as it does not include the whole set of universal human rights standards that would guarantee even undocumented illegal migrants basic rights and services, regardless of their illegal status.

By July, 2005 117 countries had signed and 85 had ratified the Protocol. (Omelaniuk, 2005) Once ratified, the individual states “should include general protection as well as specific forms of protection when a person is providing evidence or assistance to the police or is appearing as a witness for the prosecution when human trafficking cases are taken to court. Social benefits to the victims, such as housing, medical care and legal or other counseling are optional requirements for the states to include in the treatment of the victims after their rescue. (Kristiina Kangaspunta) Some of the states have failed to comply with the minimum standard of the ratified Protocol especially in the protection area of the victims. Different studies have identified reasons for the failure such as treatment of victims after rescue has not been included as part of national government policy, lack of motivation and allocation of resources by governments perceived as costly and not a priority.

The UN has in the past addressed the issue of trafficking in persons by adopting various conventions. In 1979, the Convention on the Elimination of all Forms of Discrimination Against Women,(CEDAW), was adopted and was later supplemented by an optional protocol to the Convention, which came into force in December 2000. CEDAW is an international legal instrument designed to fully protect women from having their rights violated and from discrimination. “CEDAW is the most authoritative U.N human rights instrument to protect women”, as

described by Human Rights Watch. Member States that have ratified the Optional Protocol are accountable and it allows the CEDAW Committee to investigate cases of women's rights violations and it encourages any individual subjected to abuse within jurisdiction to file their case with the CEDAW Committee. (Human Rights Watch, 2007) The optional protocol is to establish communication and inquiry procedures to address violations of the CEDAW Convention. The United Nations Resource Guide summarized that the CEDAW Convention is a unique tool to ensure that women equally participate and enjoy their rights which then reduces their vulnerability to abuse and exploitation. The Committee on the Elimination of Discrimination against Women (CEDAW) monitors the implementation of the CEDAW Convention. The Committee consists of twenty three experts and organizes two annual sessions at the United Nations. CEDAW mainly monitors the implementation of the convention at a national level although periodic assessments of reports submitted every four years by state signatories to the Convention are reviewed. In addition, the Committee also considers nongovernmental organizations information during the assessments of each country. Based on these assessments concluding comments are drawn for each country. Concluding comments are mainly the recommendation drawn from the assessments. (ESCAP, 2003)

Thailand has ratified the CEDAW Convention and signed the Optional Protocol in the year 2000. Therefore, under such law Thailand is bound by obligations to protect women's human rights and this would include trafficked women as it amounts to discrimination and human rights violations against women. The Convention adopts a holistic approach to providing protection to women in all respects. The obligations under this Convention are deemed relevant to combat human trafficking as it falls within the framework of discrimination. Furthermore Article 1 of the CEDAW Convention clearly states that the term discrimination refers to any kind of discrimination against women and Article 6 states that all States are fully obligated to address the root causes of trafficking and exploitation and all the factors that render women vulnerable to exploitation.

Later in 2002, The Convention on the Rights of the Child (CRC), Supplemented with an Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography came into force. The Supplement is in response to the

increasing exploitation and growing numbers of children in slavery. The main objective of this optional protocol is to protect children from falling into the hands of perpetrators. The CRC is the international instrument to combat trafficking of children and related exploitation and abuse. The CRC recognizes that children have an inherent right to life and survival, to an identity, to a nationality, to be heard, to freedom of thought, conscience and religion, to health, and to an education.

Thailand has signed and ratified the CRC Convention and is fully obligated to protect children from any form of abuse and exploitation. All States that sign the CRC are to ensure that these rights are fulfilled regardless of a child's legal status within a country or their nationality.

UNICEF describes the sex trade, as women and children “bought and sold like chattels, trafficked within and across borders, thrown into such situations as forced marriage, prostitution and child pornography, many suffer profound and sometimes permanent damage,” and describe human trafficking as one of the “most shocking and difficult violations of human rights.” (UNICEF, 2007) The Optional Protocol urges states to collaborate at different levels such as international, multilateral, bilateral and regional to prevent, investigate, prosecute and punish those organizing child trafficking involving “sale of children, child prostitution, child pornography, and child sex tourism.” (Division for the Advancement of Women, Department of Economic and Social Affairs(DESA), 2002)

B. Human Trafficking as a Serious Global Issue and a Gross Violation of Human Rights

Human trafficking is a human rights issue and there are numerous reasons why the United Nations identifies human trafficking as a serious global issue and a gross violation of human rights. Jorge A. Bustamante, Special Rapporteur on the human rights of migrants referring to “the General Assembly's recent High Level Dialogue on International Migration and Development, said he was concerned that debate on the issue was still centered on either the perceived challenges posed by

migration or on its economic aspects, failing to integrate the human rights dimension.” (United Nations: Economic and Social Council Commission on the Status of Women, 2005) Steps taken to tackle the problems, in the past up to the present, shows that the approaches were more likely to focus on the issue being of migrants breaking the law. In March 1999, two offices collaborated, the United Nations Office on Drugs and Crime (UNODC) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) to form the United Nations Global Program against Trafficking in Human Beings (GPAT). The main objective of launching GPAT was to provide assistance to Members States to effectively combat the problem of human trafficking.

The range of legislation across countries and regions is recognition that a problem exists but often its inadequate as evidenced by the effect such legislation has for the victims and the continuing growth of trafficking and increase in the different forms of violations shows the legislation has much more room for improvement. At the practical level, some of pieces of legislation have not been effective. For instance, ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, by destination countries including Thailand has been low and ineffective.

C. Different Aspect of Human Trafficking Being a Human Rights Issue

At a practical level Thailand faces shortages of unskilled labor which is normally considered as cheap labor by Thai and avoided because of the poor pay and hard conditions. Generally such shortages are filled by migrant workers from Cambodia, Lao, PDR and Myanmar. In order to control the flow of migrants and other issues related to migration many strategies and policies have been developed. One such strategy is to require the migrants and their families to be registered. A Thai employer must advertise any vacancies giving 15 days to any Thai citizen to apply and fill the vacancy. Where the employer receives no Thai applicants for the position it can be filled by a migrant. The registration process provides protection to the

registered employee by covering their employment under the Thai National Labor Law. If the migrant is illegal and becomes registered with their employer, they are given permission to work but their illegal status still remains and they still risk the possibility of being deported. Both registered legal and illegal migrants become totally dependent on their employer. Research reveals that the intention of using the National Labor Law to protect migrant workers is not working. Reports show that employers continue to violate migrant's rights in different ways such as demanding longer hours of work, underpaying workers and many are living in slavery like conditions. The registration policy inadvertently gives employers complete control over the migrants. While registration is a good policy to regulate migrant workers and allow business to precede it should also have some protection for the migrants by creating channels through which migrants can easily move from one employer to another protecting them from being exploited and having some freedom of choice and reduce the employers' ability to totally dictate terms.

Julie A. Mertus, an Associate Professor of Human Rights, has raised similar concerns about exploitation and human rights abuses of migrant workers. The migrant workers are perceived as a "cheap, docile and flexible labor force" even with legislation available to protect them; large number of migrants especially the irregular migrants remains vulnerable considering that they are not always protected by the legislation. With other factors such as "threat of arrest and deportation prevents any type of union association and exposes them to dangerous labor conditions." This is one identified area that even at international level the protection of irregular migrants from exploitation has met with many failures. (Mertus, 2005)

The problem of children sold into prostitution or for adoption by their parents has been recognized in many parts of the world but many states fail to eliminate it. Colin Baynes, questioned a former child trafficker about payments to a girl victim, reported that of the money paid "half of the money goes to the brothel owner... some comes to the agents and more to the girl's family.....the girls is left with nothing but disease and she cannot go back home." (Baynes, 2004) Parents selling their children become a part of a trafficking ring but in many poor countries children are easily bought and sold, without the parents being convicted or perceived as individuals benefiting from the trafficking business mainly due to weak law

enforcement or misconceptions of their role. The children are later exploited in different ways such as in manufacturing companies, the fishing industry, and sex industry. This certainly is a gross violation of children's rights and parents should be accountable for exploiting their own children and for being part of the trafficking ring. If it is not judged a trafficking issue it does constitute child abuse. In some circumstances parents give their children up for adoption and are unaware about the risk of their children being adopted by the traffickers. However, if the law is rightly enforced and parents are made aware of the rules and regulations of the proper adoption channels then it could minimize the risk of their children becoming the prey of the traffickers. In Thailand the children at high risk of being sold and adopted are those of migrant and stateless people or refugee. In 2002, Thailand signed The Convention on the Rights of the Child (CRC); Supplemented with an Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography came into force. Although it has not signed Refugees Conventions, Thailand is still obligated to protect children living in Thailand no matter he or she is illegal migrants, refugees or stateless from being exploited by their own parents or relatives.

Many reports and research suggest beyond doubt that states perceive the issue of trafficking or smuggling, as limited to national, border crime or social security issues but not as a human rights issue. This creates a window of opportunity for the traffickers to flourish their trade and expand their horizon. During the conference on the follow up to the fourth World Conference on Women, it was emphasized that "women who face zero opportunities for employment, are employed in heinous conditions, or are being paid too little to survive, migrate within their own borders and across borders in search of employment." This exposes them to the risk of being trafficked and reports show that many are trafficked.(United Nations: Economic and Social Council Commission on the Status of Women, 2005) A human rights advocate highlights that narrow national perspectives of this issue further fuel human rights violations, "Migration has been directly linked to the trafficking of women and children." It is undeniable that women, who are not eligible to access the employment opportunity such as the groups of stateless people, are vulnerable to exploitation.

Tightening borders does not mean more obstacles for traffickers, but increases the network of immigration officers to be corrupted, and effectively the

trafficked person must bear the burden. (Anti-Slavery & Development and Peace Call for International Action, 1999) Apart from increasing the opportunities for corruption strict immigration laws and anti-migration policies, have formed many obstacles for legal and safe migration. This Thailand's anti-migration policy encourages people to look for other ways to migrate and sometimes in the process they end up in the hands of traffickers who demand payment by using them as forced labor.

Migrants also risk becoming re-victimized as it is often reported that once arrested, the offending victim whose human rights have already been abused is then classified as a criminal. An alternative to tightening the borders is increasing opportunities for safe migration which includes migration channels and processes strictly monitored by the governments, NGOs and other agencies working on the issue of human trafficking and most importantly the channels for safe migration should be publicized and made known to potential migrants. This also helps in harmonizing other issues related to mobility of migrants such as HIV/AIDS, STDs and other social issues. Migration laws in Thailand do not empower migrants but in fact become a factor encouraging human trafficking. Laws such as the registration of migrants, restricting movement and placing limitations on their freedom to choose their jobs play into the hands of traffickers.

Sigma Huda ³has observed that, "significant numbers of human beings are trafficked for labor exploitation and children are also trafficked for the purpose of international adoption." Organizations involved in the fight against human trafficking urge states to look at the migration and labor connection to human trafficking and to sign all instruments that protect migrants. Sigma has also noted that trafficking is perceived by many states as an issue mainly concerning "law and order". (Huda, 2004) Migrants workers are a topic related to human trafficking and cannot be viewed as separate legal issues, the overlap with trafficking is well documented and they must be integrated into a holistic approach to solve trafficking from a human rights perspective.

According to the Universal Declaration of Human Rights, it is governments' responsibility to make certain that no individual's rights are violated and to act against

³ Sigma Huda, a Special Rapporteur on trafficking in persons, especially women and children appointed by Commission on Human Rights on 8th October ,2004.

government officials and those individuals involved in violating human rights. It is unavoidable to conclude that, given the recognition for many years, at least at international level, that human trafficking is a horrific abuse of human rights, given that it is still ongoing and increasing, a significant factor must be a lack of political will at regional and national levels to act and implement the true spirit of the UN declarations and protocols in national policies and legislation. The international community, IGOs and NGOs, consider human trafficking as a priority issue. Will Thailand stand up and be at the forefront of the assault on this trafficking war or stand idly by and let slavery flourish and affect future generations?