

## Human trafficking on globe: review of legal framework and the situation

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### Abstract

Human trafficking has become a highly visible issue in both politics and academia. As a result, a growing number of researchers have begun to investigate the problem and responses to it. However, our understanding of the trafficking problem is still inadequate and responses to the problem are inefficient. Accordingly, the following review will draw from the extant research in order to provide an overview of legal framework and the situation.

**Keywords:** human trafficking, legal framework, the situation.

### 1. Introduction

Trafficking in human beings, especially women and children, is a worldwide problem affecting all countries, regardless of the social, political or economic circumstances that govern them. The enforcement of this criminal offense in a number of cases implies an organized criminal structure and several related criminal offenses (corruption, money laundering, etc.). This phenomenon, including stages of recruitment, transport and exploitation of victims, occurs in its various forms on the territory of the countries of origin, transit and final destination. Women, children and men who are victims of trafficking are subjected to various forms of abuse and exploitation that violate their fundamental human rights. Many studies have been conducted on human trafficking to generate increasingly reliable data, provide a sense of the root causes and hypothesis on motivations of those trafficked as well as the means and methods of traffickers and their clients, and offer sound analysis and policy recommendations for governments, international organizations, and private institutions to combat this growing global phenomenon. There have been some positive developments in this field and some policies have been implemented. However, there are still some challenges of the trafficking definition as well as the situation.

### International Definition of Trafficking

In 2000, a meeting of representatives from more than 80 countries led to a detailed agreement on the fight against trafficking in persons: The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also referred to as the Trafficking Protocol). Article 3 of the "Trafficking Protocol" defines human trafficking as:

[...] the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (Trafficking Protocol, 2000).

While this comprehensive international definition of "trafficking in persons" is based on a wide consensus,

defining this very complex and diverse phenomenon has been contentious. However, the protocol provides some parameters that can help to operationalize trafficking for research purposes. This protocol offers following basic information about human trafficking:

- Types of action: There must be an action by the traffickers, in the form of recruitment, transportation, transfer, harbouring or receipt of persons.
- Types of means: The action must be undertaken by one or more of the following means: force or the threat of force, other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, and giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
- Types of trafficking-related exploitation: The action of trafficking must be for the purpose of exploitation. Exploitation shall include, at a minimum: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. These forms of exploitation tend to transcend borders and industries. For example, with respect to labour exploitation, victims may be forced to work in various industries such as manufacturing, agriculture, construction and textile.

While earlier international treaties focused on trafficking for the purposes of prostitution, the Trafficking Protocol which includes the first international definition of "trafficking in persons" represents a notable advancement in that it includes a broader range of trafficking activities. It recognizes other purposes of modern-day trafficking, including forced labour, slavery, servitude and the removal of organs. Moreover, the Trafficking Protocol can be seen as a measure to require states to criminalize trafficking and take various law enforcement actions, provide assistance and protection for victims, and fight trafficking through cooperative programs and information sharing (Potts, 2003) <sup>[13]</sup>.

However, it is argued that there may be some limitations of the Trafficking Protocol in general and its definition in particular:

Firstly, the Trafficking Protocol's protection provisions are only discretionary, and not mandatory. The protective provisions are extremely weak (Emerton *et al.*, 2007) <sup>[5]</sup>, only requiring a state to protect the privacy and identity of victims "in appropriate cases and to the extent possible under its domestic law" to "consider" implementing measures to provide for the physical, psychological and social recovery of victims. It requires States to "endeavour to provide" for the physical safety of victims whilst they are within its territory (Trafficking Protocol, Article 6). Therefore, the Trafficking Protocol does not represent a substantive advance in the human rights protection of trafficking victims (Emerton *et al.*, 2007) <sup>[5]</sup>.

Secondly, trafficking problems are often conflated with problem of organized crime (Potts, 2003 <sup>[13]</sup>; Gozdiak, 2011) <sup>[9]</sup>. The first reason is that the Trafficking Protocol is a supplement of the 2000 United Nations Convention on Transnational Organized Crime. Moreover, it is commonly believed that large profits as well as historical low risk of prosecution always attract criminal organizations to trafficking in humans. However, the extent to which organized crime is involved in trafficking is questionable. In some regions and countries, where short distances from source to destination country do not require a sophisticated crime network, trafficking appears to resemble more of a cottage industry rather than organized crime or the involvement of organized crime networks is minimal (Piper, 2005) <sup>[12]</sup>.

An essential requirement of any criminal legal framework is to define key elements of the crime. While the Trafficking Protocol has been signed by 117 states and ratified by 157 states, individual countries, states and organizations have adopted the Protocol's definition of trafficking to varying extents. Some have adopted the definition directly, while others have provided alternative definitions. Other countries, states and organizations have no identifiable definition on human trafficking. For example, the Council of Europe Convention on Action against Trafficking in Human Beings uses exactly the same definition as the Trafficking Protocol in legal documents. On the other hand, the state of California drafted its own definition of human trafficking as "all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons, within national or across international borders, through force, coercion, fraud or deception, to place persons in situations of slavery or slavery-like conditions, forced labour or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labour, or other debt bondage".

In summary, the Trafficking Protocol offers a wide-ranging international agreement to address the crime of trafficking in persons at a transnational level. It creates a global language and legislative framework to define trafficking in persons, assists victims of trafficking; and prevents trafficking in persons; establishes parameters of judicial cooperation and exchanges information among countries. However, adoption of the definition offered by the Protocol has been uneven and is far from universal.

### **The situation of human trafficking in globe**

Overall, the existence of human trafficking is argued to impact an increased number of victims in different "markets", the most significant of which are sexual and labour exploitation. The ILO estimated that over 20 million

people are victims of human trafficking globally, including human trafficking for labour and sexual exploitation. While the number of trafficked victims is unknown, the estimate implies that millions of victims are trafficked recently in the world. Other organisations and governments also provide national statistics and global figures on human trafficking. The following literature will examine the available albeit limited statistics on sexual exploitation and forced labour which are main types of human trafficking.

#### **Sexual exploitation**

Sexual exploitation or sex trafficking encompasses the range of activities - recruiting, harboring, transporting, providing, or obtaining - involved when a person is coerced, forced, or deceived into prostitution - or maintained in prostitution.

Despite a lack of empirical data on the scope of trafficking for sexual exploitation, this subject is perhaps the most politically popular area of trafficking. Accordingly, most of the publication on human trafficking has been focused on this form of trafficking. There has been a great deal of research on trafficking for sexual exploitation, contributing to knowledge about legal framework, trafficking vulnerability factors (including demand side and supply side), consequences to the victims and society and recommendations to solve the problem.

Annually, cases and victims of trafficking for sexual exploitation are reported by United Nations Office on Drugs and Crime (UNODC), International Organization for Migration, governments and other international as well as national organizations. More victims of trafficking for sexual exploitation than for other forms of exploitation were detected from 2007 to 2011. In this period, the proportion of detected victims who were trafficked for sexual exploitation accounted for 52.5 per cent to 61.9 per cent of the total number of victims. Victims of sex trafficking are found significantly more in European countries and the United States than in the other regions. Meanwhile, 98 per cent of all persons trafficked for sexual exploitation are women and girls (UNODC, 2012) <sup>[14]</sup>.

There is a debate in the literature however, that not all women who are 'trafficked' for the purposes of sex work are victims. Rather in some instances they may be more appropriately described as economic migrants seeking a better life through sex work (Pickering *et al.*, 2006).

#### **- Forced labour**

Forced labour, sometimes also referred to as labour trafficking, encompasses a range of activities - recruiting, harboring, transporting, providing, or obtaining - involved when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to compel someone to work. Once a person's labour is exploited by such means, the person's previous consent or effort to obtain employment with the trafficker becomes irrelevant.

Trafficking for forced labour has received relatively little attention compared to trafficking for sexual exploitation, and the identification of forced labour's victims has been even less successful than in the case of sexual exploitation. In addition, male victims who might be expected to be trafficked for forced labour purposes have not identified successfully in many countries (Kask and Markina, 2014; Kangaspunta, 2007). The first reason for the relative invisibility of forced labour and its victims is that trafficking legislation in many countries is limited only to sexual exploitation. In this case, statistics or reports do not include

forced labour cases which are not classified as human trafficking crimes. Moreover, the number of male victims particularly trafficked for forced labour is under-estimated because many victim support organizations provide services only for women and child victims (Kangaspunta, 2007). As the UNODC 2012 report, the proportion of detected victims who were trafficked for forced labour was doubled in the past few years, from 18 per cent of all detected victims of trafficking in persons in 2006 to 36 per cent in 2010. Furthermore, during the period from 2007 to 2010, more victims of trafficking for forced labour were detected than for sexual exploitation in Africa and the Middle East as well as in South and East Asia and the Pacific (UNODC, 2012) <sup>[14]</sup>.

Despite annual reports from governments and organisations, commentators frequently complain about the dearth of reliable data on trafficking, the lack of comparable regional data, and the lack of sharing of existing data between states (Laczko and Gozdiak, 2005 <sup>[5]</sup>; Rankin and Kinsella, 2011). Other limitations of the reports and research are the overemphasis of research and data on trafficking for sexual exploitation, while neglecting other areas of exploitation that represent important “markets” for traffickers (Andrees and Van der Linden, 2005). For these reasons, a large amount of studies are not able to convey a realistic picture of trafficking as a whole and recommend effective solutions for this phenomenon.

Another argument that dominates debate is the difficulty to capture data on internal trafficking. The United Nations and International Organization for Migration report estimates that domestic trafficking accounts for 27 per cent of all detected cases of trafficking in persons worldwide. Moreover, the number of detected cases and victims of domestic trafficking has been increasing in recent years. The percentage of human trafficking cases that were domestic trafficking cases rose from 19 per cent in 2007 to 31 per cent in 2010. However, most research on trafficking has focused on international trafficking rather than internal trafficking inside particular countries. Within the literature, internal and international trafficking are treated as complete distinct and separate from one another, and the linkages between the two forms of trafficking have been investigated in very few studies (Laczko and Gozdiak, 2005) <sup>[5]</sup>.

A further point of concern relating to human trafficking is a connection with transnational organised crime. Trafficking is often reported to be the third largest source of profit for organized crime and a rapidly growing component of transnational crime (Potts, 2003) <sup>[13]</sup>. Although much of trafficking is within individual countries, there is an increase of victims who are trafficked vast distance to reach their destinations. International logistics networks have been established to move victims across long distances. Trafficking networks also become more professional, entrepreneurial and less visible. The structure of criminal trafficking organisations is various and diverse with the means to constantly recruit, transport and maintain control victims to avoid detection (Gozdiak, 2011 <sup>[9]</sup>; Shelley, 2010) <sup>[8]</sup>.

A final trend to note is the increasing incidents of adult males becoming victims of trafficking in the last decade, with increasing efforts being made to address this problem (Laczko and Gozdiak, 2005) <sup>[7]</sup>. For example, the trafficking of adult males in the Greater Mekong Sub-region into the fishing industry and into factories has received increasing

attention in media, and by organizations involved in providing assistance to trafficking victims. One of the major problems of this trade occurs after being trafficked across national borders, male trafficking victims may be treated as undocumented migrants on their return, adding to their experience of victimisation. Despite the conditions that they have endured, they may be considered as criminals, as many nation-states have been slow to recognise that men can be victims of trafficking. Therefore, they will be unable to access support services not only in the country where they are exploited, but also in their home country. This is a challenge still facing the governments and organizations in their efforts to provide support to all trafficking victims in general and male victims in particular. The situation for male victims of trafficking is expected to improve in some areas as advancements are made in the national and international legal frameworks (IOM, 2008) <sup>[10]</sup>.

## Conclusion

It is well understood that human trafficking is the criminal exploitation of humans in a wide range of industries and settings. In the global context, there are many signs that this crime is still increasing, not diminishing. There have been some positive developments in examining this crime and specifying anti-trafficking policies. The *Trafficking Protocol 2000*, which includes the first comprehensive international definition of “trafficking in persons”, creates a global language to address the crime of trafficking in persons at a transnational level. Various types and purposes of modern-day trafficking have been identified in the *Trafficking Protocol 2000*, research, and reports. However, the trafficking definition is both broad and limited, while data on trafficking are still unreliable and incomparable. The rate of prosecuted offenders is comparatively small and the effectiveness of strategies to fight against this kind of crime remains limited.

## References

1. Aronowitz Alexis. Guidelines For The Collection Of Data On Trafficking In Human Beings, Including Comparable Indicators. International Organization for Migration and Federal Ministry of the Interior of Austria, 2009.
2. Council of Europe. “Council of Europe Convention on Action against Trafficking in Human Beings, 2005.
3. David David. “ASEAN Responses to Trafficking in Persons, 2006. [http://works.bepress.com/cgi/viewcontent.cgi?article=1016&context=fiona\\_david](http://works.bepress.com/cgi/viewcontent.cgi?article=1016&context=fiona_david).
4. David Fiona. “ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons, 2006.” [http://works.bepress.com/fiona\\_david/10](http://works.bepress.com/fiona_david/10).
5. Emerton Robyn, Karen Joe Laidler, Carole J Petersen. 2007. “Trafficking of Mainland Chinese Women into Hong Kong’s Sex Industry: Problems of Identification and Response.” *Asia-Pac. J. on Hum. Rts. & L.* 2007; 8:35.
6. Gallagher Anne, Paul Holmes. “Developing an Effective Criminal Justice Response to Human Trafficking Lessons From the Front Line.” *International Criminal Justice Review.* 2008; 18(3):318-43.
7. Laczko Frank, Elzbieta Gozdiak. “Data and Research on Human Trafficking: A Global Survey.” *International Migration.* 2005; 43(1-2):5-16.
8. Shelley Louise. *Human Trafficking: A Global*

- Perspective. Cambridge: Cambridge University Press, 2010.
9. Gozdiak Elzbieta M. *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*. DIANE Publishing, 2011.
  10. IOM. *International Organization for Migration Human Trafficking: New Direction for Research*. International Organization for Migration, 2008. [http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring\\_protection\\_070909/human\\_trafficking\\_new\\_directions\\_for\\_research.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/human_trafficking_new_directions_for_research.pdf).
  11. OSCE. "Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-Ordination and Reporting Mechanisms". OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2008; <http://www.osce.org/cthb/36159>.
  12. Piper Nicola. "A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania." *International Migration*. 2005; 43(1-2):203-33.
  13. Potts LeRoy G Jr. "Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons." *George Washington International Law Review*. 2003; 35:227.
  14. UNODC. "Global Report on Trafficking in Persons, 2012." [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).