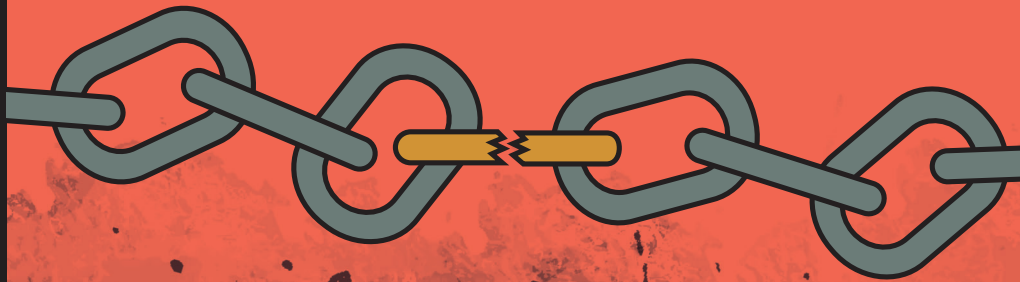




# Human Trafficking: Issues Beyond Criminalization



The Proceedings of the 20th Plenary Session  
17-21 April 2015

*Edited by*  
Margaret S. Archer | Marcelo Sánchez Sorondo

# **Human Trafficking: Issues Beyond Criminalization**



*The Pontifical Academy of Social Sciences Acta 20*

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*17-21 April 2015*

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Margaret S. Archer  
Marcelo Sánchez Sorondo



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The Pontifical Academy of Social Sciences  
Casina Pio IV, 00120 Vatican City  
Tel: +39 0669881441 • Fax: +39 0669885218  
Email: [pass@pass.va](mailto:pass@pass.va) • Website: [www.pass.va](http://www.pass.va)

The opinions expressed with absolute freedom during the presentation of the papers of this meeting, although published by the Academy, represent only the points of view of the participants and not those of the Academy.

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THE PONTIFICAL ACADEMY OF SOCIAL SCIENCES  
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VATICAN CITY



In recent years, the Pontifical Academy of Social Sciences, thanks to the efforts of its President, its Chancellor and a number of prestigious external collaborators – to whom I offer my heartfelt thanks – has engaged in important activities in defence of human dignity and freedom in our day. This has been particularly the case with efforts to eliminate human trafficking and smuggling, as well as new forms of slavery such as forced labour, prostitution, organ trafficking, the drug trade and organized crime. As my predecessor Pope Benedict XVI stated, and I myself have repeated on several occasions, these are true crimes against humanity; they need to be recognized as such by all religious, political and social leaders, and by national and international legislation.

*Statement by His Holiness Pope Francis to the “Judges’ Summit on Human Trafficking and Organized Crime”, Casina Pio IV, Pontifical Academy of Social Sciences, Vatican City, Friday, 3 June 2016.*









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# Discurso del Santo Padre Francisco a los participantes en la Sesión Plenaria de la Pontificia Academia de Ciencias Sociales

*Sábado 18 de abril de 2015*

*Queridos hermanos y hermanas:*

Os doy la bienvenida a vosotros, miembros de la Academia pontificia de ciencias sociales y participantes en esta sesión plenaria dedicada a la trata de personas. Agradezco las amables palabras de la presidenta, la señora Margaret Archer. Saludo a todos cordialmente y os garantizo que estoy muy agradecido por lo que esta Academia realiza para profundizar el conocimiento de las nuevas formas de esclavitud y erradicar la trata de seres humanos, con el único propósito de servir al hombre, especialmente a las personas marginadas y excluidas.

Como cristianos, vosotros os sentís interpelados por el sermón de la montaña del Señor Jesús y también por el «protocolo» con el que seremos juzgados al final de nuestra vida, según el Evangelio de san Mateo, capítulo 25. «Bienaventurados los pobres, bienaventurados los afligidos, bienaventurados los mansos, bienaventurados los puros de corazón, bienaventurados los misericordiosos, bienaventurados los que tienen hambre y sed de justicia, bienaventurados los perseguidos a causa de la justicia: estos poseerán la tierra, estos serán hijos de Dios, estos verán a Dios» (cf. *Mt* 5, 3-10). Los «benditos del Padre», sus hijos que lo verán son los que se preocupan por los últimos y aman a los más pequeños entre sus hermanos: «Cada vez que lo hicisteis con uno de estos mis hermanos más pequeños, conmigo lo hicisteis», dice el Señor (cf. *Mt* 25, 40).

Y hoy, entre estos hermanos más necesitados están los que sufren la tragedia de las formas modernas de esclavitud, del trabajo forzado, del trabajo esclavo, de la prostitución, del tráfico de órganos, de la droga.

San Pedro Claver, en un momento histórico en el que la esclavitud estaba muy difundida y socialmente aceptada, lamentablemente – y escandalosamente – también en el mundo cristiano, porque era un gran negocio, sintiéndose interpelado por estas palabras del Señor, se consagró para ser «esclavo de los esclavos». Muchos otros santos y santas, como por ejemplo, san Juan de Mata, combatieron la esclavitud, siguiendo el mandato de Pablo: «Ya no como esclavo ni esclava, sino como hermano y hermana en Cristo» (cf. *Flm* 1, 16).

Sabemos que la abolición histórica de la esclavitud como estructura social es la consecuencia directa del mensaje de libertad que Cristo trajo al mundo con su plenitud de gracia, verdad y amor, con su programa de las Bienaventuranzas. La conciencia progresiva de este mensaje en el curso de la historia es obra del Espíritu de Cristo y de sus dones comunicados a sus santos y a numerosos hombres y mujeres de buena voluntad, que no se identifican con una fe religiosa, pero que se comprometen por mejorar las condiciones humanas.

Lamentablemente, en un sistema económico global dominado por el beneficio, se han desarrollado nuevas formas de esclavitud en cierto modo peores y más inhumanas que las del pasado. Más aún hoy, por lo tanto, siguiendo el mensaje de redención del Señor, estamos llamados a denunciarlas y combatirlas. En primer lugar, debemos tomar más conciencia de este nuevo mal que, en el mundo global, se quiere ocultar por ser escandaloso y «políticamente incorrecto». A nadie le gusta reconocer que en su ciudad, en su barrio también, en su región o nación existen nuevas formas de esclavitud, mientras sabemos que esta plaga concierne a casi todos los países. Tenemos que denunciar este terrible flagelo con su gravedad. Ya el Papa Benedicto XVI condenó sin medios términos toda violación de la igualdad de la dignidad de los seres humanos (cf. *Discurso al nuevo embajador la República de Alemania ante la Santa Sede*, 7 de noviembre de 2011). Por mi parte, he declarado más veces que estas nuevas formas de esclavitud – tráfico de seres humanos, trabajo forzado, prostitución, comercio de órganos – son crímenes gravísimos, «una llaga en el cuerpo de la humanidad contemporánea» (*Discurso a la II Conferencia internacional sobre la trata de personas*, 10 de abril de 2014). Toda la sociedad está llamada a crecer en esta toma de conciencia, especialmente en lo que respecta a la legislación nacional e internacional, de modo que se pueda aplicar la justicia a los traficantes y emplear sus ganancias injustas para la rehabilitación de las víctimas. Se deberían buscar las modalidades más idóneas para penalizar a quienes se hacen cómplices de este mercado inhumano. Estamos llamados a mejorar las modalidades de rescate e inclusión social de las víctimas, actualizando incluso las normativas sobre el derecho de asilo. Debe aumentar la conciencia de las autoridades civiles acerca de la gravedad de esta tragedia, que constituye un retroceso de la humanidad. Y muchas veces – ¡muchas veces! – estas nuevas formas de esclavitud son protegidas por instituciones que deben defender a la población de estos crímenes.

Queridos amigos, os aliento a proseguir con este trabajo, con el que contribuís a hacer el mundo más consciente de tal desafío. La luz del Evan-

gelio es guía para quien se pone al servicio de la civilización del amor, donde las Bienaventuranzas tienen una resonancia social, donde existe una real inclusión de los últimos. Es necesario construir la ciudad terrena a la luz de las Bienaventuranzas, y así, caminar hacia el cielo en compañía de los pequeños y de los últimos.

Os bendigo a todos vosotros, bendigo vuestro trabajo y vuestras iniciativas. Os agradezco mucho por lo que hacéis. Os acompaño con mi oración y también vosotros, por favor, no os olvidéis de rezar por mí. Gracias.



# Address of His Holiness Pope Francis to Participants in the Plenary Session of the Pontifical Academy of Social Sciences

*Saturday, 18 April 2015*

*Dear Brothers and Sisters,*

I welcome you, members of the Pontifical Academy of Social Sciences and those attending this plenary session dedicated to human trafficking. I am grateful for the kind words of the President, Ms Margaret Archer. I cordially greet and assure you that I greatly appreciate how much this Academy is doing to increase awareness of the new forms of slavery and to eradicate the trafficking of human beings, with the single intent to serve mankind, especially marginalized and excluded people.

As Christians, you feel challenged by the Lord Jesus' Sermon on the Mount and also by the 'protocol' by which we shall be judged at the end of our lives, according to the Gospel of Matthew, Chapter 25. "Blessed are the poor, blessed are those who mourn, blessed are the meek, blessed are the pure in heart, blessed are the merciful, blessed are those who hunger and thirst for righteousness, blessed are those who are persecuted for righteousness' sake: for they shall inherit the earth, they shall be called sons of God, they shall see God" (cf. Mt 5:3-10). Those who are "blessed by the Father" – his sons and daughters who shall see Him – are those who concern themselves with the least and who love the smallest among their brothers: "as you did it to one of the least of these my brethren, you did it to me" says the Lord (cf. Mt 25:40). And today, among these most needy brothers and sisters are those who suffer from the tragedy of modern forms of slavery, from forced labour, slave labour, prostitution, organ trafficking, drugs.

At a moment in history when slavery was widespread and socially acceptable, unfortunately – and scandalously – even in the Christian world, for it was a large business, St Peter Claver, who was inspired by these words of the Lord, thus consecrated himself as the "servant of slaves". Many other saints, such as, for example, St John of Matha, fought against slavery, following Paul's mandate: "no longer as a slave but as a brother or sister in Christ" (cf. Philem 16).

We know that the historical abolition of slavery as a social structure is the direct result of the message of freedom brought into the world by Christ with his fullness of grace, truth and love, with his programme of

the Beatitudes. The progressive awareness of this message in the course of history is the work of the Spirit of Christ and of his gifts, shared with so many of his saints and men and women of good will, who do not identify with a religious faith, but are committed to improving the human condition.

Unfortunately, in a global economic system dominated by profit, new forms of slavery have developed, worse and more inhuman in a certain way, than those of the past. Thus even more today, following the Lord's message of redemption, we are called to denounce and fight against them. First of all, we must raise awareness of this new evil which, in the world at large, wants to be hidden since it is scandalous and "politically incorrect". No one likes to acknowledge that in one's own city, even in one's own neighbourhood, in one's region or nation there are new forms of slavery, while we know that this plagues almost all countries. We must then denounce the seriousness of this terrible scourge. Previously Pope Benedict XVI, without mincing words, condemned every violation of the equality of dignity among human beings (cf. *Address to the New Ambassador of the Federal Republic of Germany to the Holy See*, 7 November 2011). For my part, I have declared many times that these new forms of slavery – human trafficking, forced labour, prostitution, organ trade – are extremely serious crimes, "an open wound on the body of contemporary society" (*Address to Participants in the Second International Conference on Combating Human Trafficking*, 10 April 2014). All of society is called to grow in this awareness, especially with regard to national and international legislation, in order to be able to ensure that traffickers be brought to justice and their unjust earnings redirected for the rehabilitation of victims.

We must seek the most suitable modalities to punish those who become complicit in this inhuman trade. We are called to improve the means of redress and the social inclusion of victims, also to update the regulations regarding the right to asylum. Civil authorities must be increasingly aware of the seriousness of this tragedy, which constitutes a regression of humanity. And so often – so many times! – these new forms of slavery are protected by the institutions which should be protecting the population from these crimes.

Dear friends, I encourage you to persevere in this work, by which you are helping to make the world more conscious of this challenge. The light of the Gospel is the guide for anyone who places him/herself at the service of a civilization of love, where the Beatitudes have a social resonance, where there is true inclusion of the least. It is important to build the earth-

ly city in the light of the Beatitudes, and thereby journey toward Heaven in the company of the smallest and the least.

I bless you all, I bless your work and your initiatives. I thank you so much for what you do. I accompany you with my prayers, and you too, please do not forget to pray for me. Thank you.

# Address to the Holy Father

Dear Holy Father,

Thank you so much for receiving us today, during the Plenary meeting of PASS on Human Trafficking. It is to you that we owe the inspiration for our work over the last two years – to that small, handwritten note, which is now famous, encouraging us to examine human trafficking and modern slavery, including organ trafficking. In all humility we hope that our efforts have not disappointed you, because at each stage we have tried to carry the agenda forward in opposing Human Trafficking. At this meeting we are trying to take the biggest giant step yet.

Criminal law is undoubtedly a necessary condition for the abolition of this illegal practice, which is growing and whose profits of \$150 billion now exceed those of the drug trade. But, criminalization is not a sufficient condition for eliminating its consequences for victims.

To enslave any person – for their labour value, abuse of their bodies, harvesting of their organs or as babies for sale – nullifies their human dignity by reducing subjects to objects. It is a Crime Against Humanity that traduces the foundational principle upon which all Catholic Social Teaching rests: the dignity of every human being, without exception, deriving from their divine filiation.

The criminalization of this trade is the start not the end of the ‘New Abolitionism’. Criminalization of trafficking concentrates on reducing and ideally eliminating the ‘Supply’ side of the equation, but what about the ‘Demand’, which is the motor sustaining this trade? It is the demand for cheap labour, for prostitution, for organs, by which rich people’s wants nullify poor people’s right to work in physical safety, to protect their own bodies against abuse and to value their own vital body parts as necessary to life itself. This demand is growing, not decreasing and we must work against each element of it and especially the trail of human ruin they create.

To this end we have some radical proposals, of which we hope you may approve:

1. PASS has already become a social movement against Trafficking, welcoming all people of goodwill to join us in the New Abolitionism through our Website [www.endslavery.va](http://www.endslavery.va), which went live this week.
2. We want to dissociate Criminal Prosecution from automatic Repatriation and replace the latter with voluntary Resettlement programs in

host countries, leading to a right to remain and constituting Pathways to Passports.

3. We seek to combat the traffic in Organs, through the obscenity of ‘Organ Tourism’; we beg your endorsement of the Catholic Church both by blessing and promoting the distribution of Voluntary Organ Donor Cards among the faithful and to those of other faiths and none in order to reduce demand.
4. Lastly, we pray for your active support in convincing the Secretary-General of the UN to designate the elimination of Human Trafficking as one of the ten new Sustainable Development goals for 2020.

Please forgive me if I have been too direct, but moral outrage has to give rise to practical action for us to be able to say with Your Holiness: ‘Slaves no more, but brothers and sisters’.

**PRESIDENT MARGARET ARCHER**  
*Pontifical Academy of Social Sciences*

# Introduction

There are two statements that Pope Francis has constantly repeated from the beginning of his Pontificate: that ‘Human Trafficking is Modern Slavery’ and that this practice is a ‘Crime against Humanity’. PASS endorses both without reservation having, in fact, been the first to coin the latter phrase. However, each statement merits closer inspection because they denote rather different issues. Both have been crucial in shaping the leadership that the Catholic Church has assumed and the agenda she has adopted in spearheading a social movement opposing this morally horrendous treatment of human persons.

As many social scientists have noted, today’s digital media make initial protests and demonstrations by new social movements easier to organize than ever before. Conversely, to hold a movement together whilst pushing its agenda forward remains as difficult as ever. The latter is where our Academy (in fact, the two Academies) can make a contribution. We are not ‘beyond moral outrage’; that remains our constant bedrock. However, it also requires a clearer definition of what new social provisions are needed not merely to eliminate Human Trafficking quickly but to restore respect – and self-esteem – to those whose human dignity has been assaulted and battered through the process of being trafficked. It is to this that the first statement points unequivocally.

## *‘Human Trafficking is Modern Slavery’*

Compared with the many and various historic forms of slavery, the current victims of trafficking share three common denominators with those enslaved in the past: subjection to one of the most extreme forms of violent social domination; alienation from any legitimate social order; degradation and dishonour because freedom is necessary to attain any form of status in society except the lowest. Where the trafficked differ, is that historically slaves could look towards some formal process of manumission, albeit in a distant future. The trafficked cannot; they are moveable, removable and disposable people.

Even though most forms of ‘forced labour’ and ‘sex working’ take their toll whilst the trafficked are relatively young, meaning that their cash value as commodified objects diminishes quite early, what can they do with their lives if they do break free? Without documents, without rights, without any legitimate social network, and probably without the language needed, they

are defenceless against assimilation into the local ‘black’ economy, its sweatshops, drug rings, and organized street prostitution. In other words, they join the reserve army of ‘illegal migrants’ and face the prospect of extradition. Alternatively, given certain circumstances and conditions, they may give legal evidence against their traffickers. Yet, usually, after a brief respite in a witness protection programme, they then face the prospect of repatriation.

These contemporary versions of ‘manumission’ require the closest inspection of the data available. In examining it, what becomes clear is that the human story of those trafficked does not end with either their ‘vanishing’ through the holes of the social fabric in the developed world nor with their ‘departure’ after a prosecution case. Criminal conviction of the (proximate) trafficker is necessary and desirable but, in itself, does nothing positive to restore the proper self-esteem, the subjective recognition of their own human dignity, of those trafficked.

This very brief reflection leads us to at least reconsider the quasi-automatic outcome of ‘repatriation’ after a court hearing, although both the legal cases brought and successful convictions made are a small percentage of the estimated volume of trafficking. Moreover, in terms of carrying the agenda forward, it forewarns us of three issues that need to be confronted:

Firstly, should we not question the conditions that too often have gone hand in hand with national ratification of the ILO 2002 ‘Palermo Protocol’, namely ‘repatriation’?

Secondly, should we not be alert to the fact that ‘criminalization’ by successful prosecution – necessary as it is – works almost exclusively on the suppliers of trafficked persons and does insufficient – if anything – for their victims? Should not this asymmetry be addressed?

Thirdly, if the trafficked are indeed recognised to be ‘victims of modern slavery’, it must be acknowledged that their victimization can largely be attributed to national and multi-national demands for exploited labour or sexual exploitation. It follows that we need to consider the justice of recompensing the victims of such demand not solely by ‘compensation in cash’ through confiscation of the traffickers’ profits, as endorsed in some national plans. Equally, that reaction should be compared with the more generous responses of voluntary associations, seeking to offer much more humane prospects and projects for Resettlement in the host country for those who wish to remain.

All three questions raise major issues of legal re-thinking that would doubtless meet with resistance, but confronting them is an ineluctable part of being an effective social movement.

### *Human Trafficking as a 'Crime against Humanity'*

To enslave any person – for their labour value, abuse of their bodies, harvesting of their organs and as babies for sale – nullifies their human dignity by reducing subjects to objects. It thus traduces the foundational principle upon which all Catholic Social Teaching rests: the dignity of every human being, without exception, derived from their divine filiation. Since Catholic Social Doctrine, from Vatican II, is always addressed to ‘All people of goodwill’, collaboration in causes such as the abolition of Human Trafficking is welcomed from those of other faiths and of none. It follows that the social movement now unfurling is both ecumenical and broadly humanistic in its supporters.

Together we can take the next giant step. The criminalization of this trade is the start not the end of ‘Abolitionism’. Human rights are upheld by police prosecution and the legal sentencing of traffickers but they are not restored to, much less enjoyed by, their victims. International police action (rightly) condemns those profiting from this illegal trade and is making strenuous efforts to become more effective, but the traffickers are not the sole parties responsible for violating the human dignity of those trafficked. We could say that the Criminalization of trafficking concentrates on reducing and ideally eliminating the ‘Supply’ side of the equation, but what about the ‘Demand’, which is the motor sustaining this trade?

It is the demand for cheap labour, for prostitution, for organs, where rich people’s wants nullify poor people’s right to work in physical safety, to protect their own bodies against abuse and to value their own vital body parts as necessary to life itself. This demand is growing, not decreasing and it fuels ‘internal trafficking’ within countries: the ‘grooming’ of young girls, the sequestration of the desperate as ‘domestic slaves’, the detention of ‘captive workers’.

Certainly, a few countries (Norway and Sweden) are pioneering legislation to penalise the client rather than their prey. Welcome as this is, it works pragmatically on the presumption that ‘demand’ exists, as is incontrovertible today. However, the criminalization of demand is only one tool to be used and, despite its value, it can convey the assumption that such demand will always be with us in late modernity.

As social scientists, our brief should be bolder. We need to work on the *normative attitudes* that normalize ‘demand’, drawing upon evidence of interventions generating radical changes in normativity that have been successful in many other fields: drink-driving, smoking, exercising, adopting environmentally friendly practices and, more slowly, the reduction of dis-



crimination against women, ethnic groups and the handicapped. In many of these examples legal penalties and sometimes economic incentives have backed-up changes in social norms and should be assessed as a composite formula for change. Nevertheless, in those cases where an established practice has been successfully up-rooted – such as smoking – changes in normativity have outstripped penal and fiscal measures in reducing demand. This challenges us to conceptualise a parallel process in which the clients of brothels and the companies using forced labour also become socially stigmatized.

Once again, this will meet with the institutionalized opposition of those with vested interests in sustaining demand – as was the case with the tobacco industry – but the task of a social movement is to harness its cultural resources to promote public censure that overrides such interests.

### *The ongoing commitment of the Catholic Church*

As the world's oldest social movement, our Church has been prominent in initiating, mobilizing and sustaining opposition to Human Trafficking; witness the series of high level meetings promoted during Pope Francis's short Pontificate. On January 1<sup>st</sup> 2015, the World Day of Peace will take as its theme 'Slaves no more, but brothers and sisters'.

Many agencies of the Holy See have already been harnessed to this end: the Council for Justice and Peace, Delegates to the United Nations and to the EU; a variety of ad hoc meetings, both ecumenical and for young people were held in 2014; and the Academies made a signal contribution through their widely diffused Statement of November 2013 and the foundation of the Global Freedom Network, whose website has fostered others, such as the international 'Liberanos'.

This small sample of activities shows a social movement in *statu nascendi*. We should not forget that our Academy was there at the beginning, in that brief handwritten note of guidance from Pope Francis to our Chancellor on 13 May 2013. The Plenary meeting of PASS in April 2015 therefore has the (statutory) responsibility not simply of adding our voices in unison but of carrying the movement forward by giving 'moral outrage' new elements of a concrete Agenda for eliminating this Crime against Humanity – in both its causes and its consequences.

**PRESIDENT MARGARET ARCHER**  
*Pontifical Academy of Social Sciences*

# Programme

## ► FRIDAY, 17 APRIL 2015

### OPENING SESSION

Chair: Pierre Morel

- 9:00 *Welcome*  
President Margaret Archer
- 9:05 Film UNODC
- 9:15 *Origins of the Magisterium on Human Dignity*  
H.E. Msgr. Roland Minnerath
- 9:45 Discussion
- 10:15 *Argentina: Successes, Difficulties and Problems Still Confronted in Reducing Prostitution and Forced Labour*  
Gustavo Vera
- 10:45 Discussion
- 11:15 Coffee Break
- 11:45 *The Limitations of Necessary Criminalization*  
Kevin Hyland, UK Independent Anti-Slavery Commissioner
- 12:15 Discussion
- 12:45 *No Longer Slaves, but Brothers and Sisters*  
Flaminia Giovanelli
- 13:15 Discussion
- 13:30 Lunch at the Casina Pio IV

### THE ETIOLOGY OF HUMAN TRAFFICKING: CAUSES AND CONSEQUENCES OF REGIONAL VARIATIONS

Chair: Juan José Llach

- 15:30 *The Social Etiology of Human Trafficking, Its Global Distribution and Differences. Setting the Scene*  
Kristiina Kangaspunta, UNODC
- 15:50 Discussion
- 16:10 *The Social Etiology of Human Trafficking: How Poverty and Cultural Practices Facilitate Trafficking*  
Alexis A. Aronowitz, PhD, Senior Lecturer Criminology, University College Utrecht
- 16:40 Discussion

- 17:10 Coffee Break  
17:40 *The Social Etiology of Human Trafficking, Its Global Distribution and Differences: What We Can Learn from the Data*  
Michaëlle de Cock  
18:10 Discussion  
18:40 *The Programme of Pope Francis According to the Gospel: the Church as Intrinsically a Social Movement to Make the Last First*  
H.E. Msgr. Marcelo Sánchez Sorondo  
19:10 Discussion  
19:40 Dinner at the Casina Pio IV

► **SATURDAY, 18 APRIL 2015**

THE ROLE OF THE INTERNATIONAL ORGANIZATIONS

Chair: Rocco Buttiglione

- 9:00 *The ILO; Successes, Difficulties and Problems in Reducing Forced Labour in Different Parts of the World*  
Beate Andrees  
9:30 Discussion  
10:00 *Legal and Policy Framework of the EU Relating to Criminalisation, Prevention and Demand Reduction*  
Myria Vassiliadou  
10:30 *The Role of the UN and its Sustainable Development Goals in Seeking to Reduce/Eliminate Human Trafficking by 2020*  
Jeffrey Sachs  
11:00 Discussion  
12:00 Meeting with Pope Francis  
13:00 Lunch at the Casina Pio IV

THE ROLE OF NATIONAL LEGISLATION

Chair: José Raga

- 15:00 *The New Anti-Trafficking Bill for Great Britain; with Regard to Repatriation*  
John McEldowney  
16:30 Discussion  
16:00 *An Evaluation of the Place of Repatriation in French Law Dealing with Trafficked Persons*  
Yves Charpenel

- 16:30 Discussion  
 17:00 Coffee Break  
 17:30 *Repatriation and Trafficked Workers in the Philippines and Filipinos Trafficked to Work in Other Countries*  
 Maruja Asis  
 18:00 Discussion  
 Chair: Margaret Archer  
 18:30 Formulation of our Recommendations About Criminalization and Repatriation (Part I)  
 19:15 Dinner at the Casina Pio IV

► **SUNDAY 19 APRIL 2015**

Pilgrimage to Florence

► **MONDAY, 20 APRIL 2015**

ISSUES OF RESETTLEMENT – INITIATIVES FROM VOLUNTARY ASSOCIATIONS

Chair: Janne H. Matlary

- 9:00 *Lessons from two Decades of Casework: How to Restore Survivors and Communities to Safety and Strength*  
 Gary Haugen  
 9:30 Discussion  
 10:00 *Difficulties and Successful Practices in Facilitating a New Life for Persons Trafficked to Great Britain*  
 Kate Garbers  
 10:30 Discussion  
 11:00 Coffee Break  
 11:30 *Difficulties and Successful Practices in Facilitating a New Life for Persons Trafficked to Italy*  
 Giovanni Ramonda  
 12:00 Discussion  
 12:30 *The Challenge of Resettling those who Have Been Trafficked, with Special Reference to Nigeria*  
 Eugenia Bonetti  
 13:00 Discussion  
 13:30 Lunch at the Casina Pio IV

Chair: Allen Hertzke

15:00 *Difficulties and Successful Practices in Facilitating a New Life for Persons Trafficked within Australasia*

Sallie Yea

15:30 Discussion

#### PANEL DISCUSSION

THE INTERNET AND SOCIAL MOVEMENTS: DEVELOPING A WEBSITE AND ITS ROLE IN ADVANCING ANTI-TRAFFICKING

16:00 PASS team

Pierre Morel (Liberanos)

Gary Haugen (International Justice Mission)

Kate Garbers (Unseen)

Nancy Scheper-Hughes (Organs Alert – the history)

17:30 Coffee Break

#### TRAFFICKING IN HUMAN ORGANS

18:00 *Scars – Ruined Lives and Deaths of Kidney Trafficking Victims*

Nancy Scheper-Hughes

18:30 Discussion

19:00 *Trafficking for Human Organs in India*

Mathew Abraham

19:30 Discussion

20:00 Dinner at the Casina Pio IV

### ► TUESDAY, 21 APRIL 2015

THE NORMATIVE REDUCTION OF ‘DEMAND’ FOR TRAFFICKED PERSONS – WHAT INCREASES AND REDUCES ‘DEMAND’?

Chair: Hsin-Chi Kuan

9:00 *How the Global Economy Fosters Human Trafficking*

Stefano Zamagni

9:30 Discussion

10:00 *Normative Findings from the Evaluation Report of the Norwegian Sex Buying Act*

Steiner Strøm

10:30 Discussion

11:00 Coffee Break

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- 11:30 *A Liberal Profession? The Norwegian Debate About Prostitution and Trafficking*  
Janne Matlary
- 12:00 Discussion
- 12:30 Lunch at the Casina Pio IV
- Chair: Paulus Zulu
- 14:30 *How Does Social Normativity Change and Can It Be Brought to Foster the Common Good?*  
Pierpaolo Donati
- 15:00 Discussion
- 15:30 *How to Bring About Normative Change in the Demand for Trafficked Persons*  
Douglas Porpora
- 16:00 Discussion
- 16:30 Coffee Break
- Chair: Margaret Archer
- 17:00 Formulation of our Recommendations for Rehabilitation and Resettlement (Part II)
- 17:30 Closed Session for Academicians
- 19:00 Dinner at the Casina Pio IV

# List of Participants

## *Speakers*

ANDREES, Beate

Head, Special Action Programme to Combat Forced Labour  
International Labour Office  
Geneva (Switzerland)

ARCHER, Margaret S.

Director, Centre for Social Ontology  
Dept. of Sociology, University of Warwick (UK)  
President, Pontifical Academy of Social Sciences (Vatican City)

ARONOWITZ, Alexis A.

Senior Lecturer, Utrecht University  
Utrecht (The Netherlands)

ASIS, Maruja M.B.

Director, Scalabrini Migration Center  
Quezon City (Philippines)

BONETTI, Sr. Eugenia

President, “Slaves No More” Association  
USMI Counter Trafficking Office  
Rome (Italy)

CHARPENEL, Yves

Chair, Fondation Scelles  
Paris (France)

DE COCK, Michaëlle

Senior Researcher,  
International Labour Office  
Geneva (Switzerland)

DONATI, Pierpaolo

Università di Bologna  
Dipartimento di Sociologia  
Bologna (Italy)

GARBERS, Kate  
Co-Founder and Managing Director,  
Unseen  
Bristol (UK)

GIOVANELLI, Flaminia  
Undersecretary,  
Pontifical Council for Justice and Peace  
Rome (Italy)

HAUGEN, Gary  
Founder and President,  
International Justice Mission  
Washington DC (USA)

HYLAND, Kevin  
Independent Anti-Slavery Commissioner  
London (UK)

KANGASPUNTA, Kristiina  
Chief of the UNODC's Global Report on Trafficking in Persons Unit  
Wien (Austria)

LLACH, Juan José  
Director, GESE (Centro de Estudios de Gobierno,  
Empresa, Sociedad y Economía)  
IAE-universidad Austral  
Buenos Aires (Argentina)

MATLARY, Janne H.  
University of Oslo  
Department of Political Science  
Oslo (Norway)

McELDOWNEY, John  
Professor of Law and Director of Warwick's School's new LLM in EU Law in  
the World Economy, Warwick University  
Warwick (UK)



MINNERATH, H.E. Msgr. Roland  
Archbishop of Dijon  
(France)

MOREL, Pierre  
Director, Pharos Observatory of Cultural  
and Religious Pluralism  
Paris (France)  
Ambassador of France to the Holy See

PORPORA, Douglas V.  
Professor of Sociology in the Department of Culture and Communication  
Drexel University  
Philadelphia (USA)

PUTHENCHIRAYIL, Fr. Mathew Abraham  
Bangalore (India)

RAMONDA, Giovanni P.  
Director, Comunità Papa Giovanni XXIII  
Rimini (Italy)

SACHS, Jeffrey  
Director,  
The Earth Institute at Columbia University  
New York (USA)

SÁNCHEZ SORONDO, H.E. Msgr. Marcelo  
Chancellor, Pontifical Academy of Sciences  
and Pontifical Academy of Social Sciences  
(Vatican City)

SCHEPER-HUGHES, Nancy  
Professor of Medical Anthropology and Sociocultural Anthropology at Berkeley  
University  
Berkeley (USA)

STRØM, Steinar  
Chairman of the Board, Vista Analyse  
Oslo (Norway)

VASSILIADOU, Myria  
European Anti-Trafficking Coordinator  
Brussels (Belgium)

VERA, Gustavo  
Diputado de la legislatura de la Ciudad de Buenos Aires  
Presidente, Fundación La Alameda, Buenos Aires  
(Argentina)

YEA, Sallie W.  
Assistant Professor, Department of Humanities and Social Studies Education  
National Institute of Education, Nanyang Technological University (NIE/NTU),  
Singapore

ZAMAGNI, Stefano  
Università di Bologna  
Dipartimento di Scienze Economiche  
Bologna (Italy)

*Academicians*

BUTTIGLIONE Rocco  
HERTZKE Allen  
HÖSLE Vittorio  
KUAN Hsin-Chi  
POSSENTI Vittorio  
RAGA José T.  
RAMIREZ Mina  
SCHAMBECK Herbert  
ZULU Paulus

*Observers*

BOTTANI Sr. Gabriella  
BRIZUELA Agustina  
BRIZUELA Horacio  
CHIRAMEL Davis  
LARRAQUY Marcelo

LIECHTENSTEIN Heinrich  
LUCCITELLI Luca  
MAILLARD Sebastien  
MALLET Jean Sebastien  
MORENO RODRÍGUEZ Maria Yaneth  
PITOFISKY Jim  
STUDZINSKI John  
TAYLOR-CAMARA Cecilia  
VANNUCCI Adolfo  
WALKER Darren  
WEEDON Tim  
WILLIS Brian

## ► OPENING SESSION



# WHERE DOES HUMAN DIGNITY COME FROM?

ARCHBISHOP ROLAND MINNERATH

In dealing with the dramatic issue of human trafficking, it seems necessary to go back to the source of the present universal rejection of human slavery and all forms of degrading treatment.

The condemnation of human trafficking has deep roots in religion and culture. However it is not shared by all cultures and religions. To find out where is the source of our present condemnation, we have to follow the steps of abolition of slavery and more deeply the anthropological views shared by communities who do not accept discrimination of human beings. Our purpose is to find out ways to eradicate the new appalling forms of human slavery.

## I. Rejection of slavery

1. The rejection of slavery was a long process. In ancient times all civilisations admitted slavery not only practically but also with theoretical justification. The ancient city was made up of few free men together with slaves and enfranchised people. Women and underage youth had no civil or political rights either.

From an economic point of view distinctions are made between “slave societies” where slave work was the main contribution to economic life, and “societies with slaves” where compulsive work was admitted along with dominant free work. The first group ranges from the Ancient Greek and Roman cities, Brazil and colonial Antilles and the southern states of America before the war of secession. To the second belong the western Middle Ages and the Arab world.

a) To be distinguished from slavery as a status is the slave trade of the 16<sup>th</sup>-18<sup>th</sup> centuries, which involved slave suppliers in Africa, slave traders coming from European companies and slave buyers in North, Central and South America. The slave trade was the first practice to be formally rejected.

b) Historians point out that the criticism of slavery in the West came from the first economists such as Adam Smith arguing that free work is more productive than slave work. The same argument is developed by 18<sup>th</sup> century Physiocrats, observing that a free worker shows interest in his job

and does not need to be monitored. The cost of wages for free workers is lower than the cost of maintaining continued repression and surveillance of slave colonies. Moreover economists stressed that the inner market needs to develop thanks to wages and salaries, and that slavery jeopardized technological progress.

In France, for instance, slavery was abolished in 1794 after a slave revolt in the colonies, but was re-established by Napoleon in 1802. The slave trade, which means the trading of slaves sent to the colonies, was abolished by the Congress of Vienna in 1815, but not slavery as such. In the process of abolishing slavery, economic and commercial considerations took an important place. Yet some voices, like the Congress of Vienna, made reference to “the general principles of morality and humanity”.

Only later in the 19<sup>th</sup> century the European States abolished slavery in their colonies: Britain in 1833, and France in 1848. Nevertheless, this trade continued for several decades, and forced labour even later. In 1865 the US adopted the 13<sup>th</sup> Amendment prohibiting slavery, thus engaging the country in the civil war.

c) The Brussels Conference of 1889-1890 declared the intention of the European States to put an end to the trafficking of African slaves. This proposal was restated after WWI. These intentions flowed into the *Slavery convention* of Geneva signed on 24 September 1926. Herewith not only slavery as such – defined as “a condition of a person over whom rights of ownership are exercised” (art. 1, 1) – but also forced labour analogous to slavery was condemned. While abolishing the slave trade, the Convention could only encourage the progressive and “complete abolition of slavery in all its forms” (art. 2). The Convention admitted that forced labour could still be exacted for public purposes.

On 28 June 1930 the General Conference of the International Labour Organization adopted a *Convention Concerning Forced or Compulsory Labour*. It decided that after a period of five years even forced or compulsory labour for public purposes should be abolished. Forced or compulsory labour was understood as “all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (art. 2).

2. Facing these issues, the post-war philosophy of universal human rights definitely condemned slavery. Art. 4 of the *Universal Declaration* (1948) states: “No one shall be held in slavery or servitude; slavery and the

slave trade shall be prohibited in all their forms”, to be read in reference to the preamble and Art. 1: “All human beings are born free and equal in dignity and rights”. Art. 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. This text and those preceding ones bear magnificent witness to the evolution of humanity in matters of recognition of equal dignity to all.

The *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery* adopted on 30 April 1956 witnesses the impact of the new ethos of universal human rights, as it mentions “the dignity and worth of the human person” in its Preamble. Now all forms of slavery are condemned, including debt bondage, serfdom, forced marriage, child exploitation, slave trade, the marking of person of servile status.

Where does that awareness come from? We should recall that behind the work of the *Universal Declaration* is the tremendous failure of civilized nations which engaged in the most inhuman ideologies of the 20th century which ended up in the Second World War. The *Declaration* was a reaction to what appeared as absolutely unacceptable. To what extent did all the nations who signed the document share these views? Apparently all national constitutions do not prohibit slavery. It is still admitted in some Islamic countries like the Arabic peninsula, Niger, Mali, Mauritania, and also India. Some states in India practice discrimination of non Hindus. In these cases we face forms of survival of slavery as an accepted social status.

## II. New forms of slavery

In spite of all the efforts of the international community, the International Labour Organization observes that about 25 million people in the world still live in slavery conditions, in spite of legislation and human rights.

Modern slavery has new features. It consist mainly in various forms of human trafficking by which we understand any form of reduction of human being to an object, merchandise, a thing to be used for the benefit of others human beings, an individual considered as owned by somebody else, to be sold or bought.

The present situation ranges from kidnapping and forced and clandestine labour, forced marriage, selling of organs, compelled prostitution, servitude for debt, inducement in irregular immigration, deprivation of basic human rights, forms of submission, work of children, or enrolment of children in military operations.



Among these new forms of slavery, Pope Francis, in his message of 1 January 2015, further listed:

- Labourers in countries where legal protection for workers' rights is not guaranteed,
- Migrants detained in inhumane conditions, those forced to leave clandestinely, those without legal residence nor labour contract,
- Slavery for debt
- Persons, even minors, forced into prostitution,
- Women forced into marriage,
- Persons made object of trafficking for the sale of organs, for recruitment of soldiers, for begging, for production or sale of narcotics,
- Those kidnapped and held captive by terrorist groups, and used as sex slaves.

In this same message, the Pope analyses the deeper causes of slavery:

- A conception that allows that some human beings can be treated as objects,
- Poverty, underdevelopment and exclusion
- Persons in the hands of criminal networks luring young people with modern means of communication,
- Corruption and complicity in the administrative sphere
- Criminal activities and terrorism.

On 2 December 2014, together with other religious leaders, the Pope signed a Joint Declaration to eradicate modern slavery, stating that “Modern slavery in terms of human trafficking, forced labour and prostitution, organ trafficking, and any relationship that fails to respect the fundamental conviction that all people are equal and have the same freedom and dignity, is a crime against humanity”.

This statement perfectly settles the problem: where does that “fundamental conviction” come from, and do all cultures in the world share this conviction? It is obviously not the case. Not only criminal individuals or terrorist organizations, but also some States still admit or cover slavery in its antique form making a person the ownership of another. Legislation does not everywhere combat slavery in its modern form.

The conviction that all human persons share the same dignity manifested in the 1948 *Universal Declaration* has the same roots as all efforts to bring an end to inhuman treatments inflicted to human beings.

### III. Conversion of minds

The new forms of slavery must be abolished in the same way as slavery in the ancient world was abolished: through the adoption of a new vision of the human being and his dignity, through legislation but also upstream of legislation, through education and conversion of minds.

The process in the ancient world was the following. Starting from the Greek philosophers who considered slaves as objects in the hands of their masters, as a thing rather than a being, coming down to the message of Christianity that all human beings are brothers and sisters, enjoying the same human nature. It took time indeed for this new understanding to induce changes in the social status of slaves.

Slavery also existed in the Bible. The New Testament did not abolish slavery as a social institution. But a new spirit emerged. My point is that our present awareness of the inalienable dignity of each human person comes from the message of the Gospel.

It is interesting to go from the Old to the New Testament. In Lv 19, 13 there is a wonderful verse: “You will not rob or exploit your fellow”, but a few verses ahead it continues saying: “The male or female slaves you have will come from the nations round you; from these you may purchase male and female slaves... they will become your property and you may leave them as a legacy to your sons after you as their perpetual possession” (Lv 25, 44-46). The Old Testament taught the love of God and of the neighbour but the neighbour was exclusively the man of one’s own tribe, a member of the community of Israel.

The core of the teaching of the New Testament is love of God and neighbour as Christ loved us. No discrimination. In Christ distinctions between Greeks and Barbarians, between free and slaves are abolished. This means that there is only one human family, one human condition that we all share in our differences. “We are baptized into one body in a single Spirit, Jews as well as Greeks, slaves as well as free men” (1 Co 12,13).

The short letter of Saint Paul to Philemon exemplifies the change of view about the dignity of slaves. Philemon had a slave named Onesimus. Philemon was a fellow Christian, and Onesimus who escaped from Philemon’s house also converted to Christianity. Paul asks Philemon to take him back not as a slave, “but as a dear brother” (Phil 1, 15-16). As Paul puts it elsewhere, becoming a Christian meant giving up social prejudices and considering that in Christ we are all one (cfr. Ga 3, 28). The change was anthropological, but did not affect immediately the social status of slaves.

This change in considering the worth of the person did not mean abolition of the institution of slavery. It took centuries before the social context was mature enough to give up slavery as a social status. The Church did not provoke institutional changes, even if she did no longer justify slavery as did the Greek and Roman philosophers. Institutional changes came with a more incisive consciousness of the principles brought to light by the Gospel. I could remind you of a symptomatic episode that took place in Rome by the end of the 6th century. Pope Gregory the Great quietly discovered in Rome's marketplace prisoners from Anglia sold as slaves. He did not seem scandalized by this trafficking. Instead he indulged in a dubious joke. He found that these Angles were like angels (angli / angeli), because they had blond hair and blue eyes.

It seems that the Catholic Church always questioned the anthropological assumptions which justified slavery. There is no such a statement like the Dutch Calvinist Church enforcing apartheid with biblical references. On various occasions, the Church helped slavery and serfdom to disappear from current practices.

There is an interesting remark in one of Emperor Constantine's laws. He forbids branding slaves in order not to disfigure their faces, which reflects the image of God. In the Middle Ages, the Church came across the practice of arranged marriages and the prohibition of marriage between freemen and serfs, imposing the rule of free consent given by both partners.

A new challenge came up with the European colonisation of America. In the famous dispute of Valladolid about the very nature of the indigenous Indians, Pope Paul III condemned (*Veritas ipsa*, 1537) the opposite thesis stating: "Are these Indians not human beings? Do they not have reason and soul? Are we not bound to love them as much as ourselves"?

Before the 20th century, the defence of our common humanity was rarely illustrated with the concept of dignity. Yet the concept appears already in Pope Leo XIII's encyclical *Rerum Novarum*. In his defence of industrial workers, he stressed the necessity of State intervention in order to protect "the well-being of their soul (32)": it is not permitted to anybody to violate this dignity of man which God himself treats with high respect (32, 3), a dignity understood as dignity of human nature.

Dignity emerges as a key concept of the social doctrine of the Church with John XXIII and his encyclical *Pacem in terris*. It is further elaborated by the Vatican II Council.

It is interesting to observe that the first hints of the Magisterium at the concept of freedom of conscience and religion was made in defence of

believers under totalitarian regimes. Pius XI does not draw these human rights from human dignity but from the negation of such human dignity. In his radio messages pronounced during the war, Pius XII frequently uses the concept of human dignity (1942 DC 1944, 5; 1944 DC 1945, 5).

Things change after 1960. The Encyclical of John XXIII, *Mater et magistra* (1961), says that as the first of the true values of a just social order, one has to mention “the dignity of man in general and the life of each person in particular” (192). The concept is developed in *Pacem in terris*: “The dignity of the human person demands that each person may act according to her free and conscious determination” (34). Society itself has to be organized in a way that meets the dignity of its members.

The main development of the concept of dignity is to be found in the conciliar constitution *Gaudier et spes*. Here it becomes clear that the Church endorses human rights as flowing from human nature and dignity. “There is an increasing awareness of the high dignity of the human person, whose rights and duties are universal and inviolable” (26, 2).

The first chapter of the first part deals with “The dignity of the human person”. The constitution utterly condemns “whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children, as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons” (27,3)

The well-known *Declaration on religious liberty* starts with this opening sentence: “The dignity of the human person is in our day’s object of always stronger awareness”. It goes on saying that “the right to religious freedom has its foundation in the very dignity of the human person...” (2, 1). The Council remind that revelation “discloses in all its dimensions the dignity of the human person” (9). So dignity is consubstantial with human person.

## Conclusion

The question we still face today is that slavery in its modern form cannot be abolished only by laws, but by conversion of minds. Slavery must disappear from human imagination as a mean of exploitation of others. This entails a cultural conversion in some places and a powerful enforcement of the universal ethical values as expressed in the *Declaration* of 1948. This *Declaration* is in no way obsolete. It should serve as a program of education and training of all generations all over the world.

Modern slavery is mainly fostered today by two kinds of actors: on the one hand, criminal States and, on the other hand, criminal organizations

and individuals. Both should be repressed by States under the rule of law everywhere in the world.

On the side of repression, special mention must be made about the recent appalling practices of Islamic terrorism mainly in what is called Da'esh, a self-proclaimed Islamic State and in parallel organizations like Al-Qaida or Boko-Haram operating in Africa and spreading terrorism everywhere, as in Paris in January of this year. Radical Islamic terrorists claim to act under Islamic law or sharia. This law is understood in such a way that it urges followers to combat misbelievers, to oppress them, to kill them if necessary, and to submit them as slaves by conquest just as in ancient times.

The only remedy to this unexpected return to dark ages is a strong commitment of all nations perfectly aware of their responsibility in front of the spreading terrorist exactions. It has to be underlined in this context that we face here a religion based slavery justification.

There is a tremendous gap between the *Universal Declaration of Human Rights* and the Daesh ideology. The international community has the duty to prevent or repress any attempt to question the fundamental human rights, which proclaim that all men and women are equal and vested with the same dignity. There can be neither compulsion nor intimidation in religion. A State order must respect the inherent limits of its mission, which is to protect the inalienable rights of individuals and to guaranty freedom of religion.

Repression must also to be exercised against criminal organisations or individuals who profit from the misfortune or weakness of others. This means that State legislation be enforced and duly implemented, and that it fights against corruption.

Human trafficking is also a consequence of poverty and economic failure when too many people are practically excluded from access to work and to autonomy.

My point is that human trafficking must be addressed at its heart, by education and return to the source of human dignity. This source is for me the message of the Gospel. All men and women are radically equal in dignity and worth. No human being may be treated as an object or a means. Each one is an end in itself. This consideration implies that rejection of human trafficking begins with a conversion of minds. This conversion must be shared by the entire human community through active campaigns of information at national and international level. Legislation will follow and pursue traffickers. But conversion of minds also means fostering action on the causes of human trafficking: such as extreme poverty, illegal immigration, and administrative corruption.

# **ARGENTINA: LOGROS Y DIFICULTADES ANTE EL HODIERNO RETO DE REDUCIR LA PROSTITUCIÓN Y EL TRABAJO FORZOSO**

**GUSTAVO VERA**

Buenos días y gracias por la invitación. Primero quiero recordar lo obvio. La trata es un delito que ataca valores fundamentales del ser humano. Ataca la vida, ataca la libertad, ataca la dignidad y como ataca lo más esencial del ser humano, justamente por eso Francisco firmó ese documento en diciembre de 2014, junto con las demás líderes de otras religiones del mundo donde se comprometen a abogar para que la trata sea considerada un delito de lesa humanidad. De lesa humanidad significa que no puede prescribir, porque ataca lo más esencial del ser humano.

Otra cuestión que parece obvia pero no lo es tanto, es que cuando la sociedad deja de estar centrada en el hombre y empieza a estar centrada en el fetichismo o en la tiranía del dinero, es ahí cuando fenómenos como la trata y otros delitos conexos empiezan a tener un peso específico mucho mayor dentro de las sociedades.

La tercera cuestión, y que tiene que ver un poco con la historia del capitalismo y con la historia de Latinoamérica y de la Argentina también, es que la trata ha sido un instrumento de acumulación mafiosa de capital, de acumulación originaria de capital. Hay que recordar que en la conquista de América los métodos de servidumbre, de la encomienda, de la mita y el yanaconazgo, fueron predominantes. Hay que recordar también que Inglaterra basó su desarrollo industrial y su primera acumulación originaria de capital mediante el exterminio, conquista y tráfico del continente africano, al cual sometió a la más cruda explotación.

Hay que recordar también que hubo muchos cristianos que lucharon contra esto, entre los cuales, ya desde 1511, quizás el primero que se rebeló fue el sacerdote dominico, Antón Montecinos, quien había ido con Diego Colón a una de las tantas expediciones y en una de sus homilías empezó a preguntarles a quienes viajaban con él si realmente se sentían cristianos, si sentían que estaban haciendo las cosas bien en tratar como estaban tratando a los aborígenes, en esclavizarlos, en exterminarlos, en violarlos.

Poco tiempo después, Fray Bartolomé de las Casas, el Obispo de Chiapas, también se refirió extensamente sobre el exterminio y los métodos de

esclavitud a los cuales estaban sometidos los aborígenes. Lo mismo hizo el Obispo de Michoacán, Vasco de Quiroga, quien ya dio un paso más y empezó a plantear la necesidad de organizar trabajo productivo, colectivo, de inclusión, trabajos dignos, para liberar en la práctica a los aborígenes de este servicio de encomienda, de esas relaciones de servidumbre que les imponían los conquistadores.

Pero sin ninguna duda los más revolucionarios de los cristianos que lucharon contra este flagelo, contra este horror, fueron los Jesuitas, quienes desde mediados de 1500, comenzaron a trabajar en lo que luego se conoció como las misiones jesuitas. Básicamente el concepto con el que trabajaron es que había que construir el sentido de comunidad, había que integrar a los dos mundos, había que establecer relaciones humanas de igualdad, fomentar el trabajo productivo, genuino y justo tanto individual como colectivo, y que mediante el trabajo en comunidad, solucionando los problemas temporales más urgentes, iba a ser mucho más fácil que floreciera la espiritualidad en común y el sentido de pertenencia a la comunidad.

Este fue el trabajo que los Jesuitas hicieron, muy intensamente, en las zonas fronterizas de Uruguay, Paraguay, Argentina, de Brasil, con muchísimas dificultades porque tenían dos grandes enemigos. Tenían a los encomenderos, que obviamente querían llevar de vuelta a reducciones de servidumbre a las tribus guaraníes, y tenían también a los esclavistas, a que se les arruinaba el negocio de la compra y venta de seres humanos.

Las misiones jesuíticas fueron comunidades productivas donde había producción agropecuaria y donde había propiedad colectiva y propiedades individuales. La propiedad colectiva se llamaba *tupambaé* – Tupa era el dios de los Guaraníes – y en esta propiedad colectiva los Guaraníes trabajaban tres veces por semana y garantizaban una producción intensiva bastante importante para poder garantizar la subsistencia de la comunidad, y los tres días restantes de la semana, porque uno descansaban, era *avambaé*, o sea la propiedad individual de cada una de las unidades familiares que integraban esta comunidad.

Al principio tuvieron muchas dificultades para crear estas misiones hasta que algunos gobernadores como Hernandarias entre otros, las alentaron y establecieron que aquellos Guaraníes que perteneciesen a esas comunidades no iban a estar sometidos al servicio de la encomienda, o sea no iban a ser reducidos a la servidumbre. Fue ahí cuando se masificaron las misiones y llegaron a tener, en su mejor momento, hasta 150,000 aborígenes. Repito, 150,000 personas en las misiones. No hay experiencia en la historia de rescate masivo de personas en situación de servidumbre más importante que la que llevaron adelante las misiones jesuíticas en aquel momento.

Como era de esperar, con el éxito de las misiones, fueron creciendo los resquemores de los esclavistas, Y vinieron del lado del imperio portugués, del imperio español, porque la integración de los aborígenes en las misiones obstaculizaba la pelea por la máxima ganancia e impedía las formas de explotación más crudas, más crueles impuestas durante la conquista. Todos sabemos que al final hubo un proceso de desgarramiento, de destrucción, de desmantelamiento de las misiones a mediados de 1700; que fue un proceso gradual, donde los Jesuitas finalmente fueron expulsados de Latinoamérica. No obstante, la obra de los Jesuitas continuó a lo largo del tiempo y dejaron como legado en la memoria histórica que el trabajo en comunidad, que la pertenencia a una comunidad, que el tratamiento igualitario, que el trabajo digno era el camino más práctico para recuperar la espiritualidad y el camino más práctico para superar las relaciones de servidumbre y construir dignidad. Esto es muy importante tenerlo presente, porque hoy en día, uno de los debates que hay en todo el mundo alrededor del tema de la trata es no solamente como combatirla, sino como reinsertar a las víctimas en la práctica, o sea, una vez que se las recupera, como lograr efectivamente su reinserción y claramente todavía no se han encontrado alternativas sustentables para poder generar trabajo digno.

Ahora daré dos ejemplos concretos de Argentina, que fueron relativamente exitosos en pequeña escala y si se generalizaran, podrían ser un ejemplo a seguir. Hace algunos años, luchando contra el trabajo esclavo en la industria textil, donde había muchos ciudadanos bolivianos reducidos a la servidumbre, logramos que un juez federal allane un taller esclavo, rescate a sus víctimas y disponga la incautación de las maquinarias del esclavista para reutilizarlas socialmente en la reparación de las propias víctimas. El Estado se hizo cargo de estas maquinarias, ahí se agruparon en un predio estatal nueve cooperativas de ciudadanos que antes estaban sometidos a la esclavitud y que empezaron a trabajar en forma libre. Hoy trabajan más de un centenar de trabajadores de modo cooperativa que antes eran esclavizados y con maquinarias que antes eran utilizadas para esclavizar y ahora son utilizadas para liberar. También hubo otra experiencia reciente con un pueblo aborigen, el pueblo Qom, donde se les entregó maquinarias y también se empezó a armar una cooperativa en territorios donde solo había desempleo y desolación. Esta maquinaria también provino de la incautación y reutilización de los bienes de la mafia. Aquí las cooperativas son como pequeñas comunidades donde las ex víctimas recuperan el sentido de su dignidad y libertad mediante el trabajo asociativo y productivo.



Pero como me quedan quince minutos voy a dejar un poco de lado las cuestiones históricas y voy a ir a las cuestiones más concretas y presentes. Primero, la trata tiene que ser considerada como un delito de tipo mafioso, o sea no es un delito que se lo pueda combatir en forma individual, es un delito que hay que combatirlo integralmente porque está emparentado con otro conjunto de delitos mafiosos del cual va acompañado. Forma parte de lo que técnicamente se llama “crimen organizado”, es decir son crímenes que no se pueden cometer si no existe cierto nivel de organización y si no existe cierto nivel de complicidad del Estado. Es imposible traficar personas, es imposible traficar órganos, es imposible traficar mulas, es imposible desarrollar redes de narcotráfico, de tráfico de armas, de trata sexual y/o laboral si no existe algún nivel de complicidad del aparato estatal. Es decir que, cuando hay crimen organizado en gran escala es porque hay un Estado corrupto y depende del nivel y de la intensidad de este crimen organizado si este Estado además de corrupto es un Estado en estado de mafiosidad. Qué es un Estado en estado de mafiosidad? Un estado donde además de tener funcionarios corruptos que se apropian de lo público de modo privado, tiene funcionarios que utilizan sus lugares en el estado para garantizarle negocios al crimen organizado y forman parte del crimen organizado, sean carteles de droga, sean redes de trata, sean redes de venta de armamentos etc.

Entonces la primera cuestión es que la trata de personas es un delito que tiene que estar considerado dentro de los delitos de crimen organizado y que obviamente tiene una interconexión directa con el lavado de dinero porque se explota para sacar dinero. Y se explota para sacar dinero que después efectivamente se lava en un montón de operaciones financieras que muchas veces no se persiguen. La mayor parte de los países del mundo, cuando hablan de trata, cuando hablan de proxenetismo, persiguen al proxeneta, persiguen al tratante más inmediato, pero no sigue la ruta del dinero que todo esto edifica, la ruta del dinero que permite que, por ejemplo, haya bancos, que haya inmobiliarias, empresas constructoras que fueron construidas sobre la base de la explotación más despiadada, basada en la trata y el tráfico de personas. Lo mismo pasa con el tema del narcotráfico. Entonces es muy bueno que trabajemos en red, pero que tengamos en claro de que esta red tiene que combatir a las mafias integralmente. Y que el mafioso hoy se puede dedicar a la trata, mañana se puede dedicar al narcotráfico, pasado mañana al tráfico de órganos o todo junto, depende de las circunstancias geopolíticas y de las oportunidades económicas. O sea, una vez que libera un territorio donde poder traficar, obviamente lo

libera para poder obtener ganancias y se va dedicando a cada uno de estos crímenes, según la ocasión.

La segunda cuestión que tenemos que tener presente es que cuando el crimen organizado se desarrolla de manera sistémica, estamos en presencia de un estado mafioso, un estado de mafiosidad. Estado de mafiosidad es cuando la corrupción y la mafia se asocian, hacen una especie de casamiento y forman este estado de mafiosidad, donde el Estado le garantiza los negocios al crimen organizado.

La tercera cuestión es que la manera efectiva de combatir esto tiene que ver con la incautación de los bienes de la mafia, porque si partimos de la base de que lo que más le importa al mafioso es el dinero, y va cambiando de rubro criminal según la ocasión, la manera más efectiva de dismantelar a estas redes es justamente atacando su base económica, persiguiendo la ruta del dinero, e ir incautándole todos los bienes y reutilizarlos a favor de la sociedad, algo parecido a lo que aquí en Italia se hizo con la ley Pio La Torre o algo parecido a lo que se hizo en Brasil con la enmienda constitucional que recientemente autoriza a expropiar los bienes de los esclavistas y reutilizarlos a favor de las víctimas.

La cuarta cuestión es que tenemos que garantizar la reinserción laboral efectiva, plena y digna de las víctimas de trata, sean víctimas de trata o sean víctimas de adicciones. Reinserción plena y digna significa trabajo estable, que los estados tienen que tener un cupo de admisión para dar trabajo registrado y reparación a las víctimas de trata y tráfico o de delitos de índole mafiosa. Por que? Porque han fracasado en todo el mundo las alternativas para formar micro-empresarios individuales, que de alguna manera dejan librada a la suerte de la propia víctima su reinserción social. La reinserción social tiene que estar garantizada, porque sino se convierte en un comercio de un montón de ONG, de un montón de fondos de cooperación internacional, donde en general no se resuelve nada, se da vuelta, y las víctimas vuelven a estar re-victimizadas. Tenemos que tener claro el diagnóstico: La víctima de trata, una vez que es rescatada, una vez que es atendida o contenida, psicológica y espiritualmente, cuando tiene que reinserirse socialmente no va a conseguir trabajo, porque ningún empresario le va a dar trabajo a una víctima que estuvo tres años en un prostíbulo, tres años en un proceso de recuperación y lo mismo pasa con las víctimas de adicciones, entonces del mismo modo que existe un cupo para las personas con capacidades diferentes o discapacitadas, para reinserirse en el Estado, en muchos países del mundo, tiene que haber también un cupo para las víctimas de trata de manera tal de que cuando se esté en pleno proceso de

recuperación tenga un norte y tenga un horizonte de promoción humana. Y volviendo al punto de partida: el trabajo digno, concretamente, el trabajo estable, el trabajo en comunidad es lo único que logra derrotar a las relaciones de servidumbre y en la medida en que no logremos resolver este problema, que se puede resolver en parte con la incautación de los bienes de la mafia, y en parte garantizando que el Estado asuma la responsabilidad de reparar a las víctimas de modo directo o alentando a que se lo haga en el ámbito privado con algún régimen de incentivos para las empresas que se ocupen de contratar de manera estable y digna a las víctimas de delitos de tipo mafioso. Creo que estos son caminos prácticos que podemos tomar para empezar a resolver estos problemas.

El narcotráfico está fuertemente vinculado a la trata de personas, sobre todo a la trata de personas con fines de explotación sexual, porque sigue la misma ruta y además porque el tratante ha descubierto que se le cuadruplica el negocio, que es mucho más fácil reducir y someter a la víctima y no solamente “cosificarla” sexualmente, sino además convertirla en *dealer*, o sea en distribuidora de estupefacientes. De hecho el consumo de cocaína, el consumo de pastillas de diseño, ha crecido exponencialmente en muchos lugares de América Latina y particularmente en la Argentina, a partir de los departamentos privados, o partir de los burdeles, o a partir de los prostíbulos en muchos de los cuales ya la actividad de explotación sexual ha pasado en segundo lugar, pasando en primer plano la actividad que tiene que ver con la distribución masivas de estupefacientes. Hoy la Argentina, por ejemplo, es considerada, según las Naciones Unidas, el primer consumidor latinoamericano de cocaína, el tercer exportador mundial, y esto ocurre porque los centros de distribución están en un 90% dentro de los prostíbulos. Es decir que los tratantes logran reducir con más facilidad la víctima, la que convierten en adicta, y a su vez cuadruplican el negocio por la venta de estupefacientes.

El otro motivo por el cual la Argentina tiene tal nivel de desarrollo del narcotráfico y de la trata y del trabajo esclavo es que es un país donde es muy sencillo lavar dinero. Lavar dinero a través de sociedades anónimas, lavar dinero a través del fútbol, lavar dinero a través de empresas constructoras. Es muy fácil burlar al Estado, burlar los mecanismos por los cuales se disimula el origen del dinero. Esto también ocurre en otros países del mundo. En general cuando las organizaciones que luchan contra la trata no la conectan con la lucha contra el lavado de dinero fracasan. Por qué fracasan? porque, en el mejor de los casos, podrán recuperar alguna que otra víctima o podrán lograr cerrar uno o dos prostíbulos, pero la estructura económica

de la red criminal sigue cada vez más poderosa, sigue cada vez más rica, y por eso afirmo que si no luchamos integralmente contra este delito no vamos a poder derrotarlo.

El arte de los Jesuitas durante la conquista de América, es que a diferencia de Montesinos, a diferencia de Fray Bartolomé de las Casas, o de Clarkson en Inglaterra, sacerdote anglicano, que hacía fuertes homilias contra la esclavitud también, y que fueron importantes, la diferencia, es que ellos enfocaron el problema integralmente. Integralmente significa, acá hay que construir misiones, acá hay que tratar de solucionar los problemas que tenían los aborígenes en aquel momento, que se vinculaban al alcohol, que se vinculaban a cierta vida promiscua, entonces trataron de construir un sentido de comunidad a través de propiedades colectivas y a través de propiedades individuales con los núcleos familiares. Ese sentido de comunidad, de igualdad, de reconocer concretamente el idioma, la cultura, la idiosincrasia del otro fue lo que permitió que durante casi doscientos años hubiera una cantidad muy importante de aborígenes que escaparan de la encomienda, que escaparan de la esclavitud y se refugiaran en esas misiones que fueron virulentamente atacadas por los factores del capitalismo en aquel entonces, que querían empoderar a la tiranía del dinero y cosificar a los seres humanos en aras de la máxima ganancia.

En la historia argentina hemos tenido también, desde la época de la declaración de la independencia al reconocimiento, a la igualdad de los hombres, la abolición de toda forma de esclavitud y de trata. En lo jurídico la verdad es que somos un país muy avanzado. Cuando uno mira la Argentina desde afuera parece que fuéramos realmente Suecia o Noruega. Cuando uno la ve de adentro ya parece otra cosa totalmente diferente. Lo que hemos tenido en la Argentina durante muchos años ha sido una terrible distancia entre el discurso, entre el cuerpo jurídico, y lo que ocurre en la práctica. Lo que ocurre en la práctica es muy diferente a lo que dice el cuerpo jurídico. Tenemos dos leyes anti-trata, una sancionada en el 2008 y la otra sancionada en 2012, pero no hemos logrado reducir sustancialmente el medio millón de esclavos que tenemos, distribuidos en la industria del textil y en la industria de agricultura que requiere mano de obra intensiva. No hemos logrado reducir muy sustancialmente lo que tiene que ver con el crecimiento de la trata sexual y mucho menos con los delitos vinculados al narcotráfico.

Hubo una polémica – y con esto termino – hace algunos días relativa a si la Argentina marchaba hacia un proceso similar al de México, a partir de un dialogo que hubo con Francisco y de algunos reportajes que el propio

Francisco también hizo, y quiero decirles que sí, que la Argentina estamos en una situación realmente muy complicada donde, si no se da cuenta a tiempo de que tiene que enfrentar estos delitos de tipo mafioso, corre el riesgo de entrar en situaciones de violencia como las que ya atraviesan nuestros hermanos de México y de Colombia y que realmente después es muy difícil salir.

Justamente porque tenemos un estado de mafiosidad. El concepto de mafiosidad es un concepto italiano que se creó durante la época de Mani Pulite. Estado o cultura de la mafiosidad era cuando el estado interactuaba con el crimen organizado y le garantizaba y participaba en los negocios. Esto es lo que está ocurriendo hoy en la Argentina o sea, no solamente hay funcionarios corruptos que utilizan lo público con fines privados, sino que algunos de estos funcionarios corruptos buscan la ventaja comparativa del cargo que tienen para garantizarle al crimen organizado la supervivencia, el desarrollo de los negocios, y por supuesto, luego el propio funcionario participa del negocio. Por eso hemos encontrado jueces de la Corte Suprema de Justicia que tenían prostíbulos, por eso hemos encontrado jefes de gobierno adentro de prostíbulos, por eso hemos encontrado financiamiento de campañas de grandes partidos por parte del narcotráfico, por eso hemos encontrado una gran cantidad de viviendas – viviendas ociosas – que se construyeron con el dinero del lavado que proviene de la mafia. Es decir que en este momento la interacción entre la clase política, entre los tres poderes del estado y la mafia es bastante preocupante, y si la población no advierte y no empieza a reclamar políticas públicas, y no empieza a reagrupar a los honestos, y no empieza a trabajar en pos de la comunidad y del bien común, claramente corremos el riesgo de entrar en un proceso de “mexicanización”. Y esta claro que con ese término Francisco no buscaba estigmatizar al querido país hermano de México, sino señalar un proceso histórico concreto en el cual un estado transita de una corrupción generalizada a un estado de mafiosidad y después entra en un periodo de violencia del cual es muy difícil salir. Los mexicanos hablaban hace diez años de evitar la “colombianización”, también refiriéndose a un proceso histórico concreto mediante el cual la sociedad colombiana fue envuelta en una ola creciente de violencia. Yo creo que estamos frente a este proceso histórico concreto en la Argentina, en el cual, lamentablemente, la sociedad gira en torno al dinero, y no en torno al hombre, y lo que hay que recuperar, justamente, son los conceptos fundamentales por los cuales partimos del principio que tienen mucho que ver con el mensaje de Francisco: la sociedad centrada en el hombre, recuperar el sentido de comunidad, a través de la cultura del

encuentro, terminar con los delitos de tipo mafioso, la defensa de la vida, de la libertad y de la dignidad y la práctica del bien común. Básicamente, este es el motivo por el cual estamos luchando y por el cual hemos venido a explicar y proponer humildemente algunas opiniones y escuchar la experiencia de Ustedes. Les agradezco mucho la invitación.

# **THE LIMITATIONS OF NECESSARY CRIMINALISATION: DEVELOPING A COMPREHENSIVE AND HOLISTIC RESPONSE TO MODERN SLAVERY**

KEVIN HYLAND OBE<sup>1</sup>

Excellencies, Madam Chair, Ladies and Gentlemen,

Thank you to the Pontifical Academy of Social Sciences for inviting me to speak here today and thank you to Monsignor Sánchez Sorondo and Professor Archer for your vision on this issue.

## **Introduction**

I have met with some of you before in my previous role as head of London's Metropolitan Police Human Trafficking Unit, but I am here today in my new role as the United Kingdom's first Independent Anti-Slavery Commissioner.

I could say it is a privilege to hold this role, but sadly the role should not need to exist in the 21<sup>st</sup> century, so privilege is not the right term. However, it is an honour to serve, and as the Archbishop of Westminster, Cardinal Vincent Nichols, has said, we should be grateful for 'the gift of service'.

So for this gift of service I am indeed extremely privileged, as this position allows me to take a leading role in service for others, particularly the vulnerable and marginalised in our society. I intend to do all I can to protect and support the victims and bring to justice those who inflict this abuse of human dignity.

## **Human Trafficking is Modern Slavery**

As Professor Archer's preface to this Plenary Session makes clear, there are two statements that Pope Francis has consistently repeated from the beginning of his Pontificate, one of which is that 'Human Trafficking is Modern Slavery'.

I think it is very important that we use this term – modern slavery – and I am pleased that the British Government is, I believe, the first govern-

<sup>1</sup> UK Independent Anti-Slavery Commissioner.

ment in the world to formally adopt it, although President Obama has also personally shown great leadership in this regard.

Previously in the United Kingdom many modern slavery crimes have been described as forms of human trafficking. But trafficking as a term implicitly indicates movement, and whilst people are often trafficked to be abused, it is the actual exploitation and loss of freedom that should be of most concern. It is the enslavement of our fellow citizens. I am also struck by how much the term “modern slavery” actually shocks those for whom slavery had long settled in the mind as being categorically a thing of the past.

Modern slavery in the year 2015 manifests itself in various insidious forms, including forced labour, bonded labour, child slavery and early and forced marriage and all forms of trafficking in persons, including, but not limited to, for the purposes of forced prostitution or other forms of sexual exploitation, forced labour, forced begging, forced criminality, the removal of organs and domestic servitude.

It exists in every country across the globe – nowhere is immune.

Make no mistake, slavery is very much alive and well in the 21<sup>st</sup> century, not just in the developing world, but in our so-called advanced societies, the UK very much included.

To illustrate this, I will provide some examples of shocking exploitation that I encountered on a daily basis during my previous life as a police officer.

The “Romanian Cinderella”, as the media named her, who at the age of four was taken from her mother in Romania, believing her daughter was destined for a better life in the United Kingdom, including a good education.

How wrong she was. For the next three years this small and defenceless child was kept as a servant, forced to cook and clean and never allowed to attend school. Her only possessions were the clothes on her back, and her health deteriorated dramatically.

The vulnerable British man, offered a good job at a farm, only to then be coerced into forced labour, working all hours of the week for no pay, being regularly beaten and living in a rat-infested shed.

The Tanzanian woman hired on a legitimate visa, only for her wealthy sponsor to take away her passport upon arrival in the UK and keep her locked in a house, forced to carry out household chores.

And the 57-year-old Romanian man, who expected to be given work as an electrician. Instead he was forced to commit crimes for the criminals



that controlled him, kept in a shed and rarely fed. On one occasion when he asked for food he was instead assaulted and raped.

In all these cases the perpetrators were brought to justice and the victims are on the road to recovery. It was not easy, but it is possible.

Recent analysis conducted by the United Kingdom Home Office estimates conservatively that there are between ten and thirteen thousand potential victims trapped in slavery across the United Kingdom.

We know that some exploiters are opportunistic individuals, but much of this crime is organised, particularly when it crosses national borders, though the degree of the 'organisation' of the criminal networks varies greatly.

It does not exist in a vacuum: many of the groups behind modern slavery crime will also be carrying out other serious crimes.

### **A balanced and coordinated response**

This Plenary Session is of course focused on issues beyond criminalisation. And I want to talk today about that. For me the key is balance and harmonisation.

In my new role I will be focused on ensuring that all efforts in the UK strike such a balance, between unrelenting pursuit and prosecution of traffickers and slave masters, in tandem with a much greater focus to support and restore the dignity of the victims, including long-term reintegration.

Once there are laws and criminalisation, many are often less focused on what must happen next, not understanding that it is only the very first step. Following the development of legal frameworks there needs to be an understanding and a common agreement and my role is very much about developing that understanding, but also moulding a response that works in practice, not just in the statute books or in the clinical space of a court room or indeed a lecture theatre.

As the UK's first Independent Anti-Slavery Commissioner I have been afforded a great responsibility and duty. I have been appointed to spearhead the UK's response to modern slavery and call to account those who fail to deliver. My independence will be unwavering, whether that be toward law enforcement, government, the private sector or indeed any organisation.

I was appointed by the Home Secretary and will of course work closely with all relevant Government departments and agencies, many of which by law have a duty to co-operate with me in any way that I consider necessary for the fulfilment of my duties.

My key initial aims as Commissioner are to increase the numbers of victims of modern slavery that are identified and referred for appropriate

rehabilitative support and in tandem to increase the numbers of prosecutions and convictions for the traffickers and slave masters.

A major focus will also be to dramatically improve efforts to prevent these crimes from ever occurring in the first place – in the UK, but also crucially in source countries. The Act makes clear that international collaboration is central to my role.

I will be developing partnerships with countries from where significant numbers of victims are trafficked from to the UK, as well as countries that more generally suffer disproportionately from high levels of modern slavery and where the UK has appropriate assets.

I will report annually to the British Parliament across my entire remit and will make recommendations that I will expect to be acted upon.

Another priority will be to ensure that all the work I have described so far is underpinned by hard research and evidence. This has unfortunately been distinctly lacking in this field to date.

So I am delighted to be working with the Catholic Bishops' Conference of England and Wales in partnership with St Mary's University, which is developing the Bakhita Institute, a pioneering academic centre to conduct applied research. The Vice Chancellor has agreed that as many as ten per cent of staff positions – and the university currently employs 1,200 people – will be allocated for survivors of modern slavery.

Many people have been talking to me recently about the need to collect and crunch much more data and intelligence on this crime, from a wide variety of sources. And I do often agree with them.

However, in my view the key problem at the moment in the UK, and I believe this is also the case in many other countries, is that in too many cases the best source for investigating the crime – the victims themselves – are not being properly supported or indeed given appropriate interviews, which is of course crucial in gleaning a wealth of information.

In order to ensure that we do have strong intelligence we need to make sure these crimes are both properly reported and then investigated.

## **Slavery in 2015**

The slavery we see today exists for the same purpose as it has throughout history: to maximise profit for exploiters by minimising or eliminating the cost of labour.

The International Labour Organization estimates that the total illegal profits obtained from modern slavery crime worldwide amount to over 150 billion US dollars per year.

Indeed, the two primary factors driving increases in this crime are high profits and low risk. A big part of my role is to focus on that risk factor. We know that criminals are risk adverse. Globally, it has certainly been a low risk crime.

The United Nations reports that between 2010 and 2012, almost half the countries around the world reported less than 10 convictions per year.

So it is crucial that we improve our national, regional and international collaborative efforts to pursue the criminals. At the moment it is far too easy to get away with this crime, which only encourages it as a criminal activity.

And crucially, if traffickers and slave masters are not properly pursued and brought to justice, they will of course continue to exploit countless other vulnerable people.

### **International cooperation**

To achieve this, improved international cooperation is absolutely vital. One of my priorities as Commissioner is to push for a significant increase in bilateral and multi-lateral Joint Investigation Team operations. I had the opportunity to lead on many of these operations in my previous role. They are crucial when dealing with organised groups that operate across national borders.

As an example, several years ago in my previous role my police unit was able to break up a criminal gang involved in sham marriages and the trafficking of over 100 vulnerable women, mainly from Hungary, Slovakia and Poland, to the United Kingdom for forced commercial sexual exploitation.

Twelve arrests were made in the UK and abroad, assets seized and nine convictions and three cautions eventually secured.

Numerous women were rescued from slavery. And the activities of a ruthless gang – who would almost certainly have gone on to exploit countless others – were stopped.

Caritas, the Mercy Sisters and several police forces were involved in this operation.

Joint Investigation Teams are approved and funded by the European Union's judicial agency, Eurojust, in explicit recognition of the new trans-national criminal landscape that has emerged across Europe in recent years. This landscape is increasingly characterised by highly mobile and flexible groups operating in different EU States and criminal sectors.

Criminal networks and their activities are becoming increasingly international. Criminals can now book flights in minutes and through exploiting EU freedom of movement rules, the expansion of the EU and of course the

proliferation of cheap airlines, the whole of Europe is now their playground.

This trend of course calls for strengthened cross-border cooperation and for more joint operations involving police, customs, border officials and judicial authorities in different EU States.

I met just last month with the President of Eurojust and she would very much welcome greater use of Joint Investigation Teams.

We should also think creatively about how to widen the type of collaboration that is possible in Europe to the rest of the world. Mutual Legal Assistance Treaties in particular need to be fit for purpose and work at a speed that responds to the risk to life.

### **A modern response**

Tackling the criminals behind modern slavery requires a modern response that makes use of modern tools and techniques.

Just as traffickers use technology and the internet to recruit and advertise their victims, I will be pushing to make certain that in the UK we utilise technology to tackle them.

I am working with colleagues in the United States to ensure that the UK is at the forefront of partnership working that is coming out of President Obama's Big Data Initiative.

This will enable us to pilot cutting edge tools and software allowing law enforcement to uncover a wealth of information that might otherwise be difficult or time-intensive to obtain.

Crime groups can then be easily identified and cross-referenced with law enforcement databases, helping police officers map connections between modern slavery and other illegal activity.

I have agreement to pilot this in the UK for sex trafficking and also for forced labour exploitation, and I am very pleased that the UK Gangmasters Licensing Authority have agreed to be the first labour inspectorate in the world to pilot this new software for combating serious labour exploitation.

Forced labour is now very nearly as prevalent in the UK as trafficking for sexual exploitation.

Yet in many parts of Europe and globally there is nowhere near the same focus on this form of exploitation relative to trafficking for sexual exploitation. I am clear that this needs to change.

### **The Modern Slavery Act**

I cannot talk about criminalization without mentioning the UK's new Modern Slavery Act, which received Royal Assent last month.

This Act is an indication of the British Government's ambition to take a global lead in the fight against slavery and trafficking, as we did in the days of William Wilberforce. A key focus for me is to ensure that the Government effectively implements all aspects of the Act, so that in the future we can be proud to look back on it as a truly landmark piece of legislation.

Previously in the UK slavery and human trafficking offences were contained in a number of different Acts. The Government has therefore decided to consolidate and simplify existing offences into a single Act to make it easier for law enforcement and prosecutors to understand and apply.

The Act includes two substantive modern slavery offences: one for slavery, servitude and forced or compulsory labour; and one for human trafficking. The human trafficking offence reflects the international definition of human trafficking set out in the Palermo Protocol, but goes further with a raft of new measures.

And it will ensure that perpetrators receive suitably severe punishments for these appalling crimes by increasing the maximum sentence to life imprisonment.

But we know that in most cases of this crime the criminals are motivated by profit, and an even greater disincentive is to hit them where it hurts: financially.

The British Government is determined to become much more effective at attacking the illicit profits of traffickers and slave masters through greater use of asset recovery and financial investigation tools.

The Act will therefore make both of the modern slavery offences what are described as "criminal lifestyle offences", which will make perpetrators subject to the most robust confiscation regime available under the UK's Proceeds of Crime Act. This permits the court to treat all the assets that the defendant has, or has acquired, over the last six years, as the proceeds of crime. Over 2 million pounds has been recovered from traffickers in the UK in the past four years, but this figure needs to rise dramatically.

I am pleased that the British Government is clear that the first priority for assets recovered is for them to go to the victims by creating new reparation orders to ensure that money from convicted slave masters and traffickers goes directly to their victims.

The Act also introduces new Slavery and Trafficking Prevention and Risk Orders to give law enforcement and the courts powers to prevent the harm caused by modern slavery offences. These orders are designed so that law enforcement bodies and the courts can respond flexibly to the risks posed by an individual of committing future modern slavery offences.

These are some of the key clauses focused on the criminals.

Initially there was some fear that the legislation would focus too heavily on criminalization, without addressing the needs of victims.

But, in no small part due to the rigorous pre-legislative scrutiny process, which included an evidence review chaired by a distinguished Member of Parliament (and which in fact took evidence from the first Plenary Session of the Pontifical Academy in late 2013), followed by an unprecedented Joint Select Committee of both Houses of Parliament, I am pleased to say that the final version of the Act is much closer to the harmonized response to this issue that I spoke of.

Together the evidence review and the Joint Committee took evidence from hundreds of witnesses, including non-governmental organisations, shelters, faith groups, academics, police, prosecutors, international partners and other officials.

Measures to enhance support for victims run throughout the Act.

Morally, this is of course absolutely necessary. And evidence from across the globe makes clear that without effective support for victims it is very difficult to increase the numbers of prosecutions, as victims must be made to feel safe and confident enough to come forward and give their accounts.

Special measures will be extended to all victims of modern slavery to ensure that they have the necessary protections whilst acting as witnesses in court, such as screening witnesses from the accused, and allowing for evidence to be given in private.

A new statutory defence for victims of modern slavery will mean that victims who have been compelled to commit an offence as a direct consequence of their slavery situation can be confident that they will not be treated as a criminal by the UK justice system.

There have been too many instances where victims have been wrongly prosecuted, and have in effect therefore been twice victimised: first by the criminal and then by the state.

The Government is also trialling specialist, independent advocates to support child victims of trafficking.

And crucially there is also an enabling power to place the UK's framework for identifying victims of modern slavery and ensuring they receive the appropriate protection and support, the National Referral Mechanism, on a statutory footing, following much needed reform of the process.

This will be important in ensuring greater consistency in its operation, decision-making and provision of support services.

## **Long-term reintegration**

I will be focusing on ensuring that the reformed process provides support that is much better at restoring the dignity of victims and that focuses on their long-term healing and reintegration into society.

In few other crimes are human beings used as commodities over and over again for the gain of others.

Victims endure experiences that are horrifying in their inhumanity, including violence, rape, hunger and abuse. And these are individuals who have often experienced other forms of abuse, exploitation, poverty or poor health prior to being enslaved. Their vulnerabilities are multiplied many times over by their experiences at the hands of traffickers and slave masters. Stripped of their freedom and often exploited for profit, the damage inflicted on victims is incalculable.

A serious issue raised by a wide range of individuals from the voluntary sector and indeed the police is the lack of continued support and reintegration assistance in the UK.

So I am committed to ensuring support in the UK is better focused on ensuring victims receive the support they need in order to rebuild their lives and increase their resilience.

This support should include access to training and education, as well as emotional and psychological support and therapeutic care.

Vocational training is an important element to include in reintegration plans as a means of ensuring the sustainable social integration of victims by increasing their future employment prospects, confidence and life skills. This can lead to independent financial support, a sense of control 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 revictimisation.

Helping victims to become more self-sufficient is also crucial in reducing the need for them to leave their communities to find work abroad and run the risk of being re trafficked.

## **Project Bakhita**

It was with this in mind that I have been partnering with the Bishops' Conference of England and Wales over recent years. We did not want to wait for legislation to develop a response.

The work of the Bishops' Conference is, I would suggest, an outstanding model. The Bishops' Conference, under the wise stewardship of Car-

dinal Nichols and Bishop Patrick Lynch, has listened carefully to the need for a holistic response to the evil of modern slavery.

When I first met with Bishop Patrick Lynch of the Sacred Hearts of Jesus and Mary, I recall him saying that he wanted more than just another leaflet in the back of the Church. He wanted to see a real tangible response. That was a clear message of intent to deliver.

Bishop Pat identified the need for a strategy and consolidation in the Church. He then spoke to his fellow bishops and at their annual plenary and they unanimously agreed that the feast day of St Josephine Bakhita would be dedicated as a day of prayer in England and Wales, and we now know this is a day dedicated globally by the Catholic Church, in no small part thanks to Sister Eugenia Bonetti.

As the migration lead Bishop Pat asked his team to develop a comprehensive plan for the Church, looking at prevention, support, reintegration and bringing perpetrators to justice.

This now has now developed into Project Bakhita, a key element of which is a new centre in London that will provide holistic support to victims, where they will receive the support needed outside of any government provisions or limitations. This is linked to education, employment opportunities and all the elements to deliver sustained recovery.

The key ingredient is of course the love and compassion that survivors are shown to allow them to reconnect as human beings.

The centre does not work in isolation. It also aims to achieve the balanced response, again including a focus on pursuing the criminals. The police are therefore an integrated partner, focused on the concept of the so-called 'golden hour', during which the support workers will, as quickly as possible, share key information which they have gathered from the victims in a safe, secure and non-threatening environment. The police will then use this information to pursue the criminals and stop them from exploiting others.

And host families from local communities and parishes will provide a home, at the right time, for victims who may need the care and comfort of a family setting.

### **The Santa Marta Group**

As this illustrates, combating modern slavery of course requires the expertise, resources and efforts of many different individuals and entities.

Central to this must be close working between those that pursue the criminals and those that support the victims.



As the UK Independent Anti-Slavery Commissioner, a key priority will be to encourage close partnership working between statutory agencies, including law enforcement, and non-government organisations.

I firmly believe that faith groups and NGOs are a crucial partner in the fight against modern slavery.

We know that in cases where victims are controlled by their traffickers, often the only place they are allowed to go without close scrutiny is the local church or place of worship.

Foreign national victims are often very wary of the authorities in the UK and find it difficult to trust them for fear of what might happen to them, as told to them by the traffickers.

So when I headed up the London Metropolitan Police team I put a great deal of effort into forging unique victim-centred partnerships with faith groups, including the Catholic Church in particular.

This allowed us to work closely with people of faith who victims would be much more likely to trust, and who in many cases had the right skills in terms of providing appropriate immediate care and support.

Working with the Commissioner of the Metropolitan Police, Sir Bernard Hogan-Howe, and His Eminence Cardinal Vincent Nichols, we were able to take this best practice model to the very highest levels, and in April 2014 launched the Santa Marta Group here at the Pontifical Academy.

This is a very unusual group, bringing together bishops and police leaders from across the world – over 30 countries to date – working together with civil society to eradicate modern slavery, in a process endorsed by Pope Francis. The first conference resulted in a signed ‘Declaration of Commitment’ by all the Chiefs of Police present to work together on the international stage to develop effective partnership strategies.

The objective of the Group is to combine the resources of the Catholic Church with those of law enforcement agencies to prevent modern slavery, provide pastoral care to victims and support them with long-term re-integration.

A number of practical projects are now developing under the Santa Marta umbrella, which bring together source, transit and destination countries, including a piece of work looking at the exploitation of vulnerable men in the fishing industry in the North Atlantic ocean. We are talking to Cardinal Tagle, the Archbishop of Manila, to ensure work between source and destination countries is effective and coordinated.

Working with Missio, the Church’s charity for overseas mission, we are also currently developing a pilot project in Edo State in Nigeria that aims

to bring a host of partners together on the ground to prevent the trafficking of huge numbers of young women and girls into sexual exploitation in Western Europe that is currently taking place.

All projects developed through the Santa Marta Group will be focused around partnership working – between source, transit and destination countries, local and regional partners, police, UN bodies, and of course local faith and civil society groups. The Bishops’ Conference is now also in contact with the Holy See’s Nuncio to the United Nations, H.E. Archbishop Bernardito Auza, about promoting this model at the UN.

I often hear “But how can we in our country do this? We do not have the same relationships, we have corruption and mistrust”. I understand these issues, but let’s find the leaders, let’s see who is up to the mark to develop the trust between the Church and other agencies.

Pope Francis himself has never been shy to show such leadership.

If it had been suggested to me five years ago that all this was possible I am not sure I would have believed it, so I will take this opportunity to thank Cardinal Vincent, Bishop Patrick and their team, especially Mrs Cecilia Taylor-Camara and Dr David Ryall, for their leadership, openness and spirit of compassion.

### **Supply chain transparency**

Modern slavery is taking place in businesses and supply chains of companies located in the UK and across the developed world and also of course in the international supply chains of multinational companies.

It is vital that we focus on the slavery that we in the UK and in other developed countries might be unwittingly creating demand for.

The UK is therefore introducing a legal duty on all businesses above a certain turnover threshold to disclose each year the steps they have taken to ensure that modern slavery does not take place in their business or supply chains anywhere in the world.

The UK is the first country in the world to introduce such legislation, though it has been modelled on state legislation introduced in California, where the evidence suggests it is beginning to positively change corporate behaviour.

Here the media is key, as demonstrated last year by a Guardian newspaper investigation into vulnerable Burmese men being used as slaves in the fishing industry in Thailand.

The fish were used as fishmeal, which was then fed to prawns that were believed to be being sold to supermarkets in the UK, other parts of Europe

and the United States. This one investigation changed the public debate on supply chain transparency, though much more needs to be done for the attitudes of everyday consumers to change.

### **The post-2015 development agenda**

Finally, I want to talk about long-term solutions to this crime against humanity, as Pope Francis has described it.

The resurgence of slavery is one of the biggest tragedies and indeed consequences of our modern globalised world. Slavery has of course existed for thousands of years, but economic and social forces have enabled its alarming resurgence in the past few decades.

There are tens of millions of people currently trapped in different forms of slavery across the world, deprived of their human rights, freedoms and dignity.

Development and slavery have always been closely linked.

Modern slavery of course has a devastating impact on individual victims, who often suffer physical and emotional abuse, rape, threats against themselves and their families, and even murder.

But modern slavery also has wider negative implications for human development, as it undermines the health, safety and security of every nation that it touches.

Modern slavery results in a huge loss of remittances to developing countries, because remittance flows are taken from victims, who are forced to pay off debts, and become profits for the criminals.

And then there is the impact on the families and communities left behind. Victims of modern slavery cannot care for their children or the elderly. Many are young, so modern slavery also robs communities of those that could economically contribute the most to local development.

Unfortunately up until now modern slavery and development have been treated as separate policy areas. What has been crucially lacking is a policy approach that places the fight against modern slavery as part of a strategy to promote sustainable and long-term development.

There is at present no specific mention of slavery within the draft post-2015 UN development agenda. Slavery can only be tackled if it is globally recognised not as a thing of the past but as a shameful feature of our modern world.

The new Sustainable Development Goals are likely to be agreed at a United Nations Heads of State summit in September 2015, which will be opened by Pope Francis. In the period of time between now and then

there is likely to be a small window of opportunity to sharpen the draft language of the SDGs, and particularly the Targets.

I must here acknowledge that the current draft Sustainable Development Goals are a powerful set of objectives, which has resulted from a democratic and broad-reaching consultative process.

And whilst I particularly welcome targets under draft Goal 5, which focus on the elimination of all forms of violence against women and girls, including “trafficking and sexual and other types of exploitation”, it is crucial that the eradication of all forms of modern slavery is specifically referenced in the SDGs and that this goal or target of eradication is applicable to ending the enslavement and trafficking of all victims, whether women, men or children.

This is vital in order to ensure that holistic responses are fundamentally built in to national and international frameworks and aid budgets.

I am delighted that Professor Jeffrey Sachs will be speaking tomorrow on the role of the SDGs in addressing modern slavery. There is no one on earth who could better advise us.

I will be working in particular to push for drafting improvements that will ensure significantly greater focus is placed on eradicating all forms of modern slavery, including greater focus on child slavery, transparency in supply chains and reducing vulnerability to both human trafficking and also dangerous forced migration.

## **Conclusion**

To finish, I will of course quote the great British Parliamentarian William Wilberforce, when he spoke of his vision in the face of adversity to criminalise this cruel trade in human life in the 1800s.

He said: “Great indeed are our opportunities; great also is our responsibility”.

With the prospect of utilising the SDGs to ensure sustained solutions, the development of new partnership models across the globe, improved legislation, and of course the leadership of Pope Francis, we again have a real opportunity to fight back against this cruel trade in human life.

As a result our responsibilities have never been greater.

Thank you.

# NO LONGER SLAVES, BUT BROTHERS AND SISTERS

FLAMINIA GIOVANELLI

## A task of the Pontifical Council for Justice and Peace

First of all I would like to convey Cardinal Peter Turkson's greetings to the President, all the Members and the Chancellor of the *Pontifical Academy of Social Sciences*. I would also like to thank you for the opportunity given to the Pontifical Council for Justice and Peace to present Pope Francis' Message for the World Day of Peace of this year, 2015. The Pope's message, *No Longer Slaves, but Brothers and Sisters*, touches in great part the issues that will be treated in this Plenary Session.

In fact, an important task assigned to the Pontifical Council for Justice and Peace is to work towards forming, among people, a mentality which fosters peace, especially on the occasion of World Peace Day.<sup>1</sup>

## The Message for the World Day of Peace

It may be useful to briefly recall the origin and some of the characteristics of this initiative, which is due to Blessed Paul VI and has been taken forward by his Successors as well. In 1967, the very year in which he created the Pontifical Commission *Iustitia et Pax*, Paul VI also launched the idea of the observance of a Day of Peace on the first day of the year. In doing so, the Pope presented this proposal not as "exclusively ours, religious, that is, Catholic".<sup>2</sup> He wanted "all the true friends of Peace" to consider the initiative their own.

Moreover, the Pope gave another indication which suits well the frankness that has been required by the Chancellor for the works of this Plenary: "A warning must be kept in mind", he wrote in this first Message, "Peace cannot be based on a false rhetoric of words which are welcomed because they answer to the deep, genuine aspirations of humanity, but which can also serve, and unfortunately have sometimes served, to hide the lack of true spirit and of real intentions for peace, if not indeed to mask sentiments and actions of oppression and party interests".<sup>3</sup>

<sup>1</sup> John Paul II, Apostolic Constitution *Pastor Bonus*, art. 143.

<sup>2</sup> Paul VI, *Message for the Observance of a Day of Peace*, 1 January 1968.

<sup>3</sup> *ibid.*

It is also interesting to point out, finally, that the Message is officially presented at the beginning of every New Year by the Apostolic Nuncios to the Heads of Government and of International Institutions. The Message proposes, in that way, for the consideration of those responsible for public life and policy the issue that is considered by the Popes, year after year, to be ever more topical and urgent.

### **The role of the Pontifical Council for Justice and Peace**

The Pontifical Council has a particular role in the choice of the theme of the Message, helping the Holy Father to identify the subject that, in his opinion, needs to be tackled most urgently in order to achieve peaceful coexistence among the human family. This is why, on the basis of the exchanges in the numerous visits received at the Dicastery, the many contacts that the President and the Officials have around the world, and after the so-called annual “interdicasterial consultation”, the Pontifical Council submits to the Holy Father a list of three issues that it thinks deserve to be treated. For the Message of this year, the 48th Message, besides the one on the *persisting slavery in today’s world*, the three subjects were *poverty*, and *family*.

The interest and the concern of Pope Francis for the issue of the contemporary forms of slavery are well known, particularly by the Members of this *Pontifical Academy*. It was not difficult to predict then that his choice would fall on this issue. Indeed, we sadly receive daily confirmation of the justness of Pope Francis’s opinion by reading reports and by watching television news broadcasts.

### **No Longer Slaves, but Brothers and Sisters**

As is usually the case, there is a link between the Messages for the World Day of Peace. *Fraternity* is the link between the 2015 Message and the previous year’s, which was dedicated to brotherhood (*Fraternity, the Foundation and Pathway to Peace*). Being children of God gives all human beings equal dignity as brothers and sisters. Slavery deals a murderous blow to this fundamental fraternity, and so to peace as well. Peace can only exist when each human being recognizes every other person as a brother or sister with the same dignity.

By addressing contemporary forms of slavery in the 2015 Message, Pope Francis not only considers the foundation of peace, but also its concrete achievement in interpersonal relations. The scheme of the document is quite simple and logical.

- Drawing inspiration from the Epistle of Paul to Philemon and other passages from the Scriptures, the Holy Father shows that God's plan does not have any place for the enslavement of others, since God calls to all of his sons and daughters to renew their interpersonal relationships as brothers and sisters. This, being well aware that fraternity also embraces variety and differences between them even though they are linked by birth and are of the same nature and dignity.<sup>4</sup>
- Tragically, the negative reality of sin has often disrupted human fraternity and constantly disfigures our *being brothers and sisters* in the one human family. The sin of estrangement from God becomes then an expression of the refusal of communion and gives rise to a culture of enslavement (cf. *Gen 9:25-27*). Hence the need for constant conversion to the Covenant, fulfilled by Jesus' sacrifice on the cross.
- Afterwards, after recalling how "from time immemorial" different societies have known the phenomenon of slavery, generally accepted and regulated by law in periods of human history, Pope Francis affirms that today, as the result of a growth in our awareness, slavery is considered as a "crime against humanity"<sup>5</sup> and has been formally abolished. This definition of slavery as a crime against humanity had been used by the Holy Father in addressing the Delegates of the *International Association of Peace Law* on 23 October 2014. On the other hand, this wording was also present in the *Statement* issued by the Members of this *Pontifical Academy* participating in the Workshop on *Trafficking in Human Beings* in November 2013.
- In this same passage of the Message (nr. 3) Pope Francis stresses how, in spite of existing national legislations and numerous international agreements aimed to end slavery, millions of people are forced to live in this condition. Then, the Message identifies the main forms of contemporary slavery. They are grouped in the different categories under which the phenomenon is experienced by men and women today: in labor conditions, in migration, in being forced to prostitution, in being victims of kidnapping by terrorist groups.
- In section 4 of the Message there is an attempt to determine the causes of the modern forms of slavery that will be the subject of the in-depth

<sup>4</sup> cf Message for the 2015 World Day of Peace, n. 2.

<sup>5</sup> cf Address to Delegates of the International Association of Peace Law, 23 October 2014.

study of today's session. Besides the deeper, ontological, cause due to sin, the Message only quickly mentions: poverty, lack of education, underemployment and unemployment, armed conflicts, violence, criminal terrorism and the "festering wound"<sup>6</sup> of corruption. All of these factors, in addition to greed and thirst for money, contribute to making those persons who become the objects of trafficking for the sale of organs, for forced recruitment as soldiers, for begging, for illegal activities or for disguised forms of cross-border adoption.

- After looking at the causes of the phenomenon, Pope Francis calls for a shared commitment to ending slavery, at different levels and by the Catholic Church, with efforts that need to be expanded in years to come. This section 5 of the Message is crucial for the works of the present Plenary Session of the Pontifical Academy of Social Sciences.
- The call for globalizing fraternity and rejecting slavery and indifference in the light of the human experience of St. Josephine Bakhita closes the 2015 Message of the World Day of Peace.

### A few relevant points

In order to avoid to "repeat expressions of moral outrage" as recommended by His Excellency the Chancellor, I would just indicate some points of the Message that seem to me to connect well with the subjects that will be tackled in the next days.

- The 2015 Message appears to be **more concrete** than the previous ones. Precise reference is made to the tasks of all the actors, starting by what is done by religious congregations, especially women's congregations. For this reason, one of the speakers at the Press Conference for the presentation of the Message on 10 December 2014 was Sr. Gabriella Bottani who presented the work carried out by the International Network of Consecrated Life against Human Trafficking, *Talitha Kum*, and some other religious sisters who are concretely committed in this pastoral activity and were also attending the Press Conference. The opportunity to give visibility to those engaged in working with persons who work directly with the victims to help them is something new and highly valuable.

<sup>6</sup> *Misericordiae Vultus*, n. 19.



- The principle of rejecting slavery is formally recognized and, generally speaking, the phenomenon is considered a pure anachronism. Sadly we know that this is not the case. **The Church** from her side has contributed from the earliest centuries to the positive development of consciousness which brought to consider slavery as a “crime against humanity”. The fact that a Message on the contemporary forms of slavery issued by the Leader of the Catholic Church is presented to the heads of Governments and States should at least call their attention on the issue its seriousness, and the urgency to counteract it.
- “The right of each person not to be kept in a state of slavery or servitude has been recognized in international law as inviolable”.<sup>7</sup> The problem arises with **the implementation of these legal instruments**. The Pope recommends, in fact, that the State provides that its laws “include effective means of enforcement which leave no room for corruption or impunity”.<sup>8</sup> He had been even more explicit in the Address to the Delegates of the International Association of Peace Law (23 October 2014), which I recalled earlier.
- **What to do then?** In order to fight against the forms of slavery present today, the Message indicates what should be done at the various levels involved.

At the *institutional level*: prevention, protection and rehabilitation of the victims, legal persecution of perpetrators, and effective means of enforcement are needed.

At the *level of the Intergovernmental organizations*: coordination of initiatives is necessary for combating the transnational networks of organized crime that oversee the trafficking of persons and the illegal trafficking of migrants.

At the *level of business*: the social responsibility of *entrepreneurs* on the one hand and of *consumers* on the other is also invoked. Dignified working conditions and adequate salaries are to be ensured by the business leaders, but they must also be vigilant that forms of subjugation or human trafficking are not present in the distribution chain. The consumers, for their part, should be continually educated regarding their role, which can be exercised with respect for moral principles without diminishing the economic rationality of purchasing.<sup>9</sup>

<sup>7</sup> *Message for the 2015 World Day of Peace*, n. 3.

<sup>8</sup> *ibid*, n. 5.

<sup>9</sup> cf Benedict XVI, *Caritas in Veritate*, n. 66.

The *civil society*, at its level, has the crucial task of awakening consciences and promoting initiatives for combating and uprooting the culture of enslavement.

As for the mission of the *Church*: it is essentially religious but has public implications in different forms at all levels.

As already pointed out, the work of *religious congregations* has been specifically mentioned in the Message. The religious, women and men, carry out their activities of assistance to the victims, for their psychological and educational rehabilitation and for their reintegration into society. We will hear more on this subject next Monday.

To *every Christian* the Message proposes the story of Josephine Bakhita as an example of hope that invites to practice acts of fraternity, to open the eyes and to overcome indifference.

Finally, Pope Francis recognizes that “we are facing a global phenomenon which exceeds the competence of any one community or country. In order to eliminate it, we need a *mobilization comparable in size* to that of the phenomenon itself”.<sup>10</sup>

The *Pontifical Academy of Social Sciences* is at the forefront of this mobilization, from the scientific point of view and from the inter-religious perspective as well, and the works of the present session will give further impetus to this work.

<sup>10</sup> *Message for the 2015 World Day of Peace*, n. 6.



► THE ETIOLOGY OF HUMAN TRAFFICKING: CAUSES  
AND CONSEQUENCES OF REGIONAL VARIATIONS



# THE SOCIAL ETIOLOGY OF HUMAN TRAFFICKING, ITS GLOBAL DISTRIBUTION AND DIFFERENCES: SETTING THE SCENE

KRISTIINA KANGASPUNTA

## From white slavery to trafficking: some historical remarks

While slavery has a history of thousands of years, discussion on human trafficking focusing particularly on exploitation has a much shorter history. The modern debate on the international trade of women was started with the movement against white slavery and in 1904 an International Agreement for the Suppression of the “White Slave Traffic” was signed in Paris. The agreement aimed to protect women and girls from the “criminal traffic known as the White Slave Traffic”. In 1910, 13 countries signed the International Convention for the Suppression of White Slave Trade, focusing on the criminalization of trafficking (Kangaspunta 2008). The debate surrounding the negotiation and drafting of the White Slavery Convention was focused on white women in Europe, and therefore countries outside Europe as well as women other than white were not addressed. Due to obvious criticism, eventually the debate became more inclusive and the term used was changed to traffic in women (Leppanen 2007).

In 1921, the International Convention for the Suppression of the Traffic in Women and Children was signed, requesting countries to take necessary measures to prosecute persons engaged in the traffic of children of both sexes. This was the first time that male children were recognized as potential victims. Following the Convention, the League of Nations published two major studies on the traffic of women and children, one in 1927 focusing on the situation mainly in the *west* and the second one in 1932 dealing with the situation in the *east*. The international traffic described in the 1927 Report illustrates the situation in which women were trafficked from Europe to other countries using either land routes or water routes. In the report the main destinations included South and Central America, particularly Argentina, Brazil, Mexico, Panama and Uruguay; as well as Egypt, Algeria and Tunis. The main origin countries were Austria, France, Germany, Greece, Hungary, Italy, Poland, Romania, Spain and Turkey. The same kind of picture is presented in the Second Report of 1932, which seeks to clarify the

situation of trafficking in Occident and Orient.<sup>1</sup> In this report it was shown that while there is a certain movement of occidental women to the Orient, hardly any oriental women were trafficked to Occident. Traffic to Asia comprised victims of the following nationalities: American, Australian, Austria, Canadian, French, German, Hungarian, Italian, Latvian, Lithuania, Polish, Romanian, Russian and Swiss. The main destinations were Beirut, Calcutta, Saigon, Hong Kong, Bombay and Shanghai. In addition, the bulk of the traffic was reported to involve Asian women who were trafficked from one Asian country to another, Chinese women being the largest group of victims. The trafficking flows at that time were quite different than currently. However, the following quote shows that traffickers' methods included many of the current elements of trafficking in persons (Kangaspunta 2008).

Disorderly houses were formerly run by a manageress ("regenta") who was always the wife of the procurer. In such houses there were four or five or even more women, who were shamelessly exploited and never even received the proceeds of their miserable trade, for the manageress used to give them a slip, of purely nominal value, for each client, and at the end of the week it was the proprietor "dueño" who cashed these slips; moreover, such women were deprived of their liberty and practically imprisoned with the complicity of the manageress (League of Nations 1927, 23).

The issues discussed in 1927 are astonishingly similar as those discussed today. The report concludes that the motive of trafficking is money and that is why the authors announce that they choose to use economic terms to describe the phenomenon because they "seem aptly to describe the commercial aspect of the whole traffic". They also note that traffic "is a business out of which large profits can be made and, like other businesses, it is governed by the law of supply and demand" (League of Nations 1927, 9). The main remedy to prevent trafficking in the 1927 report was seen to be increased knowledge, international cooperation, criminalization of trafficking and the contribution of the civil society. In addition, public opinion was seen as a major factor behind the success in the fight against trafficking. These are the very same remedies as proposed currently to combat human trafficking.

Nearly 100 years after the first international agreement on trade of women, the United Nations Protocol against Trafficking in Persons came

<sup>1</sup> Occident being Europe and the Western hemisphere as opposed to Orient meaning Asia.

into force in 2003. What is the current trafficking in persons situation and did the Protocol manage to have an impact on any of the above-referenced issues related to trafficking in persons? In trying to respond to these questions, this article discusses some of the main trends of trafficking in persons, focusing particularly on vulnerabilities to trafficking.<sup>2</sup>

### **Factors increasing vulnerability to trafficking**

There are several causes which make potential victims vulnerable to trafficking. The same causes might also have an impact on the criminal career of offenders. Root causes and their connection to vulnerability are a complex issue, and there is no single causal relationship between vulnerability and human trafficking. Several factors related to trafficking in persons have been identified during the recent years, including mainly social, cultural and economic factors. Current knowledge shows some trends in these factors; however, it should be kept in mind that there are well-known challenges in collecting data on trafficking, particularly because of the hidden nature of human trafficking, meaning that the crime is often not reported to authorities. It is estimated that only a small part of trafficking cases come to the attention of any officials and therefore only a minor portion is represented in crime or other statistics. Therefore, an estimate of the prevalence of trafficking in persons is exceedingly difficult to determine. As a result, the interpretation of data on known trafficking cases is also challenging. Official data, however, can still give very valuable information on how the society views and responds to human trafficking. (Kangaspunta 2007). Currently, assessments on the prevalence of human trafficking are based on several estimates. However, a broad agreement regarding which methodology to calculate such estimates has not been reached, and as a result, quoted figures often contradict each other (Smith & Kangaspunta 2012).

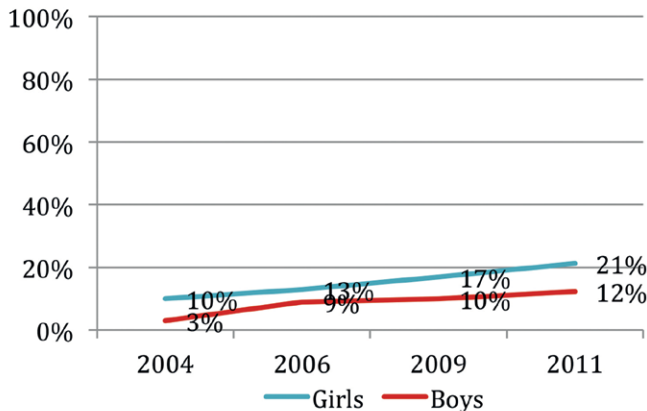
<sup>2</sup> “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs (Article 3(a) Protocol) (United Nations 2000).



Trends and factors presented below are mainly based on the findings of the data collection carried out by the United Nations Office on Drugs and Crime (UNODC) and which are presented in the biennial Global Report on Trafficking in Persons (UNODC 2012 and 2014). The data is mainly collected from national authorities. This means that only the known part of trafficking in persons could be included in the analysis.

### Age

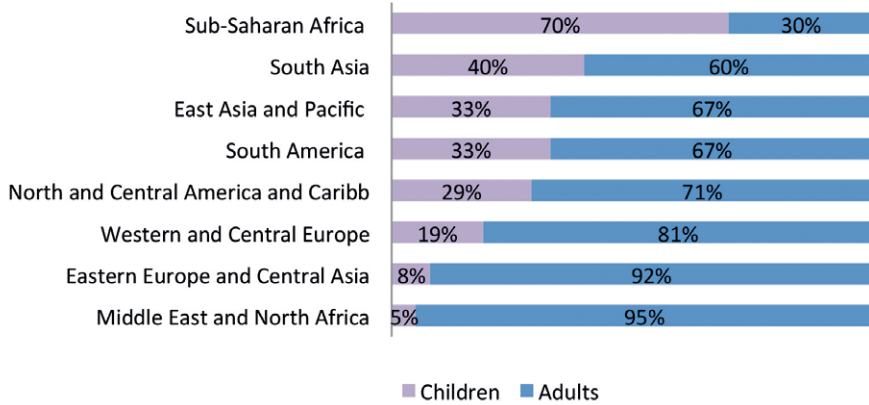
Globally in 2011, more than 30% of the total number of detected trafficking victims were children under the age of 18. Out of every three child victims, two are girls and one is a boy. The share of children among the detected victims has been increasing during the last ten years of UNODC's data gathering in the field of trafficking in persons, which can be seen in the share of both victimized girls and boys.



**Figure 1.** Trends in the shares of males (men and boys) among the total number of detected victims, 2004-2011 (UNODC 2014, 31).

There are significant regional differences in the shares of detected child victims. Sub-Saharan Africa reports the highest share of child trafficking in the world. In Sub-Saharan Africa, children comprise 70% of all detected victims and girls and boys are more or less equally detected. On the other hand, in the sub-region of Middle East and North Africa, only 5% of all detected victims are children making the adult share of all detected victims

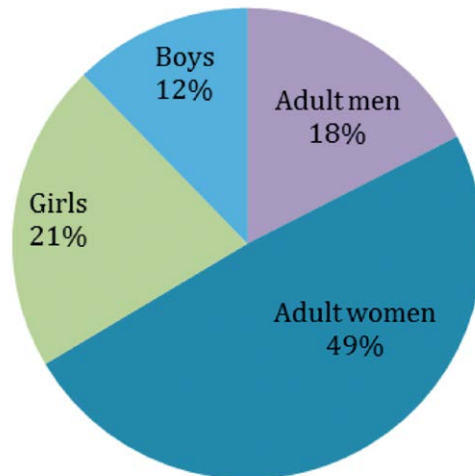
in that region the largest of any region or subregion. Also in Europe and Central Asia, children are significantly outnumbered by adults.



**Figure 2.** Age breakdown of victims detected in subregions, 2010-2012 (UNODC 2014).

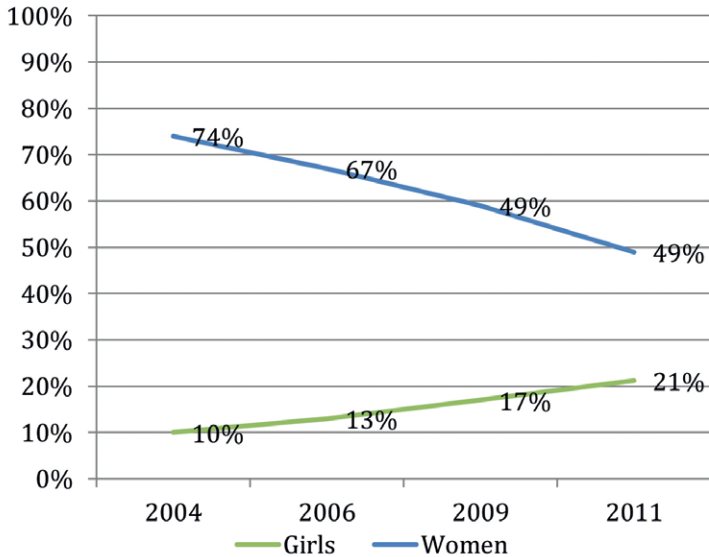
### Gender

Women’s involvement in trafficking in persons is significant, not only as victims but also as offenders. Around half of all detected trafficking victims are adult women in 2011. When the share of girls is included in the figure, female victims comprise 70% of all detected victims globally.



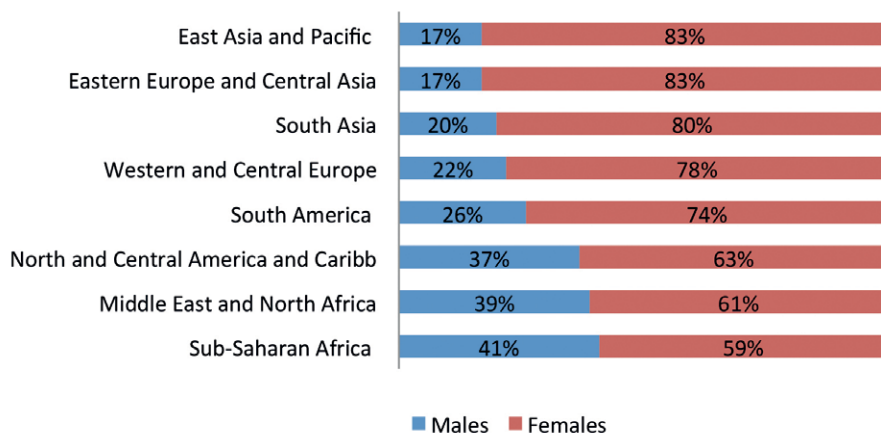
**Figure 3.** Detected victims of trafficking in persons, by age and gender, 2011 (UNODC 2014, 29).

The share of adult women victims has been declining significantly in recent years; however, it has been partially offset by the increasing detection of girl victims under the age of 18.



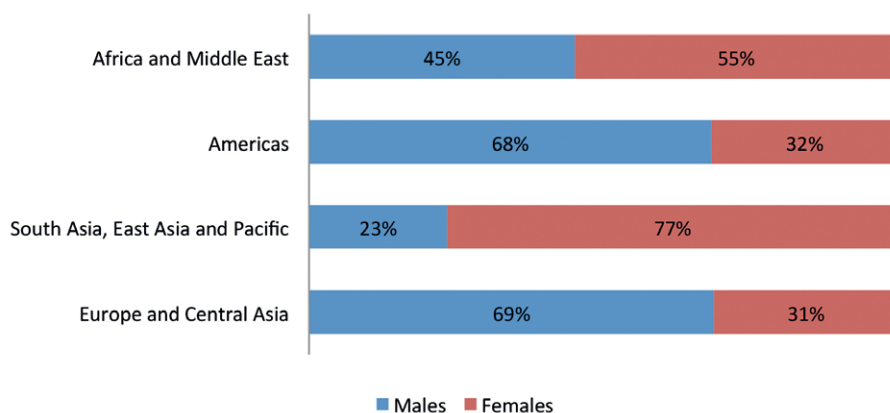
**Figure 4.** Trends in the shares of females (women and girls) among the total number of detected victims, 2004-2011 (UNODC 2014, 31).

The share of women is particularly high in the subregions of Asia and Europe as shown in Figure 5. Women comprise the vast majority of detected victims who were trafficked for sexual exploitation. In the case of forced labour, while men comprise a significant majority, women make up 35% of detected victims. It can be concluded that while men are mainly trafficked for forced labour, women are trafficked both for sexual exploitation and for forced labour. Also in the share of women trafficked for forced labour there are regional differences. In some regions, particularly in Asia, most of the victims of trafficking for forced labour were women.



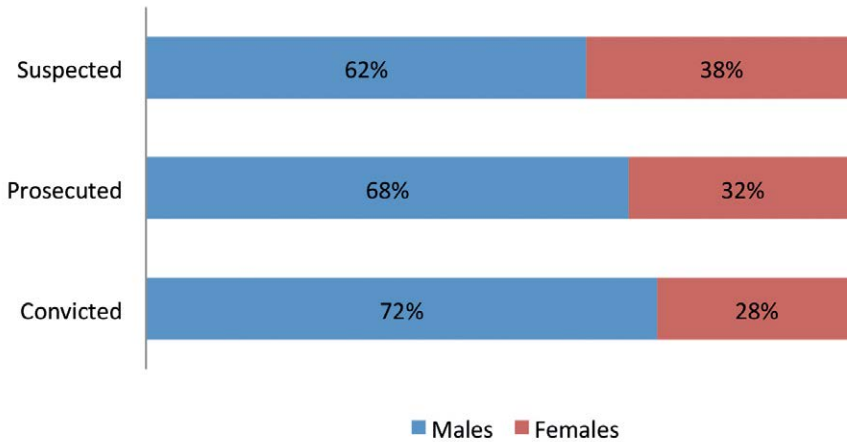
**Figure 5.** Gender breakdown of victims detected in subregions, 2010-2012 (UNODC 2014).

Also regarding the share of women trafficked for forced labour there are regional differences. In some regions, particularly in Asia as well as in Africa and the Middle East, most of the victims of trafficking for forced labour between 2010 and 2012 were women.



**Figure 6.** Gender breakdown of detected victims of trafficking for forced labour, by region, 2010-2012 (or more recent) (UNODC 2014, 36).

Women are significantly involved in trafficking in persons not only as victims but also as offenders. An analysis shows that 38% of suspected offenders were women between 2010-2012. The portion of female suspects is exceptionally high when compared with other types of crime. These shares are similar, though somewhat smaller, at other stages of the criminal justice process as shown in Figure 7. For most other crimes, the share of females among the total number of convicted persons is in the range of 10-15%<sup>3</sup> (UNODC 2014, 27).



**Figure 7.** Persons suspected, prosecuted and convicted for trafficking in persons, by gender, 2010-2012 (or more recent).

### *Economic disparity*

Trafficking in persons is a crime of global scope that leaves virtually no country unaffected. Between 2010 and 2012, victims with 152 citizenships were detected in 124 countries across the world. At least 510 trafficking flows<sup>4</sup> were detected globally. 66% of the detected victims over the 2010-2012 period crossed at least one border between different countries. 34%

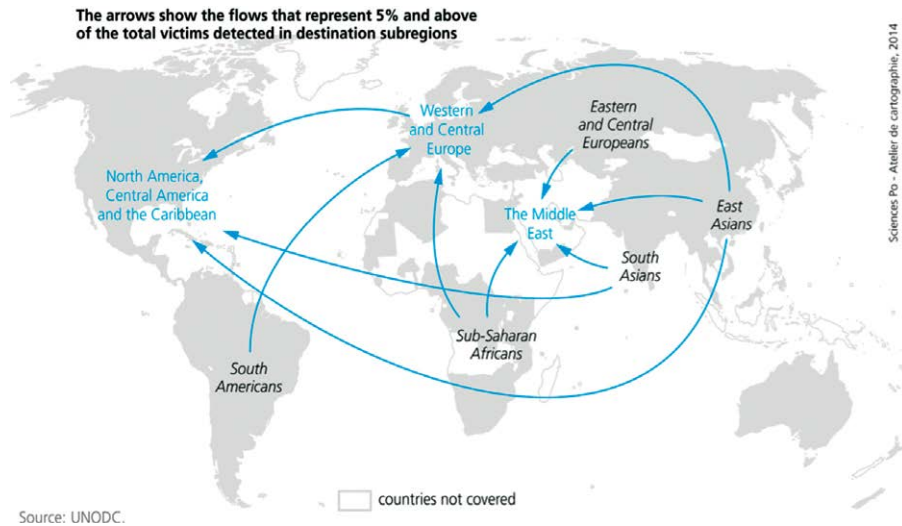
<sup>3</sup> United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (CTS), available at: <http://www.unodc.org/unodc/en/data-and-analysis/statistics/data.html>

<sup>4</sup> Defining a 'flow' as one origin country and one destination country with at least five detected victims during the 2010-2012 reporting period. This also includes the case of domestic trafficking in which the country of origin and destination coincide.

were trafficked domestically within the borders of one country. Cross-border trafficking happens often within the same subregion and only 27% of the total number of victims experienced transregional trafficking.

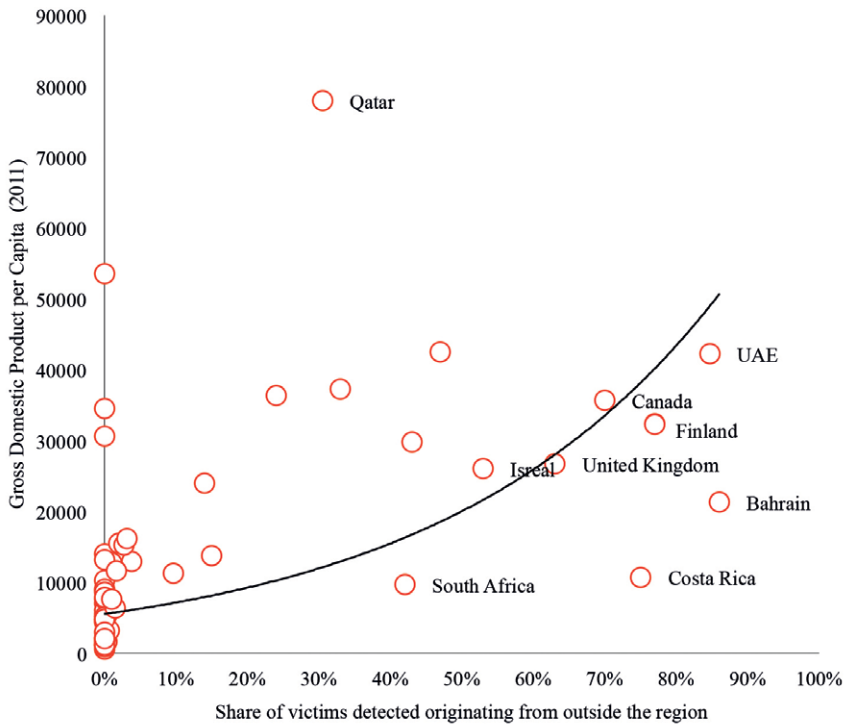
Three main destination hubs for transregional trafficking can be identified: the Middle East, Western and Central Europe, and North and Central America. The Middle East registers the highest share of inbound trafficking from other regions, where more than half of the detected victims were trafficked from other regions. For Western and Central Europe and North and Central America, this was true for about 40% of the detected victims. The origins of victims involved in transregional trafficking flows are very diverse, the main origin regions being South America, Sub-Saharan Africa, East and South Asia as well as Eastern and Central Europe. While the main destination regions include some of the wealthiest countries in the world, the origin regions are typically those where countries face many development challenges including poverty, unemployment and instability combined with high migration movements.

**Map. 1 Main destination areas of transregional trafficking flows (in blue) and their significant origins, 2010-2012 (UNODC 2014, 40).**



It can be argued that the rich regions of the world attract more transregional trafficking due to higher demand for services and labour provided by trafficked victims and higher profits from exploitative business.

As shown in Figure 8, a positive correlation between the gross domestic product (GDP) per capita and the share of transregional trafficking indicates that richer countries have larger shares of such trafficking.



**Figure 8.** Correlation between the share of transregional trafficking victims detected and GDP per capita, recorded in the countries of destination (UNODC 2014, 49).

A link between poverty and affluence can be seen also with domestic trafficking which often involves victims from relatively poorer areas of the given country trafficked for exploitation into richer areas; often the capital or another large city.

Data collected by the International Organization for Migration (IOM) illustrates the economic situations of potential trafficking victims which may make them vulnerable to trafficking. Information collected mainly in the former Soviet Union countries shows that while most trafficking victims were employed in the origin country before their trafficking experience,

their salaries were extremely low. They also often came from poor families and the offer of the trafficker nearly always involved a possibility to work abroad<sup>5</sup> (IOM 2009). This indicates that the trafficking process actually very often starts as a migration plan to improve the economic situation of the victim. It should be kept in mind though that there are also other conditions that have an impact on the directions of trafficking flows in addition to economic factors. These include, for example, issues related to job markets, migration policy, prostitution policy, legal context and border control efficiency.

### *The presence of organized crime*

Criminals involved in trafficking in persons can act alone, with a partner or in different types of groups and networks. Human trafficking can be easily conducted by single individuals with very little organization. This is particularly true if the crime involves only a few victims who are exploited locally. But trafficking operations can also be complex and involve many offenders, which is often the case for transregional trafficking flows. This kind of trafficking is motivated by profit maximization and often organized by trafficking networks which operate as businesses, trying to maximize benefits and minimize costs. These networks operate both in legal and illegal fields having an impact on the way profits are generated and used.

A strong correlation between the level of organized crime<sup>6</sup> measured at the origin country, and the share of citizens of these countries detected in the major destinations of transregional trafficking (Western Europe, North America and the Middle East) shows that the higher the prevalence of organized crime in the origin countries, the more victims of these origin countries are detected in major destinations. It is important to note that these results only refer to cross-border trafficking. This statistical link does not exist between domestic trafficking and organized crime. Domestic trafficking happens everywhere, and it seems to be unrelated to the level of organized crime.

Cross-border trafficking flows – subregional and transregional – are more often connected to organized crime since they require more organization and higher investments in order to maximize profits. Moving several victims

<sup>5</sup> The data refers to the cases assisted by IOM between January 1999 and July 2009. The total number of victims included in the database is 13,523.

<sup>6</sup> Measured by the Composite Organized Crime Index (COCI) (Van Dijk, 2008, 162-167) and the organized crime perception index referring to the year 2013 of the World Economic Forum (Schwab 2013).



across borders, particularly where travel documents are required, increases the risks of detection. To mitigate this risk, criminals need to cover some costs to commit the crime and launder profits in a smooth way. Thus they need to invest in both financial as well as relational capital, which is formed by existing connections among traffickers, customers, investors, transporters, corrupt public officials, informers, forgers, guides, debt collectors, money launderers and commercial establishments (Paoli 2009). Relational capital allows traffickers to function more effectively than their potential competitors and it is the basis for the business-type networks which are common forms of organized crime involved in trafficking (Shelley 2003).

The transnational nature of the flows, the victimization of more persons at the same time, and the endurance of the criminal conduct are all indicators of the level of organization of the trafficking network behind the flow. On this basis, a typology including three different trafficking types is emerging. The types have some features in common as the categorizations are broad. Few trafficking cases belong squarely in one category. This typology – which can be tailored to local circumstances – can be helpful in understanding the organization of trafficking in persons and what are some of the common features of this crime.

**Table 1. Typology of the organization of trafficking in persons (UNODC 2014, 51).**

Small local operations	Medium subregional operations	Large transregional operations
<ul style="list-style-type: none"> <li>• Domestic or short-distance trafficking flows.</li> <li>• One or few traffickers.</li> <li>• Small number of victims.</li> <li>• Intimate partner exploitation.</li> <li>• Limited investment and profits.</li> <li>• No travel documents needed for border crossings.</li> <li>• No or very limited organization required.</li> </ul>	<ul style="list-style-type: none"> <li>• Trafficking flows within the subregion or neighboring subregions.</li> <li>• Small group of traffickers.</li> <li>• More than one victim.</li> <li>• Some investments and some profits depending on the number of victims.</li> <li>• Border crossings with or without travel documents.</li> <li>• Some organization needed depending on the border crossings and number of victims.</li> </ul>	<ul style="list-style-type: none"> <li>• Long distance trafficking flows involving different regions.</li> <li>• Traffickers are members of a criminal group.</li> <li>• Large number of victims.</li> <li>• High investments and high profits.</li> <li>• Border crossings always requiring travel documents.</li> <li>• Sophisticated organization needed to move large number of victims long distance.</li> <li>• Endurance of the operation.</li> </ul>

### *Conflicts*

As other disasters, armed conflicts can have an impact on the level of trafficking in persons in affected communities. Conflicts increase the vulnerability of affected populations to trafficking in persons, for instance, displaced people and refugees. Conflicts often cause decay of national institutions, generate gender imbalances in conflict zones, and create a demand for combatants. Mobility by itself creates vulnerabilities when people lose their support networks and face situations where the language and the management of everyday life are different. These are all factors that amplify trafficking flows originating from or destined to conflict areas.

This is illustrated by the increased detection of Syrian victims. Currently, there are some 6.5 million Syrians who are internally displaced, and 2.5 million are refugees (UNHCR 2014). Based on information collected by UNODC (2014) during the period 2011–2013, eight countries in the world report having detected Syrian victims. Before the beginning of the Syrian turmoil in 2011, victims from this country were very rarely detected. Most of these victims have been detected in the Middle East and in Western Europe. It can be assumed that this increase parallels the large numbers of displaced people and refugees escaping conflict areas.

Another example of the linkage between trafficking in persons and conflict is the use of child soldiers, which is a form of trafficking that has been widely documented (see e.g. Machel 1996, UNICEF 2009). Most of the cases are reported from countries in Africa, where the different armed groups operating in Central and West Africa have been forcibly recruiting children to use them as combatants for decades. The numbers of victims detected are of concern. In the Central African Republic, at least 6,000 children have been reported to have been recruited by armed groups (UNICEF 2014). In the Democratic Republic of the Congo, the United Nations Organization Stabilization Mission documented the recruitment of 996 children over a 20-month period in 2012–2013 (MONUSCO 2013). Victims are not only Congolese, but also children from neighbouring countries, as these armed groups are mobile and operate across the entire Central African region (United Nations 2001–2013, UN 2014, UN 2013). Similar practices have been documented during conflicts in Africa, different countries in the Middle East, as well as in South America (UNODC 2012, 2014).

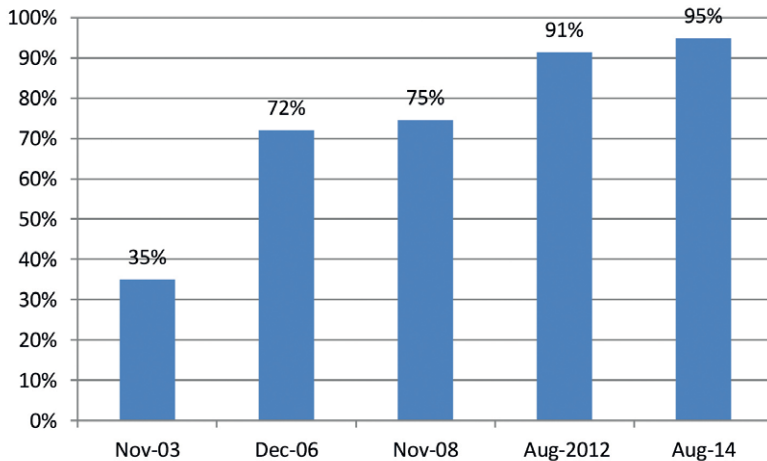
Conflicts may also create demand for victims of trafficking in persons and the services they are forced to provide. This is the result of organized criminal groups increasing their activities due to social degradation and the

absence of rule of law. This may open the door to various human rights violations, including trafficking in persons particularly for sexual exploitation. It has been documented that the presence of troops, peacekeepers and stabilization forces (including those operating under the United Nations flag) in conflict and post-conflict zones has fuelled the demand for girls and young women trafficked for sexual exploitation in some parts of the world (UN 2003–2008, UN 2013a, Mendelson 2005).

### *Weak criminal justice response*

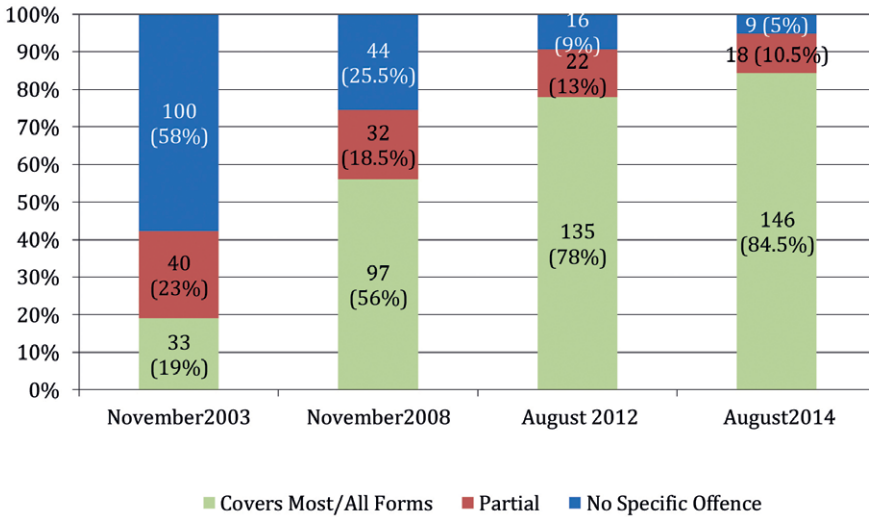
When the criminal justice system is not able to efficiently respond to trafficking in persons, the benefits of committing a crime outweigh the risks. Even though most countries in the world have passed legislation criminalizing trafficking in persons, the implementation of legislation has been poor and large areas of impunity still exist.

The Trafficking in Persons Protocol entered into force in December 2003. Before that, many countries did not have specific legislation against trafficking in persons or had partial legislation that addressed only some forms – often sexual exploitation – or some victims – usually women and children – of human trafficking. Encouraged by the Protocol, the number of countries that introduced the crime of trafficking in persons into their penal code increased sharply after 2003.



**Figure 9.** Share of countries around the world criminalizing trafficking in persons, partially or in full compliance with the UN Trafficking in Persons Protocol, 2003–2014 (UNODC 2014, 52).

In August 2014, only 9 countries did not have any specific legislation against trafficking in persons and 146 countries had criminalized all aspects of trafficking in persons as explicitly listed in the UN Trafficking in Persons Protocol. Looking in more detail at the legislative coverage, the Africa and Middle East region appears to be the part of the world that, more than others, needs to fill the legislative gap. When the population size of those countries that do not have special legislation or only have partial legislation against trafficking in persons is reviewed, we can see that about one-third of the world’s population, consisting of around 2 billion people, live in a situation where trafficking is not criminalized as required by the UN Trafficking in Persons Protocol.

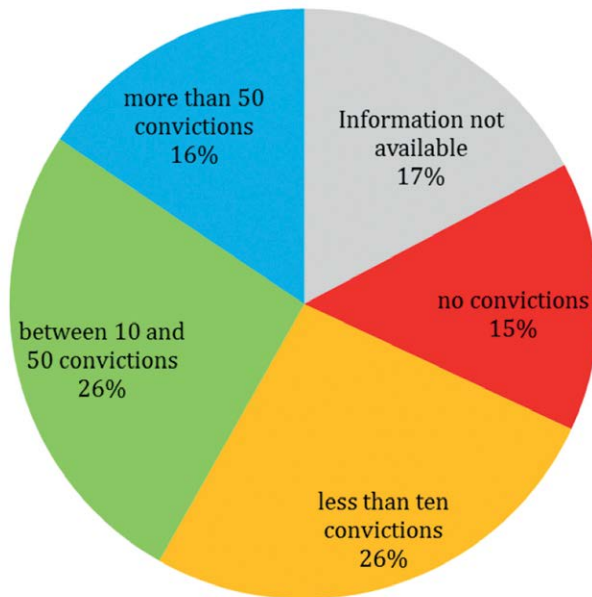


**Figure 10.** Criminalization of trafficking in persons with a specific offence, share and number of countries, 2003-2014 (UNODC 2014, 52).

The Trafficking in Persons Protocol clearly created a push for new, more comprehensive legislation addressing trafficking in persons. However, legislation remains a rather symbolic act against trafficking in persons, only signifying a moral standard against the crime, unless it is implemented. The real intolerance against human trafficking should be demonstrated by holding criminals liable to sanctions that take into account the gravity of

human trafficking offences combined with proper compensation to victims of trafficking (Kangaspunta 2015).

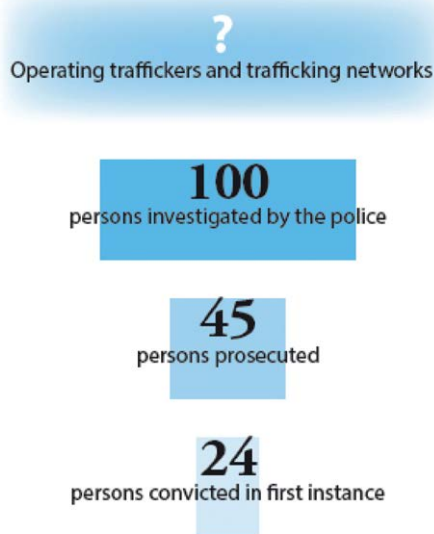
Unlike the great push to enact legislation against trafficking in persons after the entry into force of the Protocol, conviction records have remained stubbornly low since 2003. In fact, in 60–70% of countries, there were no major changes in this number between 2003 and 2012. On the contrary, the share of countries that recorded increasing numbers of convictions went down from 21% to 13% in the same period. Currently, 41% of countries have not had any convictions or have recorded less than 10 convictions between 2010–2012, even though these countries have legislation criminalizing trafficking in persons. In the period from 2007–2010, 39% and in 2003–2007, 36% reported none or less than 10 convictions. On the other hand, 16% of countries reported more than 50 convictions from 2010–2012. This number was 18% in 2007–2010 (GLOTIP 2014, 13).



**Figure 11.** Number of convictions recorded per year, share of countries, 2010–2012 (UNODC 2014, 54).

In order to study regional conviction capacities, it is useful to look at conviction numbers by population size, since in very populous countries

the number of convicted offenders tends to be higher. In Europe and Central Asia, the ratio of trafficking in persons convictions per 100,000 population is around 0.3 which is higher than in other regions where this ratio remains around 0.1 (UNODC 2014, 54). Comparing conviction rates with other crimes emphasizes the low rates in trafficking in persons cases. For example, the average number of persons convicted for completed intentional homicides per 100,000 population in Europe in 2011 was 1.2, for assault it was 74, for rape, it was 1.5. Among crimes which are connected to transnational organized crime, the number of persons convicted for money laundering per 100,000 population in Europe in 2011 was 0.7, for corruption it was 1.9 and for drug trafficking it was 21 (Aebi *et al.* 2014, 159-174). These European figures show that trafficking in persons convictions seem to be very low, even when compared with other serious crimes such as homicide or similarly hidden crimes such as rape (Kangaspunta 2015).



**Figure 12.** Probability of first-instance conviction for persons investigated for trafficking in persons (UNODC 2014 55).

The capacity of the criminal justice system can also be evaluated by the percentage of suspected traffickers who are convicted.<sup>7</sup> At the global

<sup>7</sup> This loss of cases or filtering out of cases during the criminal justice process is called attrition (see Aebi *et al.* 2014, 154).

level, out of 100 persons suspected of trafficking in persons, 45 suspects are prosecuted and 24 are convicted in the first instance. Of all those who are prosecuted for human trafficking, 55% are convicted (UNODC 2014, 55).

There are, however, some regional differences in these attrition figures. In Western and Central Europe, around 30% of suspects and around 50% of those prosecuted were convicted. Other regions in Asia, Americas and Africa present lower ratios (UNODC 2014). In order to review the efficiency of the criminal justice system in convicting suspected offenders of trafficking in persons cases, the figures can be compared with other crimes. Based on the UNODC Crime Trend Survey, which collects data globally on crimes in general, on average, 60% of suspects are convicted (Harrendorf *et al.* 2010, 92). For homicide at the global level, for every 100 persons suspected, 44 are convicted (UNODC 2014a, 93). Compared to these figures, the efficiency of the criminal justice system to process trafficking in persons crimes and convict suspected offenders is relatively low, which might reflect the complex nature of human trafficking offences, the difficulty in collecting evidence needed for successful prosecution and/or lack of resources within the criminal justice systems. All this is naturally reflected in the low conviction numbers (Kangaspunta 2015).

### ***Corruption***

Corruption can be present at all levels of the trafficking process having an impact on potential or actual trafficking victims and the possibilities to prevent or respond to human trafficking. Corrupt actors can actively assist the commission of trafficking in persons or be passively involved by not reacting to the crime when they encounter it. Also the involvement of corrupt actors varies from sporadic or single instances of corruption to systemic involvement accepting bribes from a trafficker in exchange for permitting the operations to continue (UNODC 2011).

Corruption can be linked to trafficking in persons in several ways. At the recruitment and transportation phase, corruption can be used for permitting unauthorized recruitments, for example, using fake or unauthorized recruitment agencies, fake documents or fraudulent invitations. Corruption can facilitate illegal border crossings or stay in a country through fake travel documents and law enforcement and other officials can turn a blind eye to trafficking. Criminals can be warned of raids and investigations and prosecutions and conviction can be blocked. Victims may be intimidated, information about victims may be provided to traffickers by those providing services to them and victim assistance may only be offered to

those who pay bribes (Tremblay 2011). There are also several other ways that corruption facilitates human trafficking.

At present, there is only scattered evidence of the strong linkage between corruption and trafficking in persons (Holmes 2009, 87-99). A study in Brazil on corruption and trafficking in persons showed that 71% of all examined cases of domestic and international trafficking in and from Brazil had a linkage with corruption (Cirineo, 2010). The role of organized and structural corruption in human trafficking is presented in a study on Southern and Eastern European trafficking networks (Leman *et al.* 2008). Even ten years ago, interviewed experts and practitioners in the Czech Republic estimated that up to 30% of trafficking cases involved a hidden element of corruption (Trávníčková, 2004, 10). The role of corruption in trafficking for forced labour has been illustrated in a paper on the global supply chain (Verité 2013).

However, this linkage is not reflected in conviction rates since public officials and private actors are seldom prosecuted or charged for their complicity in cases of human trafficking. A study in Finland demonstrated that legal practitioners and other authorities can benefit from trafficking-related activities; however, it is very difficult to prosecute these cases (Viuhko *et al.* 2009, 85). The UNODC Human Trafficking Case Law Database, which contains more than 1000 cases from nearly 90 countries, includes only 9 cases in which corruption is present.<sup>8</sup>

## Conclusions

The international community has been discussing trafficking in persons for 100 years. During this time, several efforts to motivate countries to prevent and control human trafficking were put in place and many countries have made commitments to address trafficking in persons. On the legislative side, the success cannot be denied, since 95% of countries have criminalized trafficking. While the adoption of legislation is a significant sign that society does not tolerate this crime, legislation alone cannot end trafficking in persons. As shown in this paper, the implementation of legislation is not at the required level and many traffickers can continue their operations with minimal risks of being punished.

In the modern world, awareness of human trafficking has increased vastly in recent years. In the beginning of the 20<sup>th</sup> century, the debate

<sup>8</sup> UNODC Case Law Database, <http://www.unodc.org/cld/index.jspx>



around white slavery referred only to white women trafficked for prostitution. Still, even ten years ago, trafficking in persons was mainly seen as a problem of sexual exploitation of women, even though concern of child victims was also present. Recently, men being exploited for forced labour and other forms of exploitation has been acknowledged as trafficking victims in many countries.

While there are some positive developments, many vulnerabilities and challenges remain. Traffickers target younger and younger victims and new methods of exploitation emerge frequently, showing the endless imagination of criminals to exploit other human beings. People are forced to leave their homes because of disasters and conflicts or they try to improve their living condition by moving to more affluent countries but too often, they end up being exploited by traffickers. Organized criminal groups take advantage of situations in which lack of rule of law facilitates corruption and other illegal activities so that they can maximize the profits from exploitation. Due to problems of identification and detection, trafficking in persons continues to be largely a hidden crime for which prevalence and severity is difficult to measure.

Several issues around trafficking in persons have indeed become better defined and understood during these 100 years. However, people continue to be trafficked, their rights continue to be violated and traffickers continue to profit. There is clearly a need for more action.

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# THE SOCIAL ETIOLOGY OF HUMAN TRAFFICKING: HOW POVERTY AND CULTURAL PRACTICES FACILITATE TRAFFICKING

ALEXIS A. ARONOWITZ<sup>1</sup>

## Introduction

Human trafficking has come to be known as the slavery of the 21<sup>st</sup> Century. Due to its clandestine nature, the magnitude of the problem is unknown. Various sources estimate the number of persons trafficked in the millions.<sup>2</sup> In the same year that the International Labour Organization estimated the exploitation in forced labor of approximately 21 million people, only 46,570 victims of trafficking (of which, 17,368 victims of labor trafficking) were identified worldwide (US Department of State, 2014).<sup>3</sup> The United Nations Office on Drugs and Crime reported 40,177 victims of trafficking identified by Government authorities or non-governmental organizations (NGOs) between the years 2010 and 2012 (UN-ODC, 2014).

The data – both estimates and actual cases of victims uncovered and identified by governmental and non-governmental organizations – provide some insight into trafficking patterns and victims. According to the most recent statistics provided by the International Labour Organization (2012), the majority of those in forced labor (including for sexual exploitation) are adults (74%; approximately 26% are children) and more women

<sup>1</sup> University College Utrecht, The Netherlands, a.a.aronowitz@uu.nl

<sup>2</sup> Kevin Bales, co-founder of Anti-Slavery International has put the figure at 27 million. The U.S. Department of State's *Trafficking in Persons Report 2007* estimated that between 4 and 27 million people are trafficked across the world. The International Labour Organization (ILO) estimated 2.4 million people were victims of trafficking worldwide (ILO, 2005). In its 2012 report, the ILO estimates the number of victims of human trafficking and forced labor is around twenty-one million (ILO, 2012).

<sup>3</sup> There is a clear distinction between these two phenomenon – not all cases of forced labor are a result of human trafficking – but this discussion is beyond the scope of this paper. For more on these differences, and a discussion on forced labor see ILO (2005).

are victims of forced labor than men (55% of victims are women, however women comprise the majority of victims (98%) in sexual exploitation and exploitation in the private economy. The majority of victims are found in forced labor (14.2 million), while 4.5 million persons are victims of forced labor for sexual exploitation (ILO, 2012).<sup>4</sup>

The United Nations Office on Drugs and Crime (UNODC) reports similar findings. The majority of trafficked victims by age and gender are adults (67%) – adult women (49%), followed by girls (21%), adult men (18%), and boys (12%). Where these two reports diverge, is in the type of exploitation most prevalent. According to UNODC (2014), in most parts of the world, sexual exploitation is the major form of exploitation perpetrated against victims identified in the *Global Report on Trafficking in Persons*.

What is clear from both the ILO and the UNODC reports is that global, aggregate figures obscure significant regional differences – with regard to the forms of exploitation, but also whether the victims are adults or children and the trafficking source countries.

Trafficking patterns will differ across and within countries and (sub-) regions of the world. This may be explained by “...a unique set of causes and effects” (Bales, 2007; 269). Bales identifies some common causes, such as economic pressures, political instability and corruption, natural disasters, the greed of human traffickers, as well as social and cultural factors. It may be these social and cultural practices which, more than any other factor, provide an explanation for these differing patterns of trafficking in a particular country or countries within a region. The devaluation of women and girls in society, the use of children in prostitution due to the belief that they are free from HIV/AIDS, and the practice of child fosterage – placing children from poor families with relatives or friends in more affluent families – are examples of such practices (Bales, 2007).

This paper focusses on three unusual patterns of trafficking, two of which were identified in UNODC’s *Global Report on Trafficking in Persons* (2014), and examines the economic situation, and social and cultural practices that may explain these unusual patterns of trafficking in three different areas of the world.

<sup>4</sup> The ILO does not make a distinction between victims in forced labor as a result of human trafficking, and as a result of other forms of forced labor. In its 2005 report, ILO did estimate that 2.45 million people were enslaved as a result of human trafficking.

## Unusual Trafficking Trends

This section briefly examines three patterns of trafficking that deviate from the norm in other regions. The age of the victim as well as the trafficking flows or routes are first discussed. A different pattern, not discussed in the UNODC trafficking report, but alluded to in other reports, is the focus of the third trafficking trend.

### *Adults and Child Victims of Trafficking*

The reports of both the ILO (2012) and UNODC (2014) find that the majority of victims of trafficking and forced labor are adults. The ILO (2012) puts the percentage of adults at 74%; according, also, to the most recent UNODC *Trafficking in Persons* report (2014), the majority of victims of trafficking are adults (67%). This holds true for 3 of the 4 regions included in the TIP report. In Europe and Central Asia, 82% of identified victims of trafficking are adults; in the Americas, 69% of victims are adults and in South Asia, East Asia and the Pacific, the figure is 64%. Only in Africa and the Middle East are the majority of victims (62%) children.

### *Trafficking Flows*

Trafficking patterns indicate global movement, with victims from 152 different source countries, identified in 124 destination countries (UNODC, 2014). Globally, slightly more than a third of the trafficking flows were domestic (34%), with an almost equal number reported as cross-border within the same region (37%) or from a nearby sub-region (3%). In the majority of sub-regions (South Asia, South America, East Asia, Sub-Saharan Africa and Eastern Europe and Central Asia)<sup>5</sup>, trafficking occurs almost exclusively from neighboring countries or countries within the sub-region (UNODC, 2014; 40). What is striking, is that within the Middle East and North Africa, two thirds (67%) of the identified victims were from outside of the region.<sup>6</sup> This pattern of inter-regional trafficking, to such a high degree, is unique.

<sup>5</sup> See the UNODC *Global Report on Trafficking in Persons* (2014; 21-22) for a breakdown of countries in each region.

<sup>6</sup> The majority were East Asians (33%), followed by South Asians (18%), Sub-Saharan Africans (10%) and Eastern European and Central Asians (6%).

### *Domestic Child Trafficking in Afghanistan*

Trafficking in the form of child sex tourism or commercial sexual exploitation of children (CSEC) is a problem in many countries.<sup>7</sup> An unusual pattern of child sex abuse, *bacha bazi*, has been identified in Afghanistan. *Bacha bazi* is a practice involving young boys, who are dressed in women's clothing and made to sing and dance at weddings and other parties in front of an all-male audience. Besides providing entertainment, the boys are often forced into sexual relations with their owners, and after the parties, the highest bidder – often a much older man. The practice, occurring in Afghanistan and parts of Pakistan,<sup>8</sup> in this form, appears to be found only in this region of the world.

Each of these trafficking patterns will be discussed separately below.

### **Child Trafficking Victims**

According to the ILO (2010), at 25.3%, Sub-Saharan Africa boasts the highest proportion of children engaged in child labor of any region in the world. Approximately one child in every four is a child laborer. UNODC (2104) also reports that the largest percentage of trafficking victims in this region are children (62% of all identified victims). The UNODC trafficking statistics may be explained in part, by countries where human trafficking is only defined as exploitation against children. The fact, however, that so many children are exploited in forced labor (according to the ILO, 2010) may be attributed to other factors such as poverty and the large number of the available children. A large percentage of the population in African countries is below the age of 15 (41%) compared to the population under 15 in the rest of the world (26%).<sup>9</sup> According to the ILO, “high population growth, the AIDS pandemic, recurrent food crises, and political unrest and conflict clearly exacerbate the problem” of exploitative child labor.<sup>10</sup>

<sup>7</sup> UNICEF 2006; For more on CSEC, see also the work of organizations such as the ILO-IPEC, ECPAT and Terre des Hommes.

<sup>8</sup> The practice of *bacha bazi* has been identified in parts of Pakistan, but there it takes on a different form. Young boys are kept by older men as (sexual) companions, but are not forced to wear women's clothing and dance at parties.

<sup>9</sup> Population Reference Bureau. Accessed on 9 March 2015 at <http://www.prb.org/DataFinder/Geography/Data.aspx?loc=246>.

<sup>10</sup> International Labour Organization (no date), Child Labor in Africa. Accessed on 10 March 2015 at <http://ilo.org/ipecc/Regionsandcountries/Africa/lang--en/index.htm>.

There is much cross-border trafficking of children in most of Sub-Saharan Africa, but the pattern of child trafficking has been found to be more prevalent in West and Central Africa (in more than 70% of countries in the region) than in other regions (Adepoju, 2005). The cross-border trafficking of children is facilitated by a link between source and destination countries. These links between countries are influenced by the ease in crossing borders (Kelly and Regan 2000), porous borders, weak border control, and the traffickers' use of local customs, (IOM 2000; De Lange, 2009), or expatriate populations in the country of destination. Tribal, historical and colonial links between countries, or the presence and tolerance of an extensive sex industry (Kelly and Regan 2000) also facilitate trafficking.

There are two main trafficking patterns in this region. The first involves domestic and intra-regional trafficking flows where children are exploited in the legitimate labor market (often in mining, fishing, agriculture, market vendors, bus assistants, and as domestic servants). The second trafficking flow involves the exploitation of young women for forced prostitution domestically, intra-regionally or in Europe and the Middle East. Children in this region have also been trafficked for forced begging or for use as child soldiers (although these forms of child trafficking will not be discussed in this paper). According to the ILO (2001), female children are generally trafficked into domestic service or work as market vendors. Male children are trafficked predominantly into the fishing industry or for labour on coffee or cocoa plantations. Both male and female children are also trafficked into forced begging.

### *Poverty, Polygamy and Child Fosterage*

Poverty is a driving factor in all forms of human trafficking on the African continent. African countries score low on the United Nations Development Program's (UNDP) Development Index. Of the 43 countries ranked low on UNDP's Development Index, 35 of these countries are in Africa. The eighteen countries scoring lowest on the Development Index (ranked 170-187 are in Africa).<sup>11</sup> Salah (2001) attributes the trafficking of women and children in Africa to abject poverty, inequality and the absence of programs for the creation of employment. Those most affected are children in rural areas. Millions in Africa live below the poverty line, and child trafficking goes hand in hand with poverty and child labor.

<sup>11</sup> UNDP Table 1: Human Development Index and its components. Accessed on 15 January 2015 at <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components>



Polygamy has been described as a “value system” in many countries in Sub-Saharan Africa and is practiced particularly in rural areas. It helps maintain a high level of fertility and has contributed to what Hiyase and Liaw (1997; 293) refer to as the “explosive population growth in sub-Saharan African countries since the 1950s”. A widow often remarries another male in the family of her deceased husband, usually a brother. The large number of children produced within these polygamous marriages can put a financial strain on the family which may influence the decision to place (some of) the children with other families. The majority of trafficked children in Sub-Saharan Africa come from large, poorly educated and often polygamous families where opportunities for education and training are limited for children (ILO, 2001). They are often kept from attending school and are forced to help support the family. Parents, who cannot support their children, are often willing to “give” them to traffickers in the false belief that the child will be given an education, training or a job (ILO, 2001; UNICEF, 2002).

Historical and cultural patterns of child fosterage exist in West African nations. The placement of children outside of the home is based on cultural values and is done to foster the further education and vocational training of the child and to strengthen extended family solidarity (Howard, 2011; De Lange, 2008; Aronowitz, 2006; Manzo, 2005; Bazzi-Veil, 2000). The education and care of the child is believed to be the responsibility of the extended family, and it is not uncommon for children to grow up and work in families which are better able to provide for the future of the child. Work teaches children social values and children are often made to work at very young ages.

The voluntary placement of children under the child fosterage system is done partly as a result of poverty and partly by the desire to provide their children with a better life (Verbeet, 2000). The receiving family may give a financial incentive to the child’s biological parents. Often times the promise is made to pay the child, but this rarely occurs. According to Truong (2006; 64), however, the practice of child fosterage “... has been distorted into a commercial transaction”.<sup>12</sup> The practice has been corrupted from one of placing the child for the benefit of the child’s future, to viewing the child as an income-generating opportunity. Whether the child is placed for altruistic or economic purposes, child placement or fosterage can easily

<sup>12</sup> Truong (2006) citing a 2003 Anti-Slavery International report.

lead to the exploitation of children who are located in homes with no supervision. “This ‘strategic fostering out of children’ is said to be a stronger causal factor in child trafficking than poverty”.<sup>13</sup>

### *Trafficking of Girls and Young Women: Gender Inequality and Ju-ju*

The majority of trafficked children in West and Central Africa are girls (Dottridge, 2002). Two deep-rooted culturally accepted practices contribute to the trafficking of girls into domestic service, and girls and young women into sexual exploitation. These are the devaluation of girls and women in Sub-Saharan Africa, and voodoo practices, known in some West African countries as ju-ju.

“In an African cultural setting, children are regarded as economic assets, and from around age 6, they are gradually integrated into the family’s productive process, performing various services” (Adepoju, 2005; 81–82). Consideration is given to family members perceived to be most likely to bring the highest returns, usually the male children. Girls are perceived to be less valuable than boys, and girls’ futures will be sacrificed to pay for the education of the male children in the family.

Girls are expected, and are more willing to make sacrifices for the family. They are also said to be “more obedient” than boys (Dottridge, 2002). Furthermore, they are seen as a poor investment since they will be leaving the family upon marriage (Dottridge, 2002; Aronowitz, 2006). The fact that boys are chosen over girls to receive an education, and that girls are often kept out of school, contributes to high rates of unemployment among females. This makes it easier for the parents to place their female children outside of the family, often in households where they will learn domestic responsibilities. Training in domestic services is also seen as preparation for marriage (ILO-IPEC, 2002; Human Rights Watch, 2003).

Another traditional practice in Central and Western Africa that makes children, and especially women and girls, vulnerable to trafficking, is the custom of early marriage (UNICEF, 2003). In extreme poverty, girls are seen as an economic burden and a survival strategy is often to sell their young daughter for the purpose of marriage. Girls and women who try to escape abusive relationships end up in destitute poverty (UNICEF, 2003).

<sup>13</sup> Aronowitz (2006; 27) referencing Email correspondence between Anne Kielland and Human Rights Watch cited in Human Rights Watch (2003; 13). Kielland cites a report by Bazzi-Veil, “Traffic des enfants en Afrique de l’Ouest et du Centre”, World Bank.

A further factor discriminating against girls and women is tied to rules of inheritance. The fact that girls and women are excluded from inheriting and owning land in many countries, results in their marginalization, poverty and high risk of being trafficked (Dottridge, 2002).

The trafficking of girls and young women into sexual exploitation can be explained by many of the same factors that explain trafficking into domestic service. Poverty, lack of educational and employment opportunities, and gender violence, foster the desire to migrate in search of better opportunities. “It appears that the trafficking of women and children is closely related to an erosion of social protection, which has pushed them to find other options elsewhere” (Truong, 2006; 63).

The fact that young women from (predominantly West) Africa – and in particular, Nigeria – end up trafficked transnationally into prostitution, is a pattern that has been observed in numerous Western European countries. While trafficking into prostitution of (young) women from many other parts of the world also occurs, what differentiates West African women from other trafficked victims is the means used to exercise control over them.

In the early 1990’s, large numbers of Nigerian girls began arriving in the Netherlands and, as unaccompanied minors, began seeking asylum. By the mid to late 1990’s, women’s interest groups and social workers began observing large numbers of young Nigerian girls surfacing in prostitution in various Red Light districts throughout the Netherlands. Stories began to surface of religious practices binding the girls to their traffickers and causing them to be terrified of cooperating with the authorities. Unique to the West African countries of Nigeria and Ghana is the use of voodoo practices or “juju” to instill fear into young women and prevent them from escaping or cooperating with police. Prior to their departure, a fingernail clipping, lock of hair or piece of (intimate) clothing is used in a voodoo ritual performed by a priest which binds the victims to their traffickers. Victims are forced to swear an oath; failure to respect the oath results in misfortune befalling the girls or their families (Van Dijk, 2001; Siegel and De Blank, 2010).<sup>14</sup> Part of the agreement requires the girls to pay back

<sup>14</sup> Aronowitz (2009) refers to Okojie, C. (2003), *Programme of Action Against Trafficking in Minors and Young Women from Nigeria to Italy for the Purpose of Sexual Exploitation, Report of Field Survey in Edo State, Nigeria*, UNICRI; Aghatise (2005) Aghatise, E. (2005). “Women Trafficking from West Africa to Europe: Cultural Dimensions and Strategies”, *Mozaic*, 2005/1; Skogseth (2006). *Trafficking in Women – Fact-finding trip to Nigeria (Abuja,*

inflated debts and swear allegiance to their traffickers. It is alleged that the trafficked women are so fearful of these oaths, that Italian police note that compared to other foreign women trafficked into prostitution into Italy, Nigerian women are subjected to much less physical supervision and control (Aronowitz, 2009).<sup>15</sup>

It is not clear to what degree voodoo played a part in the control of young Nigerian girls in prostitution in the Netherlands.<sup>16</sup> Anthropologists have been critical, pointing out that the Dutch police created a moral panic in building their investigations of Nigerian trafficking around voodoo. What is clear, is that local religious traditions, the belief in magic, and rituals played a role in the trafficking of young women to Europe. It is better understood as a symbolic action to seal a promise (Carling, no date; Van Dijk, 2001), but one which appears to have frightened young women into submission.

In concluding, poverty, large nuclear families and gender discrimination against female children can be considered root causes contributing to the trafficking of persons in (West and Central) Africa, facilitated by the practice of child fosterage. These can be classified as ‘intermediate’ and ‘deep structural’ causes. More easy to address are intermediate causes, such as the failure of parents to recognize the dangers to their children of child fosterage, or the lack of school opportunities for girls or job opportunities in rural areas. Because child labour is so ingrained – and in some cases, necessary to sustain families – in the social structure of West Africa, a balance must be created to allow children to receive an education while still helping to support the family. It is not necessarily the eradication of (all forms of) child labour, but the elimination of the worst forms, the most dangerous and abusive practices, which must be the goal. More difficult – but essential to address – are deep structural causes, such as gender discrimination, the historically accepted practice of child placement outside of the home, countries’ massive structural debt, as well as the common practice of those in power to protect their interests, and systematic corruption. These re-

*Lagos and Benin City*) 12-26 March 2006, Landinfo, Oslo, Norway, 2006; [http://www.landinfo.no/asset/224/1/224\\_1.pdf](http://www.landinfo.no/asset/224/1/224_1.pdf)

<sup>15</sup> It is not clear if these women are trafficked victims or free-lance prostitutes who have paid off their debt and begun working for themselves.

<sup>16</sup> While on mission to Nigeria with the UN in 2000, the author of this paper was told by various people working at NGOs of the practice of ju-ju which was used to control trafficked victims.

quire long-term approaches which make it difficult, but not impossible, to eradicate trafficking and modern day slavery in this part of the world (Aronowitz and Peruffo, 2003).

### **Trafficking to the Gulf States**

In another part of the world, trafficking involves mainly adults. Countries which are part of the Cooperation Council for the Arab States of the Gulf, also known as the Gulf Cooperation Council, or GCC States – Bahrain, Kuwait, Iraq, Oman, Saudi Arabia, Qatar and the United Arab Emirates (UAE) – are among the wealthiest countries of the world (see Table 1). Relatively small populations, immense wealth and booming construction developments have created a demand for foreign workers in the region (Fargues, 2011), which, to a large degree, explains the international trafficking flows to this region.

The discovery of oil led to rapid development of the region. An eight-fold growth in population – one of the most rapid in the world – from 4 million in 1950 to 40 million in 2006 – was due not to a natural growth of the native population, but through the importation of foreign workers (Kapiszewski, 2006). The Middle East is “...one of the fastest growing migrant-receiving regions in the world.” (Khan and Harroff-Tavel, 2011; 295).<sup>17</sup> These came predominantly from the SAARC (South Asian Association for Regional Cooperation) countries of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. Migration occurred from densely populated (Bangladesh, India and Pakistan) countries indexed medium to low<sup>18</sup> on UNDP’s Development Index scale (Table 2), to sparsely populated and highly developed countries in the Gulf Region (Table 1).

<sup>17</sup> Citing International Organization for Migration (IOM) (2010). *World Migration Report 2010–The Future of Migration: Building Capacities for Change*. Geneva: IOM.

<sup>18</sup> With the exception of Sri Lanka, which scores high on the Development Index.

**Table 1. GDP and Population (2013) by Country of Receiving Countries**

Country	GDP (current US\$)	Population, total (2013)	Development Index
Bahrain	\$32.89 billion	1.332 million	Very High (44)
Kuwait	\$175.8 billion	3.369 million	Very High (46)
Oman	\$79.66 billion	3.632 million	High (56)
Qatar	\$203.2 billion	2.169 million	Very High (31)
Saudi Arabia	\$748.4 billion	28.83 million	Very High (34)
United Arab Emirates	\$402.3 billion	9.346 million	Very High (40)

Source: World Bank Data, Countries and Economies; <http://data.worldbank.org/country> and United Nations Development Program, Table 1: Human Development Index and its components; <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components>

**Table 2. GDP and Population (2013) by Country of Sending Countries**

Country	GDP (current US\$)	Population, total (2013)	Development Index
Bangladesh	\$150.0 billion	156.6 million	Medium (142)
India	\$1.877 trillion	1.252 billion	Medium (135)
Nepal	\$19.29 billion	27.80 million	Low (145)
Pakistan	\$232.3 billion	182.1 million	Low (146)
Sri Lanka	\$67.18 billion	20.48 million	High (73)

Source: World Bank Data, Countries and Economies; <http://data.worldbank.org/country> and United Nations Development Program, Table 1: Human Development Index and its components; <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components>

Foreign workers make up a large percentage of the labor force in the Gulf States. Information from 2008, shows that the percentage of the labor force in the Gulf States ranges from a low of 51% in Saudi Arabia to a high of 94% in Qatar. This information can be found in Table 3 on the following page. See Table 4 in the Appendix for a distribution of the national and foreign populations in the Gulf States.

**Table 3. Foreign nationals as a Percentage of GCC Labor Force (2008)**

Country	%
Bahrain	76.7 %
Kuwait	83.2 %
Oman	74.6 %
Qatar	94.3 %
Saudi Arabia	50.6 %
United Arab Emirates	85.0 %

Source: Baldwin-Edwards (2011; 9).

### Human Trafficking and Abuse of Migrant Workers

Workers often sign contracts in their home countries through recruitment agencies only to find that the contract is destroyed upon arrival in the destination country (in some cases two contracts have been drawn up – one for the worker and an official one for the employer). Upon arrival in the destination country and at their workplace, their passports are taken from them and workers are often forced to work for a salary far less than what was promised.<sup>19</sup> Workers are often dependent upon their employers for shelter, clothing, food and transportation,<sup>20</sup> and are often subject to physical and sexual abuse. Accusations of human trafficking and abuse of workers' rights have been levied at a number of Governments in the region and have been documented by organizations such as Human Rights Watch, Amnesty International, the International Labour Organization and the International Trade Union Confederation.

Foreign laborers initially filled the gap on large construction projects in GCC countries. With development, came expansion into other occupational areas such as domestic help, hospitality and retail, opening the way for women to migrate to the region (ILO, no date). The number of domestic workers is rapidly increasing in the region. Since the beginning of the decade, the number of domestic workers has increased in Saudi Arabia by 40%; in Kuwait the figure has increased by 66% since the mid 1990s. Each

<sup>19</sup> The ITUC reports that workers in Doha, Qatar were forced to work for a salary that was two thirds of what has promised to them (ITUC, 26 November 2014).

<sup>20</sup> Multiple dependencies on an employer is an indicator of human trafficking.

household in the UAE is estimated to employ, on average, three domestic workers (ITUC, 2014).

Workers are often recruited through promises of well-paid jobs but once in the destination country, find themselves residing in substandard living conditions and exposed to exploitative and sometimes dangerous working conditions including excessively long hours, working in the sweltering heat, limited periods of rest, rationed food, low (or no) pay, verbal and physical abuse, sexual harassment and assaults by employers (Calandruccio, 2005; Human Rights Watch, 2007, 2009; Vlieger, 2011; Khan and Harroff-Tavel, 2011; Bajracharya and Sijapati, 2012; Americans for Democracy and Human Rights in Bahrain (ADHRB), 2014). Domestic servants are often kept isolated in the homes and subject to sexual harassment (Vlieger, 2011; Kapiszewski, 2006), while construction workers are forced to reside in labor camps on the outskirts of cities, often in crowded and unsanitary conditions characterized by a lack of electricity and running water. Newspaper accounts document horrific exploitation of migrant workers and deaths as a result of mistreatment and neglect.<sup>21</sup> The situation appears to be particularly egregious in Qatar, where media reports hundreds of deaths among construction workers building stadiums for the World Soccer Cup in 2022 (Morin, 2013; Gibson and Patisson, 2014; BBC, 2014).

The ILO estimates that in the Middle East, 3.4 in every 1,000 of the region's inhabitants are in positions of forced labor. This amounts to some 600,000 victims (Harroff-Tavel and Nasrim, 2013). The International Trade Union Confederation puts the number much higher and estimates that 2.4 million migrant domestic workers are enslaved in Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (ITUC, 2014).

### *Mistrust and Marginalization of Foreign Workers*

Historically, mistrust of foreign workers has existed in the region. Migrant workers were viewed as a threat to the stability of the GCC countries. They were perceived to influence the security and structure of society and endanger the cultural identity of their host country (Abella, 1995; Kapiszewski, 2006). During the GCC summit in Manama in December 2004, the Bahraini King submitted a report on the danger posed by foreign labor to the social and cultural life as well as the economy of the GCC states.

<sup>21</sup> See, for example, The Guardian's section on "Modern-day slavery in focus" at <http://www.theguardian.com/global-development/series/modern-day-slavery-in-focus>



Majeed ibn Muhsen Al-Alawi, his Minister of Labor and Social Affairs, said in an interview that “we should save future generations from having their culture lost” and that although “we are not against the foreign labor” at the same time “we do not want these workers to become citizens in the region.” (Kapiszewski, 2006; 11). Nationals are concerned about the negative influence of foreign workers on the national identities, values and cultures as well as the social structure (Kapiszewski, 2006).<sup>22</sup> Of particular concern were foreign teachers and domestic helpers / nannies who might educate and raise the children “without proper attention being given to Islamic and Arabic values” (Kapiszewski, 2006; 12).

Foreign workers in the region are not just feared, but are also despised. When asked how Qataris view foreign workers who are there building the infrastructure in the country, Sharan Burrows, General Secretary of The International Trade Union Confederation replied, “I don’t think they [the Qataris] see them [foreign guest workers] as human”.<sup>23</sup>

This mistrust may have been exacerbated by disturbances (in some cases violent protests) in Bahrain, Kuwait and Qatar by migrant workers. In Dubai, UAE, hundreds of construction workers of mainly south Asian origin went on a violent rampage to protest horrific working conditions, low pay and their lack of rights (Kapiszewski, 2006). In November 2014 around 800 workers went on strike to protest poverty wages and breaches of contract. Rather than investigations into workers’ allegations of abuse, they were physically attacked, arrested and held in detention – often incommunicado for long periods – before being deported (ITUC, 26 November 2014).

Trying to create a balance between economic growth on the one hand, and fearing permanent settlement of non-Arab and non-Muslim foreign workers and their influence on cultural identity on the other, the GCC countries introduced a system characterized by diversification, tight security, rotation, and restrictions on mobility. The only way to import labor was through the system of *kafala* – which imposed limitations on the guest worker tantamount to abuse of their human rights (Abella, 2005).

<sup>22</sup> Citing Kapiszewski, Andrzej (2001). *National and Expatriates. Population and Labour Dilemmas of the GCC States*. Reading: Ithaca Press.

<sup>23</sup> See the documentary *Qatar’s World Cup*; <https://vimeo.com/95215527>; accessed on 3 March 2015.

### *The Kafala System*

The employment system in the Middle East and Gulf States is a major contributing factor to the trafficking and exploitation of foreign works in the region. Employers pay sometimes large sums of money to recruit foreign workers. Due to their initial financial investment, employers are often anxious to recoup their investment.

The *kafala* system served originally to host foreign workers in GCC countries. It is an employer-driven sponsorship system regulating the relationship that the sponsor (*kafeel*) or employer has with his migrant workers. The host or *kafeel*, assumed responsibility for the migrant's visit, safety and protection (Bajracharya and Sijapati, 2012). What originated as a form of hospitality, has become a "system of structural dependence" giving the *kafeel* significant power over the legal and economic responsibility of the migrant worker (Khan and Harroff-Tavel, 2011; 294). The *kafeel* determines the terms and conditions of residence and work (Khan and Harroff-Tavel, 2011), often holds the passport of the foreign worker and determines whether the employee can change jobs or leave the country.<sup>24</sup> This "unequal power dynamic" between *kafeel* and migrant worker may lead to abusive, slavery-like situations. "According to experts, the sponsorship rule entails elements of servitude, slavery, and practices similar to slavery, as defined by the UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" (Calandruccio, 2005; 279<sup>25</sup>; Khan and Harroff-Tavel, 2011).

Labor laws, if they exist, are often not respected by the employers (Khan and Harroff-Tavel, 2011; Bajracharya and Sijapati, 2012). The ILO and the ITUC report that labor laws do not adequately protect domestic servants, entertainers and those employed in the agricultural sector, nor are workers allowed to organize (Harroff-Tavel & Nasrim, 2013; ITUC, 2014). In some countries (Qatar and Saudi Arabia), an employee is barred from seeking other employment without the permission of the original sponsor/ employer. In Bahrain, a worker cannot transfer jobs without the permission from the Government; the request is often denied (ADHRB, 2014). Workers who attempt to leave, or those who flee abusive employers are

<sup>24</sup> Workers are not allowed to depart a country without the written permission of the sponsor.

<sup>25</sup> Citing Borkholder, J.L., and Mohammed, M. (2002). *Domestic service as a form of trafficking in persons in the Middle East*. First World Congress for Middle Eastern Studies, Mainz, Germany, 12 September 2002.

considered illegals and may be detained or deported at their own expense. The *kafala* system has been described as “... a deeply seeded structural system that causes, permits, and in some cases encourages violence towards migrant workers” (ADHRB, 2014; 8). Because it creates such a dependency of the migrant worker on the employer, it creates vulnerability and facilitates abuse and exploitation (ADHRB, 2014).

The Governments of GCC countries must not tacitly accept the structural abuse of migrant workers so important to the development of their countries. Two approaches can be taken to alleviate the misery of foreign workers in the Gulf States. The first involves the *kafala* system, which must be modified or abandoned. Sanctions must be taken against illicit recruitment agencies in both source and destination countries. This involves prosecution of the owners and operators of *mala fide* recruitment agencies. Migrant workers must be provided with the right to unionize and fair pay for their labor – which must be paid on a regular (monthly) basis. Exit visas for migrant workers, and the right to leave the country and the ability to change jobs should never be decided upon by the employer, nor should the employer be allowed to hold the worker’s documents. The destination countries must ensure workers are given the right to terminate a contract and leave an abusive employer. Mechanisms must be put into place to allow foreign workers to file complaints (without penalty of incarceration or deportation). Improvements must be made in the cramped and unsanitary living conditions in the labor camp residences for foreign workers. Regulations regarding the maximum number of hours a laborer may work and regulated rest hours must be put in place and enforced. Multinational construction firms must establish human-rights based guidelines and ensure that local subcontractors adhere to these. With pressure from the government and private industry, many of these changes could be implemented without much effort. The second, and perhaps more difficult challenge is to address discriminatory attitudes among residents of the Gulf States towards non-Muslim workers – involving a more long-term process.

### **Afghanistan’s Bacha Bazi**

Unlike the recent press coverage of maltreatment of foreign workers in the Gulf States,<sup>26</sup> the practice of *bacha bazi* in Afghanistan is an almost

<sup>26</sup> See, for example, The Guardian’s section on “Modern-day slavery in focus” at <http://www.theguardian.com/global-development/series/modern-day-slavery-in-focus>.

unknown phenomenon. It is believed to be widespread, but the extent to which it occurs is unclear. Sadly, little attention has been paid to it. According to the U.S. Department of State's 2009 Human Rights Report on Afghanistan, "Numerous reports alleged that harems of young boys were cloistered for 'bacha bazi' (boy play) for sexual and social entertainment; although credible statistics were difficult to acquire..." (US Department of State, 2009). A few newspaper articles (Mondloch, 2013; Londoño, 2012a and 2012b; Brinkley, 2010; Qobil, 2010; Abdul-Ahad, G. 2009; Smith, 2002), even fewer academic articles (Martin and Shaheen, 2014; De Lind van Wijngaarden, and Rani, 2011), an evaluation of the situation for the Dutch (Schutt and Van Baarle, 2014) and U.S. military (Human Terrain Team, 2009)<sup>27</sup> and the 2010 Public Broadcasting System (PBS) documentary on "The Dancing Boys of Afghanistan" are all that one can find. The U.S. Department of State (2009) refers to *bacha bazi* as "...a source of shame and ... a widespread culturally sanctioned form of male rape." Reference is made to the custom in the US Department of State's *Trafficking in Persons Report 2014*: "Some Afghan families knowingly sell their children into prostitution, including for *bacha bazi* – where wealthy or influential men, including government officials and security forces, use young boys for social and sexual entertainment".<sup>28</sup>

The practice of *bacha bazi*, or "boy play" is found in Afghanistan and parts of Pakistan. Children as young as 8 (and generally not older than 18) are chosen for their youthfulness and beauty.<sup>29</sup> Young boys are dressed in women's clothing (with bells on their ankles and wrists, and sometimes wearing make-up) and perform erotic dances and songs for an all-male audience. After the performance the boy may be "sold" to the highest bidder to provide sexual services. According to a number of journalists and an internal report to UNICEF, *bacha bazi* appears to be gaining in popularity (Mondloch, 2013; Londoño, 2012; PBS, 2010) but the extent of the practice is unknown.

<sup>27</sup> The more recent interest in the phenomenon of the sexual abuse of young boys by older men was generated, in part, by US, British and Dutch military stationed in the country, who were suddenly confronted with practices unusual or unacceptable in the West (Schutt and Van Baarle, 2014). The HTT report (2009) refers to US soldiers being openly propositioned by Pashtun men wearing make-up, and older men openly showing inappropriate physical behavior toward young male children.

<sup>28</sup> US Trafficking in Persons Report, Afghanistan at <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226664.htm>.

<sup>29</sup> Once the child begins developing signs of becoming a young man, he is no longer attractive as a sexual partner or *bacha bazi* dancer.

*Bacabozlik*, as it was referred to by anthropologist Ingeborg Baldauf, was observed among the Uzbeks and Pashtun in Afghanistan in the 1970's (De Lind van Wijngaarden and Rani, 2011).<sup>30</sup> What Baldauf describes is the training of young boys to sing and dance at all male parties, and an affectionate relationship between the owner and young boy. According to her, there was rarely anal-genital intercourse as this would mean the end of the relationship (De Lind van Wijngaarden and Rani, 2011). The practice today, however, has degenerated into something far more harmful to the children than simply using them as social entertainers.

The custom of having a young male sexual companion has been strongly linked to the southern and eastern areas in Afghanistan in what is known as the country's rural Pashtun belt, as well as in the northern (predominantly Tajik) countryside (Mondloch, 2013). The history of Afghanistan and the cultural practices among the Pashtuns provide insight into the practice of *bacha bazi*.

Mujahideen warlords who battled the Soviets in Afghanistan's civil war in the 1980's kept male servants, or "chai boys" (tea boys) who also provided sexual services. It was common practice (Mondloch, 2013) and according to a former mujahideen commander, everyone had a boy ("I had a boy partner when I was an unmarried commander. I had a boy because every commander had one. There's competition amongst the commanders. Without one, I couldn't compete with the others"). (PBS, 2010). This peer pressure to have young male sexual companion was also documented in Baldauf's study (De Lind van Wijngaarden and Rani, 2011). It goes beyond peer pressure, though. The practice of keeping young male sexual partners is linked with status and power (Schut and Van Baarle, 2014; De Lind van Wijngaarden and Rani, 2011; PBS, 2010).

This tradition of keeping young boys for sexual companionship was historically prevalent until it was banned under the Taliban in the 1990's, but with the demise of the Taliban in 2001, the practice returned and is believed to have spread from more rural areas of Afghanistan to the capital and beyond. Many former warlords are now in important government positions. The ones who are supposed to protect children from abuse, are the

<sup>30</sup> De Lind van Wijngaarden and Rani (2011) compare Baldauf's study in Afghanistan in the 1970's to their study of *bacha bazi* – which takes a slightly different form – in Pakistan today. Baldauf's original article was published in a now defunct journal and is inaccessible to this author. Any comments about Baldauf's study refer to the article by De Lind van Wijngaarden and Rani (2011).

same ones perpetrating these crimes against them (Schut and Van Baarle, 204; Mondloch, 2013; De Lind van Wijngaarden and Rani, 2011; PBS, 2010).

## Poverty, Social and Cultural Practices, and Government Corruption

### *Poverty*

Afghanistan is a war-torn country, a failed state (Rotberg, 2003), characterized by crushing poverty (ranked 169 out of 187 countries in the UNDP Development Index<sup>31</sup> with 29.8% of the population living in severe poverty).<sup>32</sup> The GDP per capita (2011 PPP\$) of Afghans is \$1,892.26. Income in rural areas is much lower. The mean years of schooling is 3.2. It is questionable, in a war-torn country, if children in rural areas are able to attend school at all.

Poverty does not cause, but facilitates the practice. Children are recruited from the streets, as orphans, or families give away their young boys in the hope of providing the child with better opportunities. In other cases, the *bacha baz* – the owner – promises the family a small income in exchange for the child. In a study of *bacha bazi* by anthropologist Ingeborg Baldauf in Afghanistan in the 1970s, she found that boys are used by poor families as a source of income or to guarantee the repayment of loans (De Lind van Wijngaarden and Rani, 2011). The poverty in Afghanistan ensures a large pool of potential victims.

Further contributing to the problem is gender inequality (and discrimination) – of 151 countries, Afghanistan is ranked 149 on the United Nations Development Program's Gender Inequality Index Rank, 2013.<sup>33</sup> Abject poverty and gender inequality only partially explain the practice of *bacha bazi*. Other factors, such as the role of women in society, social and cultural norms, and government corruption also support the practice.

<sup>31</sup> UNDP, *Human Development Reports*, Table 1: Human Development Index and its components; accessed on 9 March 2015 at <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components>

<sup>32</sup> UNDP, *Human Development Reports*, Table 6: Multidimensional Poverty Index (MPI); accessed on 3 March 2015 at <http://hdr.undp.org/en/content/table-6-multidimensional-poverty-index-mpi>.

<sup>33</sup> United Nations Development Programme, *Human Development Reports*, Table 4: Gender Inequality Index; <http://hdr.undp.org/en/content/table-4-gender-inequality-index>.

### *Patriarchy and Social Exclusion*

It is a patriarchal society with strict segregation between men and women, and exclusion of women from public life. Women are marginalized and men have little to no opportunity for social contact with women outside of their wife and female family members. Due to the strict separation between men and women, Pashtun men "...often lack the experience of these aspects of life with women". (HTT, 2009; 2). According to De Lind van Wijngaarden and Rani (2011; 1069), "Male relationships with women outside of marriage are strongly discouraged, while social and physical affection between males is socially tolerated. The association of adult men with boys is not questioned, adding to boys' vulnerability to sexual abuse and exploitation".

The fact that men are not allowed to socialize with unmarried women, but are allowed to socialize with other men (and boys), has been said to contribute to the all-male social activities, including sexual relations. This was supported in Baldauf's original study of *bacha bazi* in Afghanistan, and confirmed by De Lind van Wijngaarden and Rani (2011; 1069) in their study of *bacha bazi* in Pakistan – "The cultural difficulty for unmarried Pakistani men to have social or sexual relations with women seems one of the root causes of *bacha bazi*". The separation between unmarried men and women means that "[w]omen are simply unapproachable. Afghan men cannot talk to an unrelated woman until after proposing marriage.<sup>34</sup> Before then, they can't even look at a woman, except perhaps her feet. Otherwise she is covered, head to ankle" (Brinkley, 2010; 3; see also De Lind van Wijngaarden and Rani, 2011). According to a professor of psychiatry at Columbia University, Justin Richardson, the extreme restrictions on sexual relations with women lead to an increased prevalence of sexual relations between men and young boys (Reynolds, 2002). "In some Muslim societies where the prohibition against premarital heterosexual intercourse is extremely high – higher than that against sex between men – you will find men having sex with other males not because they find them most attractive of all but because they find them most attractive of the limited options available to them" (Reynolds, 2002;1).

Additionally, Arabic – the language of the Koran – is not spoken by many of those who follow the religious teachings of Islam. In rural south-

<sup>34</sup> Additionally, when they marry, men are required to pay large sums of money to, and buy presents for the bride and her parents – something unobtainable for many young men (Baldauf, cited in De Lind van Wijngaarden and Rani 2011; Human Terrain Team, 2009).

ern Afghanistan, members of the Pashtun communities are dependent upon the interpretation of local Mullahs to understand the Koran. “The more rural the area, the far less likely it becomes that even the Mullah himself understands Arabic and the more likely that what is taught is based upon local cultural tradition, independent of Islam itself. Homosexuality is strictly prohibited in Islam, but cultural interpretations of Islamic teaching prevalent in the area tacitly condone it in comparison to heterosexual relationships” (Human Terrain Team, 2009; 5). Sex with a man, while not condoned, is “...preferable to sex with an ineligible woman, which in the context of Pashtun honor, would likely result in ...revenge and honor killings” (HTT, 2009; 6).

Another problem, according to anthropologists and sociologists, results from a “perverse interpretation of Islamic law” (Brinkley, 2010; 3). The Koran has very strict regulations regarding cleanliness. During menstruation, the woman is considered unclean and “execution of ritual prayer, fasting, reading from or coming into contact with the Koran, sexual intercourse, or the entering of a mosque is forbidden” (Wunderlich and Schlüter, 1982; 25). Fundamentalist imams, exaggerate a passage from the Koran on menstruation and “...teach that women are ‘unclean’ and therefore distasteful” (Brinkley, 2010; 3).<sup>35</sup> The social scientist who prepared the report on Pashtun culture and practices for the U.S. military reports that local cultural interpretations of the Koran “have created the passionately if erroneously held belief that women are physically undesirable” (HTT, 2009; 6-7). This is another example of interpretations which are selected to support pre-conceived beliefs.

### *Cultural and Social Norms*

Cultural and social norms are often unspoken rules or expectations of behavior within a specific cultural or social group which dictate social standards of desirable and undesirable behavior. These cultural and social norms persist because of individuals’ preference or pressure from others to conform. Internal pressures and external influences are thought to maintain social and cultural norms (World Health Organization, 2009).

*Bacha bazi* has been closely linked to members of the Pashtun<sup>36</sup> ethnic group and tribal leaders. Pashtun literature praises the love of older men

<sup>35</sup> See also Human Terrain Team (2009).

<sup>36</sup> The Pashtuns are the largest ethnic group in Afghanistan, and they are the dominant group in the government.



for beautiful young boys (Schut and Van Baarle, 2014; de Lind van Wijngaarden and Rani, 2011; HTT, 2009; Reynolds, 2002). The Pashtun traditional practice of *halekon* – taking boys from their families to use them as apprentices or to integrate them into the collective fighting groups has a long history (Martin and Shaheen, 2014). During this process they are also sexually objectified and abused (Londoño, 2012). This, coupled with the socially acceptable practice by mujahideen of keeping young male sexual partners during the war, greatly facilitated the practice and its widespread acceptance among certain members of society.

The military study of Pashtun found that “Pashtun men are freer with companionship, affection, emotional and artistic expression, and the trust bred of familiarity with other men.” It further identified “a *culturally-dependent homosexuality* appearing to affect a far greater population base than some researchers would argue is attributable to natural inclination” (HTT, 2009; 2).<sup>37</sup> And yet, Pashtun men do not think of themselves as homosexuals (HTT, 2009). It appears that it is the label, rather than the practice itself, which is condemned. Research in Afghanistan (Baldauf) and Pakistan (De Lind van Wijngaarden and Rani, 2011; 1070) found that “...the attraction for boys is not defined in terms of homosexuality by either the boy or the bacha baz, as homosexuality is often defined as sex between ‘equal’ men, whereas these boys are considered (both by themselves and by the bacha baz) to be ‘not-yet-men’. This is the key reason why these relationships end at a certain stage, when the young men become too ‘similar’, physically, to the bacha baz, the relationship becomes untenable”.

In some parts of Afghanistan, and among certain segments of Afghan society, *bacha bazi* or the sexual abuse of adolescent males by older men is a social norm (Schut and Van Baarle, 2014).<sup>38</sup> According to De Lind van Wijngaarden and Rani (2011; 1068), “[t]his only becomes possible, culturally, if there is a shared understanding of ‘value’ in the boys, at least among the men who desire them. This value is their beauty....the promise of erotic

<sup>37</sup> “Dr. Mohammed Nasem Zafar, a professor at Kandahar Medical College, estimates that about 50% of the city’s male residents have sex with men or boys at some point in their lives” (Reynolds, 2002).

<sup>38</sup> “Sexual exploitation and/or abuse of adolescent males by older men (...) can, in some parts of the country, be considered a social norm within certain segments of Afghanistan society, particularly among certain populations” Schut and Van Baarle, citing S. Khan, *Everybody knows, but nobody knows: Desk review of current literature on HIV and male-male sexualities, behaviours and sexual exploitation in Afghanistan* (NAZ Foundation International, 2008; 10).

fulfillment and pleasure. The lavish spending on clothes, shoes and other goods all tend to focus on beautification of the boys and increasing their desirability in the eyes of the *bacha baz* and his ‘rivals’”. The more attractive or talented the boy is deemed, the more his presence elevates the status of his patron (HHT, 2009; 10).

In a country where women are suppressed and socially marginalized, men dictate laws and practices, further normalizing the practice of the dancing and sexual abuse of young boys.

### *Corruption*

Corruption is another factor which supports the practice. Afghanistan is governed by national, common and Sharia law, has a number of national action plans and strategies to protect children,<sup>39</sup> and has ratified a number of international conventions protecting the rights of the child<sup>40</sup> (Schut and Van Baarle, 2014). Laws exist in the country prohibiting pederasty (sex between an adult man and a boy), sexual abuse of children and forced labor. All legal mechanisms are in place to protect Afghanistan’s children, yet the practice continues. Rather than protecting the children of Afghanistan, many of the offenders are police officers, military leaders or wealthy businessmen (Martin and Shaheen,<sup>41</sup> 2014; U.S. Department of State, 2014; PBS, 2010). While the deputy chief of police in Takhar province, Afghanistan told investigative journalist Najibullah Quraishi that “If the people are caught, they will be severely punished”, his chief of the youth crime department and chief investigator were caught on film attending a *bacha bazi* party (PBS, 2010).<sup>42</sup> Attending such performances is only one of the corrupt practices in which police are involved. PBS (2010) documents a case in which a police officer provided a weapon used to kill a young *bacha bazi* dancer who had escaped from his master. Despite having received a long sentence, the officer was freed from jail within a few months. Others

<sup>39</sup> The 2004 National Action Plan Against Child Trafficking and the 2008 National Strategy for Children at Risk.

<sup>40</sup> The United Nations Convention on the Rights of the Child, the Universal Declaration of Human Rights and the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

<sup>41</sup> Martin and Shaheen citing Jalalza, M. K. (2011) *Child Sex, Bacha Bazi and Prostitution in Afghanistan*. LAP Lambert Academic Publishers.

<sup>42</sup> Direct quote taken from the documentary transcript at <http://www.pbs.org/wgbh/pages/frontline/dancingboys/etc/script.html>.

involved in *bacha bazi* who were arrested, were also freed within a short period of time (PBS, 2010). The situation is so dangerous that Nazer Alimi, UNICEF researcher who compiled an internal report for UNICEF Afghanistan said he knew the offenders but refused to identify them by name as he feared for his life.<sup>43</sup> One respondent in Schut and Van Baarles' research (2014; 36) calls it "the weakness of the government".

The UN Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, has repeatedly tried to call attention to the problem only to find that no one in Afghanistan wants to discuss it. No one denies its existence, but it is a taboo subject. Coomaraswamy (2010) has said "Where states fail and don't provide services due to corruption or incompetence ... there is nothing, nobody to protect these children" (PBS, 2010).

The dangers of ignoring such abuses of young boys is not limited to the child victims themselves. At least one *bacha bazi* dancer, Imam, expressed his desire, when he is too old to dance at the age of 18, to "...become the master of his own stable of dancing boys... I'll probably keep between 20 to 30, if I can afford to. A boy should be 12 or 13 and of good character, a very polite boy. He should have no other interests except *bacha bazi*. I would like to keep them for myself, and they should be useful for me and my friends" (PBS; 2010).<sup>44</sup> And so the cycle of violence is perpetuated. Another report admonishes that by usurping the female role in society, this and similar practices "... may contribute to the alienation of women over generations, and their eventual relegation to extreme segregation and abuse (HTT, 2009: 2).

The Human Terrain Team Report (2009; 8) attributes *bacha bazi* to "poverty, segregation and tacit cultural approval". *Bacha bazi* and the unspoken acceptance of this practice can be addressed through a number of measures. Poverty alleviation in geographical areas and aimed at "at risk" families is an important first step. Until children are able to get an education and parents are in a position to support their family, the risk exists that male children will be given up to a wealthy "patron". Awareness raising – and "breaking the silence" is necessary to make parents understand

<sup>43</sup> See interview with Nazer Alimi, director of the UNICEF-funded Youth Information and Contact Center in Mazar-e-Sharif at <http://www.pbs.org/wgbh/pages/frontline/dancingboys/etc/alimi.html>

<sup>44</sup> Quotes downloaded from the documentary transcript at <http://www.pbs.org/wgbh/pages/frontline/dancingboys/etc/script.html>.

the harm done to young boys. This harm is not just limited to the physical assault that occurs during forced sexual relations, but also the psychological harm and stigma attached to those boys who have participated in *bacha bazi*.<sup>45</sup> The tacit approval, participation in *bacha bazi* parties and protection of powerful figures by law enforcement and government officials must be addressed and corruption at all levels of government that support this practice must be eradicated. Law against sexual assault of children must be strictly enforced. In addition to prevention, programs must also exist to reintegrate children already harmed by the practice.

### Concluding Remarks

Patterns of trafficking vary in different (sub)regions of the world. In fact, trafficking patterns (age, gender, markets, *modus operandi* of recruitment, movement, control and exploitation) differ, and should be studied at the local, rather than national or global level. While quite different, each of the patterns examined – intra-regional child trafficking for forced labor in West and Central Africa, international sexual exploitation of girls and young women from Nigeria to Europe, the international trafficking of adults for labor exploitation from South Asia to the Gulf States in the Middle East, and the domestic trafficking of young boys for entertainment and sexual exploitation in Afghanistan – share some commonalities. Poverty is a driving force in all of these trafficking patterns. Children are recruited from poor families, often in rural areas, for placement in wealthier families (often in urban areas) as domestic or sexual servants. Parents in West Africa and Afghanistan give their children to others in the hope of providing a better future for the child, or sell their children out of desperation. Girls and young women migrate to Europe from Nigeria, and adult laborers depart South Asian countries for the Gulf States leaving poverty and the hope of employment to support families back home.

Deeply-rooted attitudes supporting gender inequality in Africa and Afghanistan, and discrimination of non-Muslims in the Gulf States further contribute to the trafficking problem and exploitation of vulnerable populations. In Africa, gender discrimination puts girls and women at risk of exploitation. In Afghanistan a different pattern emerges. There, the gender discrimination and marginalization of women puts young male children at

<sup>45</sup> De Lind van Wijngaarden en Rani (2011) in their study of *bacha bazi* in Pakistan (which takes a slightly different form) argue that boys who have been adopted by a *bacha baz* would probably later end up in male prostitution.

risk of exploitation. Discrimination against non-Muslim foreign workers allows for the exploitation of this population in Gulf States.

The social and cultural practices which facilitate trafficking are unique to a particular geographic area, and must be studied and dealt with as such. The cultural and social practices that have been linked to human trafficking and exploitation in the patterns discussed in this paper – child fosterage in Africa, the *Kafala* system in the Middle East, the strict separation of men and women in Afghanistan – do not, in and of themselves *cause*, but *facilitate* trafficking. They can facilitate uncontrolled, systematic abuse when children or migrant workers are employed in households or businesses in which there is no supervision, inspection or control. Social and cultural norms and attitudes that facilitate exploitation must be addressed and changed. The tacit tolerance of exploitation by employers, family members and sub-sections within society, as well as weak government response, indifference and corruption, further reinforces the problem. Changing these deeply-rooted attitudes, and cultural norms involve long-term structural change.

The common *cause* of trafficking in all of the forms of exploitation discussed in this paper is the demand generated by those who desire the low-cost services of trafficked victims – and the scrupulous intermediaries/traffickers/exploiters – who step in to meet this demand. Without the demand for household and agricultural help in Africa, for sexual services of victims in their own countries or further abroad in Europe, the Middle East and the Americas, for construction workers and domestic servants in households in the Gulf States, or the companionship and sexual services of young boys in Afghanistan, human trafficking and exploitation would not exist. Our approach to reducing exploitation must target problems such as poverty, corruption, lack of educational and employment opportunities, discrimination, gender inequality, social and cultural practices that support these abuses – and the demand which drives the market.

## Appendix

**Table 4. Total population, and percentage of nationals and non-nationals, latest year**

Country	Total population	% Nationals	% Non-nationals
Bahrain (2010) <sup>a</sup>	1,234,571	46.0	54.0
Kuwait (mid-2013) <sup>b</sup>	3,891,943	31.5	68.5
Oman (mid-2013) <sup>c</sup>	3,855,206	56.3	43.7
Qatar (2010) <sup>d</sup>	1,699,435	14.3	85.7
Saudi Arabia (2012) <sup>e</sup>	29,195,895	67.9	32.1
United Arab Emirates (2010) <sup>f</sup>	8,264,070	11.5	88.5
Total	48,141,120	51.9	48.1

(a) CIO, Census 2010; (b) PACI, Oct. 2013; (c) NCSI, *Bulletin of Population Statistics* n°3, 2013; (d) QSA, Census 2010; (e) CDSI, <http://www.cdsi.gov.sa/english/index.php>; (f) [www.uaestatistics.gov.ae](http://www.uaestatistics.gov.ae)

Source: Gulf Research Center Cambridge; *Determinants of Future Migration in the Gulf*; [http://www.grm.grc.net/workshop/94\\_WS10%20-%20Determinants%20of%20Future%20Migration%20in%20the%20Gulf.pdf](http://www.grm.grc.net/workshop/94_WS10%20-%20Determinants%20of%20Future%20Migration%20in%20the%20Gulf.pdf); accessed on 1 March 2015.

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# HOW CAN DATA COLLECTION HELP VICTIMS OF MODERN SLAVERY?

MICHAËLLE DE COCK

Is it justified to spend hundreds of thousands dollars in research projects when millions of victims are still suffering from forced labour at this very precise time and should be rescued as a matter of extreme urgency? My short presentation is meant to provide a brief overview on the ILO's activities related to research on Modern Slavery and demonstrate how and why such research programmes are core to any efficient policy and action designed to combat modern slavery.

And, considering trafficking, forced labour and all forms of modern slavery as signs of time, and the very special location of this conference, I would like to refer to 1961 Pope John XXIII's Encyclical Letter *Mater et Magistra*.

This encyclical affirms the process of See, Judge, Act as a way of reading and responding to the signs of time as follows:

There are three stages which should normally be followed in the reduction of social principles into practice. First, one reviews the concrete situation; secondly, one forms a judgement on it in the light of these same principles; thirdly, one decides what in the circumstances can and should be done to implement these principles. These are the three stages that are usually expressed in the three terms: observe, judge, act”.

What does that tell us for the fight against modern slavery? How does such a statement guide us in our urgent action to prevent children, women and men to become new victims of modern slavery and to be more efficient in detecting and rescuing current victims?

A first answer lies in the first stage as quoted above: *reviewing the concrete situation*. That means forgetting about our prejudices, ignoring the sensationalistic papers and discourses which, in many cases, aim at focusing the attention on the speaker more than on the victims, and being ready to observe with rigour and precision the situation as it is. Leaving the myths behind to face the reality. But this requires adequate observation tools. For many years, and not so long ago, millions of victims of trafficking for labour exploitation were left ignored mainly because most observers focused

their observation on victims of sexual exploitation. Just as a doctor uses different tools to observe the cells, the organs and the body as a whole, so should those people concerned with forced labour. Nevertheless, all forms of examination are useful and can bring a unique piece of information crucial to give a right diagnosis and from that prescribe the right and most efficient treatment. The needs for data and information are specific to the various actors. For example, at national level, political and social actors involved in the fight against modern slavery want to know with some degree of exactitude what are the various forms of slavery which take place in their country, and who are the victims. Estimating the national prevalence will inform the policy makers on the extent of the means necessary to combat the various forms, and the more precise the estimates are, the more adequate the means can be. The business community has different needs; a typical request for data issued by specific economic sectors involve the detection and observation of the goods which may involve use of forced labour at some stage of the production. Management, board or consumers want to know where such forms of exploitation take place and who the victims and the exploiters are. NGOs and project implementers will ask researchers to provide accurate baseline information to be sure that their actions targets the right population and answers to the real needs of the victims or potential victims of trafficking or forced labour.

The international community calls for accurate macro data. Typically, there is still a need for an agreed typology and relevant definitions of the various forms of trafficking and modern slavery, along with accurate estimates of each of these forms. The global estimate of forced labour published by the ILO in 2012 aimed at answering to this need of global data: by estimating the number of victims at 20,9 million people, the ILO gave with some degree of precision, the extent of the problem. The very simple typology used revealed that more than two-thirds of the victims are trapped in labour exploitation, 22% in sexual exploitation and 10% in various forms of state-imposed forced labour. By combining these figures with the economic figures published the same year on the profits made out of forced labour, it becomes clear which sectors and where in the world most profits are made by criminal operators who exploit the vulnerability of children, women and men.

This is where the importance of the second stage comes: *form a judgement on it (the concrete situation) in the light of these same principles*. The judgement is the result of what we call the analysis. Figures don't speak for themselves. We need to give sense to them. Even from the data produced

by large-scale national survey on forced labour, it is not obvious to derive useful and accurate conclusions. The ILO calls for the use of solid statistical tools which allow extrapolations, for econometric analysis which lead to some understanding of causality of slavery. For example, it is not always the poor women who are most at risk of being trafficked. In some contexts, educated young males also have a huge risk of being trafficked. Looking at statistical determinants provides a profile of very concrete and real human beings who need to be protected. The ILO has developed and shared survey guidelines, which include tools for rigorous sampling and questionnaire design, advice on survey implementation and guidance for analysis.

This judgement is critical to implement the final stage which consists in deciding what should be done to *implement these principles*. A first and direct follow-up action to research is awareness raising. Revealing the “concrete situation” to the policy makers, to the governmental and non-governmental social actors active in the fight against forced labour, to the recruiters and employers of the victims, to the general public is very important. It opens the doors on a hidden phenomenon, and therefore contributes to the protection of the vulnerable people. Using the results of the analysis of data can help designing targeted awareness raising campaigns, gaining *ipso facto* in efficiency. The same applies for policy changes: most of our research reports end with a chapter on recommendations which are based on the data collected, as well as feedback from all stakeholders. The ILO accompanies countries in their legal reform, if necessary, or policy changes when recommended. All this process is linked to what we call capacity building: from the first stages of the research design till the implementation of the actions, local actors are trained to better understand and combat modern slavery. Typical examples from many countries all over the world include training programmes for labour inspectorates, police and the judicial world. Some recent research targeted on the access to justice has revealed the difficulties victims face to access justice and have led to specific training programmes on that issue. The same applies for project design. The actions will target the most vulnerable people, for prevention, detection and rehabilitation. Last, but not least, survey results can be used at local, national or global level to raise funds to combat this outrageous form of exploitation. Donors need to know better and more accurately the problem they are asked to “solve”.

These are just a few examples of what is currently being done by the ILO and other actors to articulate research and action in the fight against trafficking and slavery. But we want to do more and better.

The ILO is working with other international actors on the improvement of survey methods, to create measurement standards so that results can be comparable and trends measured. Estimating prevalence at national level with reliable methods is a priority. In October 2013 we received the mandate from the International Conference of Labour Statisticians to “set up a working group with the aim of sharing best practices on forced labour surveys in order to encourage further such surveys in more countries”. We want to promote simple sets of key indicators of forced labour/trafficking that countries will be invited to measure on a regular basis to assess the progress made. It is also urgent to work together on the development of more efficient tools to assess the impact of our interventions. What works and what does not work to combat trafficking, and why? World resources are difficult to mobilize and the needs are huge: it is our duty to inform donors where and how money can be invested most efficiently to address the problem.

It is only by working together, sharing our difficulties and expertise, testing new ideas and new research protocols, that we can be sure to collect and analyse new data that will help all actors work better and more efficiently to put an end to Human Trafficking.

# THE PROGRAMME OF POPE FRANCIS ACCORDING TO THE GOSPEL: THE CHURCH AS INTRINSICALLY A SOCIAL MOVEMENT TO MAKE THE LAST FIRST

MARCELO SÁNCHEZ SORONDO

‘The church has experienced times of brilliance, like that of Thomas Aquinas. But the church has lived also times of decline in its ability to think. For example, we must not confuse the genius of Thomas Aquinas with the age of decadent Thomist commentaries. Unfortunately, I studied philosophy from textbooks that came from decadent or largely bankrupt Thomism. In thinking of the human being, therefore, the church should strive for genius and not for decadence’.  
(Interview with Pope Francis, *America Magazine*, 30 September 2013)

There are many documents that serve as reference points to understand Pope Francis’ new attitude and the programme of his pontificate. Like Mozart in music, he is creative and renews in different ways the substantive issues that he has in his mind and in his heart, not letting anyone else write or dictate them. He wants to make them his own and to respond to his important experience as a pastor. Of all his speeches I would like to analyse one in particular, perhaps the most spontaneous and significant, which he gave to the young people from Argentina that he met in Rio de Janeiro’s San Sebastián Cathedral. He began by saying: ‘Let me tell you what I hope will be the outcome of World Youth Day: I hope there will be noise. Here there will be noise, I’m quite sure. Here in Rio there will be plenty of noise, no doubt about that. But I want you to make yourselves heard in your dioceses, I want the noise to go out, I want the Church to go out onto the streets, I want us to resist everything worldly, everything static, everything comfortable, everything to do with clericalism, everything that might make us closed in on ourselves’.

He explained that young and old must fight together against an exclusive society dominated by ‘financial humanism’, which only seeks *profit* or its own advantage and so, consciously or not, is committing suicide by marginalizing its future, young people, and its wisdom, the elderly. The Pope’s exact words were: ‘Look, at this moment, I think our world civilization has gone beyond its limits, it has gone beyond its limits because it

has made money into such a god that we are now faced with a philosophy and a practice which exclude the two ends of life that are most full of promise for peoples. They exclude the elderly, obviously. You could easily think there is a kind of hidden euthanasia, that is, we don't take care of the elderly; but there is also a cultural euthanasia, because we don't allow them to speak, we don't allow them to act. And there is the exclusion of the young. The percentage of our young people without work, without employment, is very high and we have a generation with no experience of the dignity gained through work. This civilization, in other words, has led us to exclude the two peaks that make up our future'.<sup>1</sup> Therefore, we must act and work to change this status quo.

But what is the starting point to reverse this suicidal trend, especially in the West? It is faith in Jesus Christ. In Kierkegaardian tones, Francis said: 'Faith in Jesus Christ is not a joke, it is something very serious. It is a scandal that God came to be one of us. It is a scandal that he died on a cross. It is a scandal: the scandal of the Cross. The Cross continues to provoke scandal. But it is the one sure path, the path of the Cross, the path of Jesus, the path of the Incarnation of Jesus. Please do not water down your faith in Jesus Christ. We dilute fruit drinks – orange, apple, or banana juice – but please do not drink a diluted form of faith. Faith is whole and entire, not something that you water down. It is faith in Jesus. It is faith in the Son of God made man, who loved me and who died for me. So then: make yourselves heard; take care of the two ends of the population: the elderly and the young; do not allow yourselves to be excluded and do not allow the elderly to be excluded'.

A son of St Ignatius, founder of the Spiritual Exercises, Pope Francis argues that the solution does not lie as much in discussing the essence of Christianity, because it is relatively easy to understand the threshold of mystery, but above all it lies in practicing faith and charity, which is more difficult. In this he is existential like Kierkegaard, who said that Christianity has no essence but is a practice to perform on 'existence': we have to

<sup>1</sup> Apostolic Journey to Rio de Janeiro on the Occasion of the XXVIII World Youth Day, Meeting with Young People from Argentina, *Address of Holy Father Francis*, Thursday, 25 July 2013, San Sebastián Cathedral, [http://www.vatican.va/holy\\_father/francesco/speeches/2013/july/documents/papa-francesco\\_20130725\\_gmg-argenti-ri-en.html](http://www.vatican.va/holy_father/francesco/speeches/2013/july/documents/papa-francesco_20130725_gmg-argenti-ri-en.html) Pope Francis then repeated these concepts in his conversation with the founder of the Italian newspaper La Repubblica, published on 1 October 2013: [http://www.repubblica.it/cultura/2013/10/01/news/pope\\_s\\_conversation\\_with\\_scafari-english-67643118/](http://www.repubblica.it/cultura/2013/10/01/news/pope_s_conversation_with_scafari-english-67643118/)



become Christ's contemporaries by actively participating in his grace and in the love of his Spirit. 'Lord Jesus Christ,' – Kierkegaard writes in *Practice in Christianity* VI – 'you did not come to the world to be served, and thus not to be admired either, or in that sense worshiped. You yourself were the Way and the Life – and you have asked only for imitators [*Efterfølgere*]. If we have dozed off into this infatuation, wake us up, rescue us from this error of wanting to admire or adoringly admire you instead of wanting to follow you and be like [*ligne*] you'.<sup>2</sup>

Now, in the light of this, what does Pope Francis intend as the programme of his pontificate? He points to the Beatitudes and Matthew 25. When a young man in Rio asked him: 'What should we do, Father?', Francis replied: 'Look, read the Beatitudes: that will do you good. If you want to know what you actually have to do, read Matthew Chapter 25, which is the protocol by which we will be judged. With these two things you have the action plan: the Beatitudes and Matthew 25. You do not need to read anything else' (San Sebastián Cathedral, Rio de Janeiro, Thursday 25 July 2013).

Why are the Beatitudes the programme of this pontificate? Because they were the basis of Jesus Christ's own programme, expressed in the famous Sermon on the Mount. In this Pope Francis coincides with St Thomas Aquinas who states that they contain all the perfection of our lives (*tota perfectio vitae nostrae continetur*), according to the *Reportatio* of Petri de Andria.<sup>3</sup> Through them the Lord explains to us his plan, his promise and the reward he will give us, to fulfil our happiness, which is what we naturally aspire to with all our being and actions. In short, the Beatitudes explain and indicate the path and the ultimate prize, that is God's reward, which is what true happiness is. We all aspire to this happiness but only those who follow and pursue the Beatitudes with perseverance in the practical exercise of their lives deserve it. Therefore, Thomas says that whereas Moses made the commandments his foundation, Jesus Christ promulgated

<sup>2</sup> Søren Kierkegaard, *Practice in Christianity* (Howard V. Hong and Edna H. Hong eds.) in *Kierkegaard's Writings*, XX, xii, 213, p. 233, Princeton University Press, 1991.

<sup>3</sup> St Thomas Aquinas, *Super Matthaicum*, chap. 5, lect 2. St Thomas also quotes St Augustine: "Whoever will take the trouble to examine with a pious and sober spirit, will find in this sermon a perfect code of the Christian life as far as relates to the conduct of daily life. Accordingly the Lord concludes it with the words, 'Every man who heareth these words of mine and doeth them, I will liken him to a wise man'" (St Augustine, in *St Thomas Aquinas, Catena Aurea (Golden Chain)*: <http://dhsprory.org/thomas/CA-Matthew.htm#5>).

the Beatitudes above everything else, as the synthesis, reduction and project of Christian life.<sup>4</sup>

As St Thomas says in his commentary on Matthew 5, following the famous question of Aristotle's *Ethics*, in general, we all aspire to happiness, but human beings differ when judging what it is. Some will think of it as something, others as something else. Today's mentality, according to the Pope, places happiness in external and material things; worse still: in artificial realities such as money and finance, which is virtual money, the famous 'derivatives', or titles derived from other financial entities, which are a gamble between the present and the future, meaning that they increasingly represent a value that is less real and more random. The medium turns into the purpose, the future turns into the present, reality turns into possibility. Incidentally, in this view our Pope is not only inspired by St Francis of Assisi, but also very much by St Ignatius, who had already sensed the existence of modern capitalism's somewhat evil soul. Let us recall the central meditation of the Spiritual Exercises on the Two Flags: you either choose to be at the service of Christ or on the side and under the rule of *Mammona iniquitatis*. Moreover, St Ignatius also teaches us that Lucifer instructs the demons first to tempt with a longing for riches, so that men may more easily come to vain honour of the world, and then to all the other vices (SE 139–142).

Many others want money not only for themselves but also to satisfy their own whims. I do not know whether in general you too have noticed that it is characteristic of billionaires to be capricious. It is already underscored in Ecclesiastes: 'I recognized that there is nothing better than to be glad and to do well during life' (Eccl. 3: 12). These two false views of human happiness, one based on money and the other on following one's own whims, lead to corruption, which, according to Pope Francis, is the daughter of Satan. Moreover, corruption is the Antichrist itself, because it produces structures of sin that corrupt the world with never before seen forms of criminality. This is the 'globalization of indifference' towards the human person and the common good that the Pope denounced in his homage to the brutal deaths in the sea of Lampedusa: 'The culture of comfort, which makes us think only of ourselves, makes us insensitive to the cries of other people, makes us live in soap bubbles which, however lovely, are insubstantial; they offer a fleeting and empty illusion which results in indifference to others;

<sup>4</sup> *Loc. cit.*

indeed, it even leads to the globalization of indifference. In this globalized world, we have fallen into globalized indifference. We have become used to the suffering of others: it doesn't affect me; it doesn't concern me; it's none of my business!' (*Homily*, Arena sports camp, Monday 8 July 2013).

A few others, a little more worthy on this scale of errors, believe that happiness today consists in having an active life according to a golden mediocrity and worldly bourgeois comfort. Yet others believe in sterile theoretical discussions that the Pope qualifies as 'spiritual worldliness'. All these opinions are false and harmful. Pope Francis, like Jesus Christ in the Sermon on the Mount, fights and condemns them with determination, passion and courage.

Currently, the more widespread false opinion is disrupted or, rather, transformed and turned inside out like a glove by the Beatitude that Pope Francis considers central, as is the advice of Jesus Christ himself on poverty: 'Blessed are the poor in spirit, for theirs is the kingdom of heaven' (*Mt* 5: 3). St Luke, the friend of the marginalized in the Roman Empire, is more trenchant: 'Blessed are you who are poor, for the kingdom of God is yours' (*Lk* 6: 20). To those who think the kingdom of heaven can be reached by way of riches, by which the highest honours of this world are also obtained, the Lord does in fact promise the Kingdom which comprises wealth and dignity, but via the opposite way, through poverty and service. It is not about dominating but about serving. We see that, thanks to wealth, man acquires the power to commit any sin and to satisfy the desire for every sin: because money can help you obtain any temporal good, as already noted in *Eccle.* 10: 19, 'money answers for everything', and by the great Spanish poet Quevedo, 'Over kings and priests and scholars Rules the mighty Lord of Dollars. Mother, unto gold I yield me, He and I are ardent lovers; Pure affection now discovers How his sunny rays shall shield me!'<sup>5</sup>

The Pope is rightly concerned about the growing phenomenon of crime, primarily financial crime, but even more of its deleterious consequences, such as the horrific crime of human trafficking that is spreading with the 'globalization of indifference', as he terms it in *Evangelii Gaudium*.

<sup>5</sup> Francisco de Quevedo y Villegas, *Poderoso Caballero es Don Dinero*, satirical poem, 1632. For St Thomas Aquinas, the "immoderate desire for having anything whatever" is termed covetousness (*S. Th.*, II-II, 118, 2), which he also defines as "an immoderate desire for money" (*In I Tim.*, 6, 10, Turin 1953, p. 259, n° 251). This leads to profit making as an end in itself, which is the immoderate greed for gain "which knows no limit and tends to infinity (*quae terminum nescit sed in infinitum tendit*)" (*S. Th.*, II-II, 77, 4).

Some 2 million boys and girls disappear every year to meet the needs of the growing global sex market of the wealthy, which is euphemistically called sex tourism. Since the International Palermo Protocol against human trafficking was instituted in 2003, this crime has produced over twenty million missing persons, and this figure is only the tip of the iceberg.<sup>6</sup> In this sense, it is clear that a longing for riches is the root of all sin, as St Paul says, followed by St Ignatius and St Francis. Pope Francis sees this link very clearly: ‘The suffering of the innocent and peaceful never ceases to hit us; contempt for the rights of the most fragile persons and peoples are not that foreign to us; the dominance of money with its demonic effects such as drugs, corruption, the trafficking of persons, including children, together with material and moral misery are the common currency’ (*Homily of Archbishop Bergoglio*, Chrism Mass, Holy Thursday, 13 March 2013). At the first workshop on human trafficking we organised at the Pontifical Academy of Social Sciences, a psychologist explained how a minority of wealthy people has produced the psychological pathology of the global sexual market. As St Thomas said, there is a deep connection between capital sins, so that one calls and leads to another.

Therefore, ‘Blessed are the poor’. Don’t you agree that this is first and foremost an intrinsically social and sociological statement? Of course this sentence also deserves a theological explanation. Who are the poor really? As Thomas said, firstly, they are ‘the humble who regard themselves as poor; for they are truly humble who regard themselves as poor not only in external, but also in internal things’.<sup>7</sup> Jesus is the master of this attitude: ‘learn from me, for I am meek and humble of heart’ and ‘you will find rest for your selves’ (*Mt* 11: 29). And also: ‘Have among yourselves the same attitude that is also yours in Christ Jesus, who, though he was in the form of God, did not regard equality with God something to be grasped. Rather, he emptied himself, taking the form of a slave’ (*Phil* 2: 6). The kingdom of heaven can only be reached through poverty and humility. But what does ‘poor in spirit’ mean? It is not the poor by necessity or tragic circumstances

<sup>6</sup> According to the recent *UNODC 2012 Report on Trafficking*, the International Labour Organization estimates that since 2003 “20.9 million people are victims of forced labour globally. This estimate also includes victims of human trafficking for labour and sexual exploitation” [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), p. 1.

<sup>7</sup> Thomas Aquinas, *Super Evangelium S. Matthaei lectura (Commentary on Saint Matthew’s Gospel)*, Chap. 1-12, transl. by R.F. Larcher, O.P., <http://dhspriority.org/thomas/SSMatthew.htm>

of life. As Paul Ricœur said, we stand with the poor if we fight this poverty, which more often exposes human injustice. We are not with those politicians who love the poor so much that they multiply them!

In other words, the poverty that oppresses an important part of contemporary humanity must be fought vigorously. Here we should open a serious chapter about the aim of the economy and the failure of the many economic theories and ideologies that do not put the human person, justice and the common good at their centre, as the Pope states in *Evangelii Gaudium*. Social doctrine condemns both the Marxism of the means of production in the hands the state and the neoliberalism of the market without rules. Injustice is evident today in many countries, especially those without Christian and Catholic roots, but if one considers the world as a whole, in a global sense, international injustice is clearly visible with the richest countries taking advantage of the poorest with the arrogance of ‘either you accept this or nothing’. One of the clearest symptoms is the growing tragedy of world hunger already denounced by Pope Paul VI to the United Nations on October 4, 1965 with his famous order ‘to devote to the benefit of the developing countries at least a part of the savings which could be realized through the reduction of armaments’ (Address to the United Nations General Assembly). There have since been many broken promises in this tragedy, which are also severe injustices offending human consciousness, and not only hunger and broken promises, but also injustice for lack of international redistribution, for instance arbitrariness in the management of sovereign debt. For those living in countries with emerging or developing markets who feel unfairly treated by developed countries, this continuing arbitrariness, which is a grave injustice, is another reason to be dissatisfied with a brand of globalization engineered to serve the interests of the rich countries (and in particular of their financial sectors). Today it seems that even the left despises the poor, as French journalist Jack Dion writes in his new essay, *Le mépris du peuple*.

The poor by necessity or circumstances are not always happy. Those who are happy have made poverty a deliberate spiritual choice. St Paul said that ‘the grace of God has appeared’ and trains us ‘to live temperately, justly, and devoutly in this age’ (*Ti* 2: 12): temperately i.e. being reasonable in using the goods of the world and in our own actions and passions; justly, that is, behaving decently toward our neighbours, considering the other as myself, a person as I am person, therefore an end and never merely a means for me; devoutly, namely behaving in the awareness of the existence

of God and of His presence in me, and his infinite Providence towards me and my brothers.

Of those who poor and temperate by choice, some have wealth but do not put it at the centre of their hearts, because they are magnanimous and detached: 'If riches increase, set not your heart on them' (*Ps* 62:10). This is difficult, as the Lord himself says in the Gospel of Mark: 'How hard it is for those who have wealth to enter the kingdom of God!' The disciples were amazed at his words. So Jesus again said to them in reply, "Children, how hard it is to enter the kingdom of God! It is easier for a camel to pass through the eye of a needle than for one who is rich to enter the kingdom of God" (*Mk* 10: 23–25).

Others do not have much wealth, nor does it affect their hearts. Their situation is safer, because the mind is easily separated from the spiritual realities by wealth's mundane weight and the demands of its administration. Therefore, the latter are said to be poor in spirit, because they are, by virtue of the grace of Christ and the gifts of his Spirit, poor with a poverty that is above the human way of acting, that is beyond the natural way: these are the men and women who are truly happy whom the Lord refers to when he says: 'Blessed are the poor'. Actually, for men and women to be able to discard all worldly goods to the point of not appreciating them at all, they have to live in a heroic and superhuman way,<sup>8</sup> that is, as true disciples of Jesus Christ, poor and magnanimous at the same time.<sup>9</sup> This poverty distinguishes the new law from the old one and even from other religions that are very present today and are often aggressive. The first thing Moses does is promise riches: 'The Lord your God will set you high above all the nations of the earth' (*Dt* 28:1), and in v. 3: 'Blessed shall you be in the city and blessed in the field'. Therefore, to distinguish the old law from the new, Christ first places happiness in the contempt for temporal things '*contemptu*

<sup>8</sup> St Thomas Aquinas convincingly explains that the disordered desire for the goods of this world derives from the deprived human condition: "avarice is said to be incurable because of the condition of the subject, since human life is continuously exposed to privation. Any form of shortage provokes avarice. Because the reason to seek temporal goods is to subsidize the indigence of present life" (*De Malo*, 13, 2 ad 8).

<sup>9</sup> "Hence by altogether contemning all riches (*omnes divitias contempsit*), Christ showed the highest kind of liberality and magnificence; although He also performed the act of liberality, as far as it became Him, by causing to be distributed to the poor what was given to Himself. Hence, when our Lord said to Judas (*John* 13:27), 'That which thou dost do quickly', the disciples understood our Lord to have ordered him to give something to the poor (v. 29)" (St Thomas Aquinas, *S. Th.*, III, 7, 2, ad 3).

*divitiarum temporalium*’, i.e. in the Franciscan ‘*marriage with Lady Poverty*’, which Pope Francis follows, as is also evident in the name he chose for himself. The blessed all have this poverty that comes from the excellence of their charity.

The opinion of those who put happiness in the selfish satisfaction of their own appetite or whim is censored by the following beatitude: ‘Blessed are the merciful, for they will be shown mercy’. We should be aware that our appetite is threefold. There is the irascible call that seeks revenge against one’s enemies, and this is rejected by the Lord with the beatitude that teaches: ‘Blessed are the meek (*beati mites*), for they will inherit the land’ (*Mt* 5: 4). Then, the concupiscent appetite, forever seeking pleasure. The Lord condemns it and turns it around completely when he says: ‘Blessed are they who mourn (*beati qui lugent*), for they shall be comforted’ (*Mt* 5: 5). Here the appetite is dual in its goal of infinite pleasure: firstly, it wants no higher law to coerce it in the search for corruption, and secondly, it wants the other to be a subordinate or subject of his. It is just the opposite of the other as myself or myself as other, which Aristotle already spoke about and which is re-proposed today by contemporary ethics (P. Ricœur, J. Marias): there is a desire to dominate and not to serve or ‘minister’. Benedict XVI, during the Mass for the episcopal ordination of the new Secretary of State, Pietro Parolin, before the latter left for Venezuela as nuncio, had already said: ‘Priesthood is not dominion, but service’, adding that ‘in civil society and often also in the Church things suffer because many people on whom responsibility has been conferred work for themselves rather than for the community’.<sup>10</sup>

The Lord crushes both unrighteous attitudes. That of not being subordinated to any law, spreading corruption, with the beatitude: ‘Blessed are they who hunger and thirst for righteousness, for they will be satisfied’ (*ibid.*, 6). The justice of giving to each his due is the social virtue par excellence and will never be perfect in this life, hence the need to be permanently hungry and thirsty. In this sense, Steve Jobs’ famous words, ‘Stay hungry, stay foolish’,<sup>11</sup> which resonated so strongly especially with young people all over the world, were certainly inspired by Jesus Christ.

<sup>10</sup> Mass For The Episcopal Ordination of Five New Bishops, Homily of His Holiness Benedict XVI, Vatican Basilica, Saturday, 12 September 2009, [http://www.vatican.va/holy\\_father/benedict\\_xvi/homilies/2009/documents/hf\\_ben-xvi\\_hom\\_20090912\\_ord-episcopale\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/homilies/2009/documents/hf_ben-xvi_hom_20090912_ord-episcopale_en.html)

<sup>11</sup> Stanford Commencement Speech, 2005. <http://news.stanford.edu/news/2005/june15/jobs-061505.html>

The remedy against the desire to dominate is the beatitude: 'Blessed are the merciful, for they will be shown mercy' (*ibid.*, 7). Therefore both those who put happiness in external things, especially in money, and those who put it in fulfilling their appetite for worldly pleasure, which causes sickness or corruption, are wrong. Justice and mercy are required together forever because justice without mercy is cruelty and mercy without justice is the mother of all moral dissolutions. As Pope Francis says, mercy is having a heart full of compassion for the suffering of others, particularly those who have been excluded from the banquet of life, be it material or spiritual goods. We have mercy on the suffering of others when we feel it as our own, when we are inclined to help and make a gesture of compassion. In fact, when something makes us suffer, we usually try to find ways to overcome this situation. We are truly compassionate when we try to comfort the suffering of others, our neighbours, just as we comfort ourselves. The suffering of others is double. Firstly, it means not possessing the goods necessary for life, health, education, work, social security, equal opportunities. And here we should have a merciful heart as dictated by St John: 'If someone who has worldly means sees a brother in need and refuses him compassion, how can the love of God remain in him?' (1 *Jn* 3: 17). The second type of poverty is worse, because the human being who sins becomes wretched as an individual or as a member of society. Just as happiness is becoming virtuous and saving others, the most harmful misery is becoming depraved or corrupt and corrupting others. Hence, when we admonish the corrupt in a proper way, in order for them to make amends, we work God's mercy: 'At the sight of the crowds, his heart was moved with pity for them' (*Mt* 9: 36).

'Blessed are the clean of heart, for they will see God' (*Mt* 5: 8). This beatitude is one of most necessary in our days full of temptations, especially carnal ones. The heart is God's temple and we need it to be pure, especially as far as purity of the flesh is concerned: nothing prevents elevation to God as impurity. In contemporary culture, which has both a Marxist and a liberal origin, the sexual revolution ended up having a dark side that became sexual slavery. Although I'm aware that it's 'politically incorrect' to say so, maybe women have a special mission here more than in any other field. The Blessed John Paul II was prophetic in his address about the dignity and vocation of women, *Mulieris Dignitatem*.<sup>12</sup> The saints who are full of

<sup>12</sup> Apostolic Letter *Mulieris Dignitatem*, of the Supreme Pontiff John Paul II on the Dignity and Vocation of Women on the Occasion of the Marian Year [Human Trafficking: Issues Beyond Criminalization | 143](http://www.vat-</a></p>
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justice, charity and its effect which is likeness to God, know the human heart better than anyone else and come into direct contact with God, see God, and experience him.

‘Blessed are the peacemakers, for they will be called children of God’ (Mt 5: 9). This is the seventh beatitude according to Matthew. In brief, spiritual life disposes towards two things: a vision of God, and love. Just as purity of heart disposes towards the vision of God, so peace disposes towards the love of God and of our neighbour, for thereby we are called and we are the true children of God and participate in the filiation of his natural Son, Jesus Christ. Thus, through peace we are open to loving our neighbours as ourselves. It is important to note that the prize for being ‘children of God’ is given to peacemakers and those who ‘are persecuted for the sake of righteousness’ for ‘theirs is the kingdom of heaven’, which is the same thing. Actually, all the previous beatitudes are reduced to these two, and they produce the effect of all the others, which are like their preambles. Who is it that acts with poverty of spirit, grief, meekness, if not those whose hearts are pure? Who is it that acts with justice and mercy if not the peace seekers? Only the saints with their pure hearts can grant God’s peace. The world cannot give such real peace. Therefore, for Thomas Aquinas there are three reasons why the peaceful and peacemakers are called children of God. The first is ‘because they have the office of the Son of God’ who came into the world to gather the dispersed. The second is ‘because through peace with charity one reaches the eternal kingdom’ to which all the children of God are called, and it is already a real foretaste of it. Finally, the third is because through charity and grace the human being ‘becomes like unto God; for where peace is, there is no resistance’, as it would be the opposite of peace. As Pope Francis says, resisting the divine sun, hiding from its light and love, shutting off the horizon of transcendence, is the opposite of peace. In general, modern man has no peace because he has shut off the horizon of eternity.

It is remarkable to see how these beatitudes belong to one another and surpass one another: the more one is merciful, the more one is just and vice versa; the more one is a peacemaker, the more one is a child of God and vice versa. There is a gradual circularity among them: one leads to another, and they mutually perfect themselves.

[ican.va/holy\\_father/john\\_paul\\_ii/apost\\_letters/documents/hf\\_jp-ii\\_apl\\_15081988\\_mulieris-dignitatem\\_en.html](http://ican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_15081988_mulieris-dignitatem_en.html)

The Lord then proposes the eighth beatitude, which signifies the perfection of all the previous ones. The human being is perfect when he does not give up trying to practice the Beatitudes even in the event of persecution: 'As the test of what the potter molds is in the furnace, so in his conversation is the test of a man' (*Si* 27: 5). The beatitude says: 'Blessed are they who are persecuted for the sake of righteousness, for theirs is the kingdom of heaven'. But one may wonder whether this contradicts the message 'Blessed are the peaceful', because persecution clearly perturbs the state of peace or precludes it entirely. We answer that persecution is the cause of the removal of external peace, but not of the internal peace possessed by the peaceful. In this case, persecution itself is not the essence of happiness, but an external occasion allowing it. What makes us happy in Jesus Christ is the practical exercise of justice. This beatitude is matched by what St Peter writes: 'But even if you should suffer because of righteousness, blessed are you' (1 *Pt* 3: 14). It is worth noting that he does not explain whether it is because of atheists, lay people or non-believers, nor does he mention the reason for faith like the classic martyrs did, but he only indicates as a reason for persecution the practice of justice, which is the social virtue par excellence.

The final Beatitude, the ninth, says, 'Blessed are ye when they shall revile you, and persecute you, and speak all that is evil against you, untruly, for my sake', which strengthens the meaning of the previous one. These two last Beatitudes summarise, of course, the programme of Pope Francis. In this he is revolutionary compared to the Popes of the last few centuries, but not compared to the previous Popes: one for all is Gregory the Great, who lived in the Benedictine Monastery on the Caelian hill (one of Rome's seven hills) where he used to invite the poor to eat at his table every day, while his sister, belonging to one of Rome's most noble families, served them.

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And this leads us to Matthew 25: 31 ff, which is good to remember and write down, because it is the action plan that the Lord will judge us by, in the light of the Beatitudes: 'When the Son of Man comes in his glory, and all the angels with him, he will sit upon his glorious throne, and all the nations will be assembled before him. And he will separate them one from another, as a shepherd separates the sheep from the goats. He will place the sheep on his right and the goats on his left. Then the king will say to those on his right, "Come, you who are blessed by my Father. Inherit the kingdom prepared for you from the foundation of the world. For I was hungry

and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me”. The righteous will answer him: “Lord, when did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and welcome you, or naked and clothe you? When did we see you ill or in prison, and visit you?”. And the King will reply: “whatever you did for one of these least brothers of mine, you did for me”. Then he will tell the people on his left: “Depart from me, you accursed, into the eternal fire prepared for the devil and his angels. For I was hungry and you gave me no food, I was thirsty and you gave me no drink, a stranger and you gave me no welcome, naked and you gave me no clothing, ill and in prison, and you did not care for me”. They, in turn, will ask him: “Lord, when did we see you hungry or thirsty or a stranger or naked or ill or in prison, and not minister to your needs?” And he will answer: “I say to you, what you did not do for one of these least ones, you did not do for me’. And these will go off to eternal punishment, but the righteous to eternal life’. We know that Pope Francis rightly insists in warning us that this is the action plan that we shall be judged by. I will be brief for reasons of time.

First of all, the King, Jesus Christ, who is well represented in Michelangelo’s *Last Judgment* in the Sistine Chapel, says ‘blessed by my Father’, because God is the source and mother from whom we receive all the graces and gifts that we have, be they natural or free. There are two causes of our happiness or beatitude: one, on behalf of God the Father, which is his blessing; the other, on our behalf, which is merit based on our freedom to accept God’s blessing. We should not be sluggish, but cooperate with God’s gift, ‘by the grace of God I am what I am, and his grace to me has not been ineffective’ (1 Cor 15: 10). Every Christian, therefore, is well aware that he should do everything in his power, but that the final result depends on God and his blessing: this conviction must support him in the daily practice of the Beatitudes, especially in difficult situations and in the persecution which derives from performing them. In this regard, St Ignatius of Loyola teaches us in modernity the best rule to act by placing everything in God as first cause, and everything in human freedom, sustained by grace, as secondary cause: ‘Pray as if everything depended on God and work as if everything depended on you’.<sup>13</sup>

<sup>13</sup> Cf. Pedro de Ribadeneira, *Vida de San Ignacio de Loyola*.

One may wonder why, there being so many possible meritorious actions, the Lord proposes here acts of mercy towards our neighbours as the action plan and criterion for salvation. Some have interpreted this by suggesting that just by performing acts of mercy, one is saved, even if he commits many sins, which is a bit like saying: ‘be a sinner and strong in your sins, but be stronger in your faith and rejoice in Christ’ (*Esto peccator et pecca fortiter, sed fortius fide et gaude in Christo*). However, thanks to Paul, we know that this is not true: ‘all who practice such things deserve death’ (*Rm 1: 32*), and in Galatians, after listing carnal sins, he says ‘those who do such things will not inherit the kingdom of God’ (5: 21). Thus this interpretation is illusory. Of course, it may be that if one abstains from sin and does penance, one is released from sin and is saved through almsgiving. For almsgiving should start from ourselves and from the bottom of our hearts. Pope Francis always insists on the advice he used to give as a confessor: when you give alms look fondly in the face of the person you are helping. And what if you are an atheist, as in the case of Eugenio Scalfari, the founder of the successful Italian newspaper *La Repubblica*? We know that Pope Francis, inspired by St Thomas, replied to him with a letter telling him to follow his conscience, the first postulate of which is: do good and avoid evil.

But why does Jesus Christ refer to these acts more than others? According to St Gregory, it is because these, which he interpreted as minimal, presume the others: if one does not do the primary things required by natural love, one almost certainly will not do the greater ones. St Augustine claims that we all sin in this world, but not all of us condemn ourselves. He who does penance and performs acts of mercy, is saved. As we shall see, Pope Francis intends acts of mercy to include all good acts. So, when we fulfil a beatitude we perform our duty of charity towards our neighbour. Therefore, when we do good to others, first and foremost we benefit ourselves. And let us not just consider bodily alms but spiritual ones too. Everything that human beings do for their neighbours, results in good for themselves, and everything one needs to do is contained in the acts of mercy.

So why do the righteous reply with wonder: ‘Lord, when did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and welcome you, or naked and clothe you? When did we see you ill or in prison, and visit you?’ First of all, they admire the Lord’s judgement out of sincere humility, but not just for this reason.

The Lord’s reply underscores the new evangelical focus that revolutionises the previous categories: ‘I say to you, whatever you did for one of these least brothers of mine, you did for me’. Why? First of all, because we are

all brothers: we are a body whose head is Jesus Christ and we are the limbs either in act or in potency.

But are all human beings children of God? Yes, they all are, the good and the evil, at the very least because they participate in the common human nature that makes us brothers, but also through participation in the grace of Christ, that makes us ‘fellow citizens with the holy ones and members of the household of God’ (*Eph* 2: 19). But are we called to do good to everyone? Yes, to everyone, because Christ is ‘the firstborn among many brothers’. And we owe them all mercy and service. The Apostle says, ‘while we have the opportunity, let us do good to all’ (*Gal* 6: 10). Basically, we are all called to participate in the grace of Jesus Christ, either actually or potentially.

Why does he specify these least brothers? Because they are the neediest members, underprivileged and deprived of the body of Christ. They are the open sores of his flesh. By acting mercifully towards ‘these least brothers’ of ours, we do so towards Jesus Christ who suffers until the end of time in them. As Pope Francis said during the recent canonization of Mexican St. Guadalupe García Zavala, ‘this is called ‘touching the flesh of Christ’. The poor, the abandoned, the sick and the marginalized are the flesh of Christ. And Mother Lupita touched the flesh of Christ and taught us this behaviour: not to feel ashamed, not to fear, not to find ‘touching Christ’s flesh’ repugnant. Mother Lupita had realized what ‘touching Christ’s flesh’ actually means’.<sup>14</sup> This is the novelty of Francis, who always lived as a Christian when he was a priest and a bishop, and wants to continue along this same path now that he is the Pope.

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One can extract two corollaries from these two texts, Matthew 5 (the Beatitudes) and Matthew 25 (the protocol of the Judgement). First of all one could say that from a philosophical point of view Pope Francis, as regards the great subject of evangelisation, being able to start from truth or human good – which is justice – prefers to follow the Beatitudes which speak about the poor, the afflicted, the righteous and the peacemakers. In other words, if we reduce the subject of the beginning to transcendentals

<sup>14</sup> *Homily of Pope Francis*, 12 May 2013, [http://www.vatican.va/holy\\_father/francesco/homilies/2013/documents/papa-francesco\\_20130512\\_omelia-canonizzazioni\\_en.html](http://www.vatican.va/holy_father/francesco/homilies/2013/documents/papa-francesco_20130512_omelia-canonizzazioni_en.html)

and their mutual membership and conversion, ‘*quodlibet ens est unum, verum, bonum*’ (Kant, *Critique of Pure Reason*, § 12), without neglecting the transcendental of truth which is very much emphasised in Pope St. John Paul II and in Pope Benedict XVI, perhaps Pope Francis begins with that of good which today is that of justice and the Beatitudes, like Christ in the Sermon on the Mount. We can say with St. Thomas ‘the object of the intellect is the first and the most important in the genus of formal causes: indeed, its object is being and truth. But the object of the will is the first and the most important in the genus of final causes: indeed its object is good, within which are included all ends’ (*De Malo*, q. 6, a. un., cor.). We can conclude that attraction to good, to happiness and to perfection has priority as regards all the attitudes of the conscience. Therefore to begin with human good, which is justice, not only seems suited to human anthropology but also demonstrates how intense is the social destination of the Gospel.

The second corollary is that in essential terms the Beatitudes and the last are more concrete existentially than the golden rule. This last, both in its positive and in its negative meaning, quoted in the Gospel, ‘do not do to others’, or ‘do to others’, is always maintained in the abstract view of the other or of oneself as another (Ricoeur). The Beatitudes, on the other hand, which speak about the other in his existential situation of suffering – the poor, the weeping, the suffering, the pure in heart, the merciful, he who looks for justice and suffers for justice – in definitive terms, the last, demonstrate a human and social concretion of suffering that is not present in the golden rule. Today, therefore, we are called, following Pope Francis, to see how these recommendations of the Lord can be thought about and structured in the social order. Blessed are those who know how to think of and organise a global society where the last are the first! Thank you.



## ► THE ROLE OF THE INTERNATIONAL ORGANIZATIONS





# THE ILO: SUCCESSES, DIFFICULTIES AND PROBLEMS IN REDUCING FORCED LABOUR IN DIFFERENT PARTS OF THE WORLD

BEATE ANDREES<sup>1</sup>

## Introduction

The purpose of this paper is to assess the contribution of international labour standards and ILO's cooperation with member States in different parts of the world to achieve justice for victims of modern slavery. It is the contention of this paper that criminal justice needs to be embedded within a broader system of "social justice". While criminalization is strategically important to define the boundaries of socially acceptable behaviour and to hold those to account who violate social norms, in itself it will not transform deeply rooted practices of exploitation and abuse. The vast majority of the estimated 21 million victims of forced labour in the world today are not "slaves" of brutal warlords or mafia-type criminal networks. They are subjected to coercion in the informal economy and in mainstream economic sectors, tied to their work places by subtle means of coercion and control. In other words, their exploitation is not the result of some marginal deviant criminal behaviour; rather it is part and parcel of contemporary labour relations in certain parts of the economy. The fundamental injustice they suffer is to be deprived of a fair share of what economists call the "marginal product of their labour". They are subjected to varying degrees of coercion by those who have control over their lives and incomes: feudal landlords, tribal chiefs, unscrupulous labour brokers, corrupt state officials or suppliers within global value chains.

Those who benefit from this exploitation have vested economic and political interests in maintaining the status quo and thereby keeping entire families and communities in abject poverty. According to ILO's most recent estimates, forced labour generates US\$ 150 billion illicit profits every year. The highest gains can be made in the sex industry (US\$ 99 billion); however the majority of people in modern slavery are exploited in sectors where working conditions are often poor, such as agriculture, fisheries,

<sup>1</sup> Head, ILO Special Action Programme to Combat Forced Labour (andrees@ilo.org).

construction, domestic work, and manufacturing, especially in low-tier supply chains. In countries, where forced labour is systematically imposed by state authorities, the situation is even more challenging, and criminal law may only be of limited value as long as repressive regimes are in power. Forced labour orchestrated by the state, such as through prison labour or the military, accounts for about ten per cent (or 2.4 million) of the total number of estimated victims.

The focus of this paper is on those underlying economic and political root causes of exploitation, which deprive millions of men, women and children of a life in freedom and dignity. Many of those systemic forms of exploitation are deeply embedded in practices of discrimination and social exclusion. The impact of international labour standards on transforming those deeply entrenched practices can offer important insights to the topic of this Academy which looks at issues “beyond criminalization”.

The paper is structured as follows: The first part traces the evolution of ILO standards against forced labour in parallel to the development of international standards against slavery and human trafficking. It will also discuss the ILO’s Forced Labour Conventions, the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) and its specific provisions on prevention and remedies.

The second part of the paper will review the impact of ILO’s supervisory mechanism and its interaction with country-level interventions or what the ILO calls “technical cooperation programmes”. While the ILO’s unique system of supervision and its operational capacity have achieved significant progress much remains to be done to effectively eradicate all contemporary forms of forced labour. The concluding chapter will discuss some recommendations on the way forward.

## **1. The evolution of ILO standards related to slavery**

The historical evolution of norms against slavery was part of a broader social movement which acted as a catalyst to the development of international labour law.<sup>2</sup> Humanitarian thinkers and enlightened politicians considered the abolition of slavery only as a first step towards the full liberation of working women, men and children from the chains that tie them to inhuman and degrading work places. Such “liberation” was not only regarded as a humanitarian issue; economists argued that it would also lay

<sup>2</sup> See Rodgers, Gerry, *et al.* *The International Labour Organization and the quest for social justice, 1919-2009*. Geneva (2009)

the foundation for more prosperous trade relations. The first attempts of creating an international system of labour standards were made in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Although not tripartite in form, there was recognition that representation of those directly involved – and in particular the then increasingly assertive trade unions – was necessary. But it was only after the catastrophe of the First World War, and the subsequent revolutions in Europe, that labour law became subject of international treaties through the creation of the ILO in April 1919.

The Constitution of the ILO was contained in Chapter XIII of the Versailles Peace Treaty, and it specifically established a link between social justice and lasting peace. The creation of the League of Nations followed and it soon contemplated a Convention against Slavery. Parties to the Convention, which was adopted in 1926, agreed to prevent and suppress the slave trade and to end slavery in all its forms as soon as possible. Forced labour should be used for public purposes only, with certain exceptions, and the practice should progressively be abolished. The League of Nations then requested the ILO to further investigate the use of forced labour, especially in territories under colonial administration. This led to the adoption of the first Forced Labour Convention in 1930. While the drafters of the Convention focused on the use of forced labour for public purposes, they decided to adopt a very broad definition that is still applicable today:

Forced and compulsory labour is all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Despite the widespread use of forced labour in territories under colonial rule at the time, the ILO hence succeeded in establishing a standard that made its exaction illegal. The Convention requires ratifying parties to make forced labour a penal offence and to provide for adequate penalties in the case of non-compliance. It allows for certain exceptions, limited to the use of forced labour for public purposes or under public supervision, namely military service, minor community services, normal civic obligations, emergencies and prison labour under certain conditions.

Soon after the adoption of ILO's first Forced Labour Convention No. 29, political developments in Europe, in particular the rise of the Nazi regime in Germany, threatened to undermine the consensus that forced labour should progressively be abolished. The brutal practices of forced prison labour in Germany and in countries under Nazi occupation as well as in countries under Communist rule, in particular the Soviet Union, posed a major challenge to the free world and to those seeking to uphold

international standards. It became increasingly evident that forced labour would not only be used by colonial powers in some distant territories but also by dictatorial regimes in the midst of Europe.

In 1949, the UN and the ILO set up a joint Ad Hoc Committee under the leadership of the Indian diplomat Ramaswami Mudaliar. The original mandate of the Committee was to document forced labour as a means of political coercion and for economic purposes, on the assumption that this would be limited to countries of the Eastern Bloc. The Mudaliar Committee, however, interpreted its mandate in a rather liberal way and thereby reopened the debate about the use of forced labour in colonial territories.<sup>3</sup>

Eventually, the findings of the Committee paved the way for ILO's second Abolition of Forced Labour Convention, 1957 (No 105). It calls for the immediate abolition of forced labour as a means of punishment for holding or expressing political views, as a method of mobilising labour for economic development, as a means of labour discipline or punishment for having participated in strikes or as a means of discrimination. The new Forced Labour Convention was very much a product of the Cold War, and the issue itself deeply antagonized the Cold War powers. While Communist member States of the ILO viewed it as a tool to undermine their political and economic sovereignty, some Western countries tried to safeguard the continued, albeit limited, use of forced labour in their colonies.

Interestingly, the first complaint that was submitted under this Convention was directed against Portugal, the only colonial power that had not yet ratified ILO's first Forced Labour Convention No. 29. The complaint was filed by the Government of Ghana that considered Portugal's observance of Convention No. 105 in territories that were still under its rule, notably Mozambique, Angola and Guinea, as unsatisfactory. In 1961, the ILO's Governing Body set up a Commission of Inquiry under the complaint procedure. The Commission investigated the complaint and in its report to the Governing Body shed light on the continued use of forced labour in Portuguese colonies, the cruelty of the colonial system and its underlying racist stereotypes.

In parallel to ILO standard setting and monitoring, efforts to eliminate slavery and remnants of the slave trade continued within the UN system. In many parts of Latin America and Asia, deeply entrenched systems of bonded labour survived in the post-colonial era. Independence, however,

<sup>3</sup> Daniel Maul: The International Labour Organisations and the Struggle against Forced Labour from 1919 to the Present, *Labor History*, 48: 4, 477-500.

had created a new momentum to reform tenancy systems and to redistribute land. In response to this new development, the UN Economic and Social Council appointed a Committee to draft a supplementary Convention to address “slavery-like practices” such as servitude and debt bondage which were not part of the 1926 Convention. Within about a year, the Conference of plenipotentiaries adopted a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery in 1956. For the first time, the case of children was given special consideration. The drafters of the Conventions concluded that where a child under 18 years is delivered by parents or guardians to another person for the purposes of exploitation should be considered an institution similar to slavery. Slavery and forced labour of children has later been addressed in more detail by the ILO Convention on the Worst Forms of Child Labour No. 182, which was adopted in 1999.

Up to this point, the UN and ILO instruments consistently called for penal sanctions to eliminate slavery and forced labour but they also recognized that an end of those practices would only be achieved over a certain period of time. This explains the “transitional provisions” in ILO’s first Forced Labour Convention which provided for the continued use of forced labour during a certain period of time, albeit subject to certain restrictions.<sup>4</sup> More importantly, these instruments sought to address systemic practices and institutions of slavery, rather than individual cases of crime. This explains why none of these instruments provide for victim protection or compensation measures. It also explains why there is limited guidance on prosecution in any of these instruments even though they do imply that penal sanctions should be imposed on persons holding someone in slavery or exacting forced labour.<sup>5</sup>

The adoption of the Trafficking Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime, can be seen as a departure from earlier thinking (henceforth Trafficking Protocol). The Trafficking Protocol, adopted at the beginning of a new millennium in 2000, emerged as a response to the perceived growth of irregular migra-

<sup>4</sup> The Protocol to the Forced Labour Convention of 2014 (Art. 7) calls for a deletion of the transitional provisions from the text of the Convention.

<sup>5</sup> On the distinction between systemic and individual forms of forced labour see: Roger Plant: *Modern slavery: The concepts and their practical implications*, ILO Working Paper 2015.

tion and transnational organised crime after the fall of the iron curtain. As a criminal justice instrument, it seeks to achieve justice for *individual* victims of crime rather than addressing *systemic* forms of exploitation and abuse. The drafters of the Trafficking Protocol linked the action and means of human trafficking to its ultimate purpose, namely “exploitation”. Exploitation includes at a minimum slavery, practices similar to slavery, forced labour and servitude, the exploitation of the prostitution of others and other forms of sexual exploitation as well as the removal of organs. The acts and means of trafficking are described in a way that is consistent with the instruments on forced labour and slavery but their enumeration goes well beyond earlier definitions.<sup>6</sup>

The latest milestone in the evolution of international law against slavery, forced labour and human trafficking was achieved in June 2014, when employer, worker, and government delegates to the International Labour Conference (ILC) voted overwhelmingly in support of a new Protocol to the Forced Labour Convention, 1930 (No. 29) (henceforth Forced Labour Protocol), along with a non-binding Recommendation supplementing both the Protocol and the Convention. The successful vote was the culmination of a two-year process that began in June 2012, when the ILC held its first recurrent discussion on fundamental principles and rights at work and adopted conclusions calling for an examination of whether new standards on forced labour were needed.

The adoption of new international labour standards on forced labour – and of a binding legal instrument in particular – was far from a foregone conclusion. Some ILO constituents had expressed reluctance to tamper with one of the ILO’s oldest and most highly ratified Conventions, which also numbers among the ILO’s eight fundamental Conventions. Relatedly, some deemed existing ILO standards on forced labour and non-ILO international legal instruments – namely those addressing trafficking in persons – already sufficient to suppress contemporary instances of forced labour.

The eventual adoption of the Forced Labour Protocol and Recommendation is significant not only because a consensus developed in support of the new instruments despite these obstacles, but because they reflect a significant shift in perspective on how best to combat severe forms

<sup>6</sup> The Trafficking Protocol has also taken a different approach from earlier instruments which focused on the “white slave trade” and the suppressions of the traffic in persons and the prostitutions of others. See Kristiina Kangaspunta’s (UNODC) contribution to this Academy.

of exploitation, including forced labour. Rather than focusing primarily on criminalization the strategies outlined in the Protocol and Recommendation emphasize prevention, protection, and remedies. These are not new concepts, but their explicit inclusion and link to the Convention's fundamental obligation to suppress all forms of forced labour demonstrates the recognition that broader and more comprehensive measures are needed. By expanding the range of key actors beyond criminal law enforcement, provisions in the instruments addressing the role of business and labour administration are particularly noteworthy, as are provisions emphasizing the *process* of law and policymaking through a requirement that national policies and action plans be developed in consultation with employers and workers.

To conclude, within little more than 100 years, a rich body of international law has emerged which defines slavery, forced labour and human trafficking in different but at the same time very complementary ways, and which calls for a wide range of measures to eliminate those illegal practices. The remainder of this paper will now look at the concrete application of standards against forced labour in a selected number of cases.

## 2. Changing attitudes and practices: case studies

A central question of this Academy is how to change underlying *normative* attitudes that contribute to the persistence of forced labour and human trafficking despite almost universal legal prohibition. In the following, I will discuss three cases of forced labour which had once been considered either as “normal” social behaviour or as a government's prerogative to exact forced labour from its citizens. The actions of individuals are in part influenced by “institutions” which encompass “rules of the game” (i.e. formal rules and informal social norms) as well as organisations and their governance.<sup>7</sup> The ILO's normative system and its transposition into national legislation are the “rules of the game” which seek to shape organisations and the behaviour of their members. Those rules can co-exist with informal social norms that take much longer to change. This is why the ILO uses a two-pronged approach: first, creating and monitoring standards which enjoy broad consensus not only from governments but also from actors of the “real economy” – workers and employers – and second, im-

<sup>7</sup> Douglas C. North: *Institutions, Journal of Economic Perspective*, 1991; see also: *ILO: Rules of the Game: A brief introduction to International Labour Standards*, Revised Edition, Geneva, 2009.



plementing “technical cooperation programmes” at regional and national levels, with the aim to overcome the stubborn persistence of opposing informal social norms.

In its recent history, the ILO has won major victories in related policy areas by using such a two-pronged approach. For example, the adoption of ILO’s Worst Form of Child Labour Convention, 1998 (No. 182) has led to an unprecedented movement against the exploitation of children and a universal recognition that children should be in school, not at work. As a result, the decline of the number of child labourers has accelerated from 215 to 168 million between 2008 and 2012.<sup>8</sup> Another example is the recent adoption of the Domestic Worker Convention, 2011 (No. 189) which contributed to changing behaviour of employers, recognizing that domestic workers should be treated as workers, not as underpaid “maids”. The following examples will demonstrate that similar social and behavioural changes have occurred in a selected number of cases related to forced labour.

### ***2.1. Forced labour imposed by state authorities: the case of Myanmar***

Forced labour has been used routinely by the military regime in Myanmar since its coming into power more than 30 years ago, and the ILO has criticised Myanmar’s the gross violation of Convention No. 29 for about as many years. Civilians were forced to build large infrastructure projects, to deliver porter services for the army and to clear roads of mines. Children have been recruited as soldiers into the army. Myanmar ratified Convention No. 29 in 1955, and soon thereafter the CEACR received the first allegations of its violation. After many years of stagnation and lack of progress, the International Confederation of Free Trade Unions (ICFTU)<sup>9</sup> filed a representation against Myanmar and a committee reviewed the case in 1994. As the Government continually failed to respond, the workers’ group submitted a complaint in 1996 (under Article 26 of the ILO Constitution) and a Commission of Inquiry was established. Although the Government refused to collaborate, the Commission nonetheless succeeded in collecting evidence of the widespread and systematic use of forced labour in Myanmar. It documented horrendous abuses, including the requisition of entire villages for forced labour and services, forced prostitution and other human rights violations.

<sup>8</sup> ILO: Global child labour trends 2008 to 2012, Geneva 2013.

<sup>9</sup> Now: International Trade Union Confederation (ITUC).

The Government however still refused to change its practices and even referred to the “transitional provisions” of Convention No. 29.<sup>10</sup> In 2000, the Governing Body of the ILO took the unprecedented measure of invoking Article 33 of the Constitution, recommending that the International Labour Conference take additional action to secure compliance with the recommendations of the Commission of Inquiry. The Conference duly responded by calling on all ILO members, including employers and businesses, to review their relations with Myanmar so that they were not supporting forced labour in that country. Myanmar’s participation in ILO activities was forbidden unless it contributed to the elimination of forced labour. The growing isolation of the country and mounting international pressure slowly helped trigger a response from the Government.<sup>11</sup>

Eventually, it accepted the appointment of a Liaison Officer who for many years was the only international human rights officer with regular access to the country. In February 2007, the Government signed a Supplementary Understanding with the ILO which provided for the establishment of a complaints mechanism for individuals who have been subjected to forced labour. The agreement stipulated that the ILO Liaison Officer reports to the Governing Body on the number, type and outcome of complaints received under the mechanism. In the period between February 2007 and September 2014, the ILO received and registered 3,639 complaints. Of these, 1,744 have been accepted as falling within both the definition of forced labour and the scope of the complaints mechanism, while 472 cases are still being verified. In most of the cases, the ILO negotiated a settlement with the government. 272 perpetrators were punished either judicially or administratively.<sup>12</sup>

A major breakthrough was achieved in 2011 when a new government came to power. Following discussion with ILO, it signed a Memorandum of Understanding in March 2012 according to which forced labour should be eliminated by 2015. In the same year, it also revised the War or Village Tract Administration Act which had previously served as a legal basis for exacting forced labour. The government’s willingness to engage with the ILO opened the door for the development of large-scale technical coop-

<sup>10</sup> See footnote 3.

<sup>11</sup> See ILO: *Report of the Commission of Inquiry*, 1998 and various Governing Body papers, download at: [www.ilo.org](http://www.ilo.org)

<sup>12</sup> ILO: *Update on the operation of the complaint mechanism in Myanmar*, GB.322/INS/INF/2.

eration programmes which are now under way, focusing on a wide range of labour-related issues, such as labour law reform, enterprise development, support for the creation of independent workers' and employers' organisations, freedom of association and collective bargaining and labour migration.

As a result of high-level policy change, legislative reform and many awareness raising and training activities, the behaviour of individuals in government, especially the military, started changing. The political situation is still unstable and ILO continues to monitor the situation closely. All of its governing and supervisory bodies are involved in this process until lasting change will be secured.

## ***2.2. Traditional practices of bonded labour: the case of India***

Pledging labour in exchange for credit or wage advances is a century old practice in South Asia, including in India. Millions of poor households juggle constantly with various credits and debts due to low and irregular income and lack of social protection nets.<sup>13</sup> As a consequence, many workers are “bonded” against a wage advance paid by the employer. The worker is only free to leave the employer once the debt has been fully repaid. In some instances, wages manipulations or high interest make it impossible for workers to pay the debt, keeping his or her entire family in bonded labour. If a debtor-creditor relationship between workers and employers creates a situation where workers cannot leave the employment relationship without risk of retaliation, are subject to coercion or have been deceived about the conditions of work, the ILO's Forced Labour Convention would apply. Since bonded labour is prohibited in India, credits, such as wage advances, are either enforced by coercion and force or by the power of customary practice.

There is a correlation between the vulnerability of poor households to sudden income shocks and the risk of adults and children to end up in bonded labour.<sup>14</sup> But abject poverty is only one of the many root causes of bonded labour in South Asia. Another factor, at least as important, is the discrimination and social exclusion of scheduled castes and tribal people

<sup>13</sup> For more information see Isabelle Guérin *et al.*: Empowering Communities: Lessons from Tamil Nadu, India; in: Beate Andrees/Patrick Belser: *Forced Labour: Coercion and Exploitation in the Private Economy*, Boulder, Colorado, 2009 and Ravi S. Srivastava: *Bonded Labour in India, its Incidence and Pattern*, Geneva, 2005.

<sup>14</sup> See ILO: *Profits and poverty: The Economics of Forced Labour*, Geneva 2014.

from education and the labour market. While not excluded by law, they effectively lack access to education, skills training and social protection schemes.

Bonded labour was and still is prevalent in traditional agricultural production and increasingly on plantations. In addition, bonded labour prevails in brick kilns, stone quarrying, mining, gem cutting, rice mills, loom-ing, in fisheries and fish processing, bidi rolling and construction. It is also widespread in domestic work. Trafficking for sexual exploitation, including customary practices like the Devadasi system under which young girls are “married” to the gods in Southern India, also persists across the sub-continent.<sup>15</sup>

There are no national surveys on bonded labour in any of the South Asian countries but some studies, including micro-surveys, give an indication of the size of the problem. In 2009, the ILO carried out a survey in Nepal which focused on high-risk populations. It indicated that, out of an estimated total of 1.6 million working adults in high risk districts, 143,000 (9 per cent) were in forced labour. Haruwa-Charuwa and Haliya households accounted for the vast majority (71 per cent) of adults in forced labour. In addition, the ILO carried out a range of qualitative studies on brick kilns in India and various occupations involving bonded labour in Pakistan.<sup>16</sup> The absence of a reliable national survey on the pattern and incidences of forced labour however makes it very difficult to design and assess policy measures. The following will discuss some experiences and lessons learned of more than 20 years of ILO’s work on bonded labour in India.

Having ratified Convention No. 29 in 1954, India is subject to the ILO’s regular review mechanism. Prior to 2000, ILO’s interventions against forced labour in India were largely confined to the supervision of the application of the Forced Labour Conventions, in particular Convention No. 29. The case of bonded labour in India was discussed several times by the Committee on the Application of Standards during the International Labour Conference, including between 1994 and 2014 which is the reference period in this paper. The Conference Committee expressed deep concern over the lack of progress regarding the elimination of bonded labour in India but it did not recommend further action under the ILO constitution. Over the same period of time, the CEACR published twelve

<sup>15</sup> See Srivastava (op. cit.) and Kara, Siddharth: *Bonded labor: tackling the system of slavery in South Asia*, Columbia University Press, 2014.

<sup>16</sup> Download at: [www.ilo.org/forcedlabour](http://www.ilo.org/forcedlabour)

lengthy observations assessing the country's institutional arrangements on bonded labour, identification, rehabilitation and enforcement.<sup>17</sup> It also made distinct observations on trafficking and child labour.

Each single observation published since 1994 deplored the lack of reliable statistics which impedes identification and monitoring of progress according to the CEACR. Although the government provided statistics on the number of released bonded labourers, the CEACR insisted on the need to have a deeper understanding of the scope of the problem and urged the government to cooperate with the ILO in this regard.

A second major concern of the CEACR and its observations since 1994 is related to the enforcement of legislation against bonded labour and related practices. Bonded Labour is illegal in India. The Indian Constitution outlaws trafficking in human beings and forced labour. In 1976, the Indian Parliament adopted the Bonded Labour System (Abolition) Act which defines bonded labour, declares it an illegal practice and provides for monitoring and enforcement mechanisms. For example, it frequently deplored the fact that most vigilance committees did not fulfil their role and function in identifying and releasing bonded labourers. The CEACR was particularly concerned with the low number of prosecutions, convictions and the frequent acquittals of offenders. It requested further information from the government and continued expressing its dissatisfaction about the slow pace of progress on the ground. In more recent years, it also requested information about the effective abolition of the Devadasi system.

Other observations, though fewer in number and couched in softer language, concerned protection, prevention and rehabilitation. The CEACR highlighted the time lag between identification and rehabilitation, pointing out that many bonded labourers are never compensated. It also stressed the importance of organising workers in vulnerable sectors, taking special measures for children and providing adequate funding of rehabilitation schemes.

The responses of the government were not always forthcoming. At times, it expressed dissatisfaction with the fact that India was targeted by the ILO's supervisory system despite the various measures which it had already put in place. Given the seesaw between the CEACR and the government (with Indian social partners being largely absent from the debate), ILO's operations on the ground were closely monitored. It was only in 2000 that

<sup>17</sup> The last observation on C. 29 was adopted in 2012 and published in 2013.

the ILO was able to start large-scale technical cooperation projects against bonded labour in India. Given the critical position of the federal governments project interventions were mainly implemented at state level, starting in Tamil Nadu. In addition, the ILO carefully negotiated a non-threatening approach to bonded labour by focusing on prevention rather than enforcement. Essentially, the ILO's intervention models focused on testing practical solutions, such as the use of micro-finance, convergence of government welfare schemes to enhance access of "at-risk-populations", inter-state migration agreements, improving the regulation and monitoring of recruitment, community empowerment, organisation of vulnerable workers and social dialogue. In 2011, the federal Ministry of Labour eventually requested ILO's support to scale up the Tamil Nadu model at a pan-India level.

ILO's work on the ground has contributed to the development of a rich body of studies, tools and assessments of bonded labour in South Asia, and more specifically in India. While the direct impact of research, training and capacity building is difficult to measure it has clearly contributed to greater political acceptance and a deeper understanding of the problem. In early 2000, for example, the ILO sensitized members of the Pakistan Federal Shariat Court on issues related to bonded labour. This in turn led to a decision by the Court in 2005 dismissing bonded labour as "being repugnant to injunctions of the Holy Quran and Sunnah", in opposition to claims of powerful brick kiln owners. In order to justify its reasoning, the Court not only referred to Islamic principles on the treatment of labour but also to ILO Convention No. 29.

There is also evidence that the "agency" of bonded labourers has increased in recent years as a result of ILO interventions and the work of many other organisations on the ground. ILO projects supported various forms of collective action, including unionisation of workers in brick kilns and rice mills and community-based action targeted at the provision of public goods, such as drinking water, access to government welfare schemes, housing, education etc. The evaluation study of ILO's second generation of anti-bonded labour projects found for example that wages increased as a result of collective action.<sup>18</sup> Overall, interventions led to a significant reduction of vulnerability, a decrease in debts and increase in assets in target areas. It also contributed to the empowerment of women on financial matters and their greater involvement in community affairs.

<sup>18</sup> The study was carried out by the French Institute of Pondicherry in 2006; see also Guérin *et al.* (2009), *op. cit.*

Strengthening the position of bonded labourers through collective bargaining is a challenging endeavour however. First because global restructuring of production, which also affects the Indian sub-continent, has led to a structural weakening of union power and a decline of the standard employment relationship on which collective bargaining is largely based. In addition, national trade union and employers organisations are often absent in informal sector activities such as brick kilns. Collaboration between small, informal sector unions, non-governmental organisations and large national federations is often problematic, and the ILO faced difficulties in overcoming those cultural differences and political conflict of interest.<sup>19</sup>

Lessons learned from ILO's micro-finance based approaches are mixed too. While project interventions demonstrated a positive impact on reducing household vulnerability to sudden income shocks (and hence reducing the risk of debt bondage), there are also challenges associated with micro-finance. For example, is targeting "at-risk-households" feasible and ethical? Would macro-level poverty reduction strategies not be more effective and fair? Is it smart to involve bonded labourers in yet another credit scheme instead of breaking the cycle of debts and credits entirely? An assessment of ILO's projects suggests that targeting has an impact on reducing vulnerability to bondage but linking micro-finance interventions to community based training and awareness raising activities is important. It also revealed that poor households need training to understand the concept of insurance and to make successful claims. There are gender aspects too. Institutional arrangements that are grass roots based and flexible provide greater opportunities for women's empowerment.<sup>20</sup>

The "convergence approach" has provided access of the poorest to welfare schemes, but it is not a panacea to address unfair working conditions. "Working out of poverty"<sup>21</sup> is a major objective of ILO's policies and standards. Wages and productivity are at the core of this debate, and both can and should not be replaced by welfare. So while many challenges still remain it can be concluded that ILO's technical cooperation to eliminate bonded labour in India and other countries in South Asia has had an im-

<sup>19</sup> Coen Kompier (forthcoming).

<sup>20</sup> For a detailed analysis of lessons learned from finance-based interventions see: Premchander *et al.* (2014): *Prevention and elimination of bonded labour: The potential and limits of microfinance-led approaches.*

<sup>21</sup> See Report of the Director General to the 91st session of the International Labour Conference: Working out of poverty, Geneva 2003.

pact on reducing vulnerability. It has also brought to light the complexity of deeply entrenched practices of exploitation, discrimination and social exclusion.

### *2.3. Trafficking and exploitation of migrant workers: cases studies from the Middle East*

The ILO has made comments on the treatment of migrant workers in relation to Convention No. 29 for many decades but the adoption of the Trafficking Protocol has created a new momentum for supervision and technical cooperation on this issue. In 2001, the CEACR published a general statement linking trafficking in persons to forced labour and henceforth requested information on trafficking-related offences more systematically from ratifying member States. It emphasized special protection measures for migrant workers, the elimination of abuses in the recruitment process and the prevention of labour trafficking through employment-based measures. Observations were addressed to countries in all regions, including major migrant receiving countries. The focus here will be on the Middle East and the Gulf Cooperation Countries, in particular Jordan, Qatar and the U.A.E.

When analysing CEACR observations and direct requests over the last 20 years with regards to countries in the Middle East, one will notice a striking shift in emphasis. In the 1990s and early 2000, the primary focus of the CEACR was on prison labour (e.g. Jordan, U.A.E.) and the freedom of public officials to quit service (e.g. Qatar). In 2002, a shift started to occur regarding the U.A.E. when the issue of child camel jockeys came to the fore, following a communication received from the International Trade Union Confederation (which collaborated with Anti-Slavery International).<sup>22</sup> The exploitation and abuse of children as camel jockeys quickly received international prominence and the case was put on the agenda of the Committee on the Application of Standards in 2003. The Government was requested to collaborate with a “direct contacts mission” to its country which was tasked to investigate the case further.<sup>23</sup> Eventually, the U.A.E.

<sup>22</sup> Camel jockeying is a Bedouin sport, and children from Bangladesh, Pakistan, Sudan, Mauritania and other countries were recruited to train the camels, resulting in frequent injuries including death of the children involved. Children have now been replaced by robots.

<sup>23</sup> Child camel jockeys were also by Qatar on which the CEACR made comments in this respect since 2002 and until the practice stopped.



adopted a law in 2005 that banned the use of children below the age of 18 in camel racing, and supported the repatriation of more than 4,000 children in collaboration with UNICEF.<sup>24</sup>

Also in early 2000, the ITUC started to raise the issue of trafficking in persons to the U.A.E., especially women for the purpose of sexual exploitation. As of 2008, the CEACR requested detailed information about trafficking in persons more broadly, including measures of prevention, prosecution and protection. The Government had enacted a new law against trafficking in 2006, and the CEACR was keen to assess its application in practice. It frequently called for measures to strengthen the protection of migrant workers, in particular migrant domestic workers, and insisted on the freedom to terminate employment (linked to the sponsorship system). In recent years, the ITUC has taken a stronger position against Qatar and the U.A.E., leading to a submission of a representation against both countries under Art. 24. Both cases are still pending.

As for Jordan, the shift in emphasis occurred in 2010 when the CEACR started to request information about the protection of migrant domestic workers from forced labour. In previous years, comments were concerned with the use of prisoners to work for members of the Jordanian army. The law was reformed in 2008 which was noted with satisfaction by the CEACR.

The alleged trafficking of migrant workers in Jordan's emerging garment industry by contrast was mainly dealt with under ILO's technical cooperation programmes. The number of migrant workers in Jordan's garment industry rose quickly from 2000 onwards, notably in factories which were established in export processing zones. The factories produced garments for export to the US under a Free Trade Agreement which both countries signed in 2000. Migrants from Bangladesh, Sri Lanka, India and most recently Nepal and Myanmar account for the majority of workers in these factories. In 2006, US-based non-government organisations reported serious violations of labour law, including forced labour and trafficking in Jordanian export processing zones. Following an investigation of the allegations the Jordanian Ministry of Labour published, in 2007, an Action Plan to improve working conditions and to reinforce its inspection services. At the same time, the ILO started Better Work Jordan, a garment factory monitoring programme in partnership with the International Finance Corporation (IFC).<sup>25</sup>

<sup>24</sup> ILO: Tricked and trapped: Human Trafficking in the Middle East, Beirut 2013.

<sup>25</sup> For more information about Better Work see: [www.betterwork.org](http://www.betterwork.org)

In parallel, the ILO supported the Ministry of Labour in the organisation of training courses for labour inspectors, provided advice on the amendment of the Labour Code and the drafting of a new anti-trafficking law and strategy which were adopted in 2009 and 2010 respectively. The government's swift response and ILO's technical support resulted in a significant decrease of forced labour cases in garment factories. According to recent reports under the Better Work compliance assessment, forced labour related practices like the retention of passports, restrictions on the freedom of movement and physical abuse have dropped significantly.<sup>26</sup> There are still problems related to the recruitment of migrant workers and high recruitment fees, forcing many migrants to accept long working hours in order to repay debts. The ILO is currently piloting a "fair recruitment corridor" between Jordan and Nepal under its Fair Recruitment Initiative.<sup>27</sup> It also started a major migrant governance programme in 2013 which supported legislative changes, helped workers to organise and engaged with media and civil society organisations, and thus contributed to greater openness towards worker representation, protection of migrant workers from exploitation and freedom of employment.

### 3. Concluding remarks

What can be learned from those selected case studies? First, in all cases, criminalization of certain practices is not enough to bring about lasting change but the enactment of laws prohibiting bonded labour, human trafficking and forced labour was an important starting point. Those laws are also the normative basis of assessing compliance with international standards and their effective implementation. It will certainly take more time until the migration system of certain Arab countries will be reformed so that workers truly enjoy freedom of movement and representation. It will require continued monitoring to ensure that authorities in Myanmar are complying with the reformed Ward and Village Tract Administration Act. And eventually, India may consider a reform of its Bonded Labour System (Abolition) Act to strengthen prosecution and enforcement. All legislative reform processes have to pass the test of universally recognized international standards so that egregious practices of exploitation cannot be justi-

<sup>26</sup> See forthcoming report of Better Work Jordan.

<sup>27</sup> For more information see: <http://www.ilo.org/global/topics/forced-labour/policy-areas/fair-recruitment/lang--en/index.htm>

fied on the basis of cultural differences, as a means of political repression or for purposes of economic development.

ILO's Conventions against forced and child labour are almost universally ratified, and ratifying as well as non-ratifying countries are subject to regular reporting and monitoring systems. In addition, the ILO's complaint procedures can be invoked to bring countries into compliance. The strength of the ILO's mechanism is to combine normative action with technical assistance, based on dialogue and the soft power of persuasion. This may seem ineffective at times or distanced from the realities on the ground, but ILO standards are important signposts for governments, employers, workers, and civil society organisations. They create a level playing field in an increasingly integrated economy, and as such, they are complementary to other international norms.

Second, normative standards, although important, are not enough. They need to be effectively implemented. As the case studies demonstrated, it sometimes takes a certain amount of external pressure before the ILO will be able to show its effectiveness. Workers' and employers' organisations, often in collaboration with civil society, play a key role in raising international consciousness and pressure. Through their membership in the ILO's governing and supervisory bodies, the voice of the most excluded and exploited is being heard. When workers and employers take concerted action – and they often do on the issue of forced labour – it is very difficult for governments to remain silent. The supervisory system functions as a catalyst of change; however, it is through sustained presence on the ground that the ILO can be most effective. It takes years and sometimes decades before deeply rooted practices change, and before political or economic interests will be aligned with the goal of ending forced labour. Implementation of international and national standards therefore requires “technical cooperation”, such as community-based interventions, strengthening of institutions, and building the capacity of governments and other actors, facilitating the exchange of good practices and maintaining positive and negative incentives to stimulate change.

Third, while progress is happening, a healthy dose of scepticism is necessary to remain vigilant. The exploitation of the poorest and most vulnerable for economic benefit is not a vice or unhealthy habit like smoking. It is part and parcel of an economic system which has brought wealth and well-being to many but which has also exacerbated inequalities and social exclusion. In today's global economy, there is a constant pressure on labour costs which can lead to a downward spiral of worsening labour standards.

Furthermore, over 201 million people were unemployed in 2014 and their number is likely to grow. Social unrest is to be expected where unemployment is high, especially among young people.<sup>28</sup> An over-supply of desperate and vulnerable people seeking employment at home or abroad brings opportunities for unscrupulous labour brokers, some employers and criminal traffickers who will be tempted by quick profits. Criminal justice is therefore intrinsically tied to social justice, and their joint promotion is not an option but a necessity. The decent work agenda of the ILO, in particular its system of international labour standards, is therefore an integral part of the struggle against forced labour and human trafficking.

<sup>28</sup> ILO: World Employment and Social Outlook, Geneva 2015.

# **LEGAL AND POLICY FRAMEWORK OF THE EU RELATING TO CRIMINALISATION, PREVENTION AND DEMAND REDUCTION**

**MYRIA VASSILIADOU**

Thank you very much for inviting me. Thank you, of course, to the Pontifical Academy of Social Sciences and to my friends who invited me here today. I was here one year ago and I am very inspired to see the effort of the Holy Father and how much it has developed in the last year. I think the messages that are sent to the public are extremely important, and we need to do a lot more.

In the sermon this morning I gave an example of a person that I met during my work, and I want to give you one more example because many of you were not there this morning. I met a young woman in one of the European countries who was asked by a friend of hers – that was very recently – to go to another country that has better employment conditions, to get a job. It was her best friend. So she left her country at nineteen to go and work in another European country. The minute she got there she was locked in a flat and she was forced to marry a third country national. And for ten months this third country national, now her husband, and a lot of other people, also trafficked her for sexual exploitation. So we have a case of multiple forms of trafficking, if you like. After ten months a neighbour understood that she had been locked in the room for all this time; she alerted the police, the authorities did a very good job, they helped her and she went back to her country. She is still in the shelter because if she returns to her village she is under threat, her family is under threat. These organised networks threatened to kill them, both the family and her. The woman has blood cancer and she has no access to healthcare in her country, because it has to do with the regions and so on. So she is stuck in that situation.

I think that if we want to talk about trafficking, we need to remember that we are talking about real people, in real situations, suffering multiple forms of exploitation many times. And if we want to talk about trafficking here today we need to remember what it really is. It is two things. We can talk about vulnerability all day, we can talk about poverty all day, we can talk about war; in reality, this is predominantly about money, about profits

and about demand. If people don't use the products and services of the victims, and if there is no profit, there is no trafficking. There are many other horrible things, but we don't call them trafficking. We can easily say that trafficking in human beings is about buying and selling people and their services. Let's call it by its name. It is a serious form of organized crime. As such it requires that we all cooperate together on various levels, so I'm very glad to be here, because different stakeholders need to be involved in this very complex phenomenon.

I want to tell you a little bit about what we do at the EU. For us it is a very high priority. The President of the European Commission, President Juncker, has stated very clearly this is a priority for the upcoming years, and fortunately needs to remain a priority. And we also need to remember that in the Charter of Fundamental Rights, trafficking is the only form of crime that is explicitly prohibited. We are here to talk about an extreme fundamental rights violation. We are here because, as we were told before, there are potentially hundreds of thousands of people at a given time in Europe today, as we speak, who are trafficked.

I want us also to remember that we have different forms of exploitation, of trafficking. Victims are forced to beg, they are trafficked into domestic servitude, sham marriages, illegal adoptions, for the purpose of the removal of organs, to engage in criminal activities, benefit from, forced labour, and sexual exploitation.

We are here to talk about going beyond criminalization. I don't know if we are even there in criminalization, and I'll explain. We need to have criminalisation, we need to have laws that prevent, protect and criminalise. We need to ensure that we prevent the phenomenon, that we prosecute the criminals and we protect the victims. This is what the EU legislation does. I think I can very comfortably say that it is one of the most progressive legislations in the world, because it has this comprehensive approach. What I do in this context is that I have been mandated to give strategic direction in the work against trafficking at the EU level, and I try to coordinate the services of the Commission, as well as other entities including EU agencies, in order to progress in the work that we do against trafficking.

So earlier on we heard a little bit about the scale of the phenomenon. Let me tell you a little bit about what happens in Europe. What we know for the years 2010–2012 is only the number of *registered* victims: we don't estimate, we don't speculate, we don't do this thing. We count how many people have been registered by the authorities, and we had 30,146 people who were registered. It is safe to say that the numbers are much, much

higher. 80% of those victims were women and 70% of the traffickers, the criminals, are men. 16% of those victims registered are children, girls and boys. The most widespread form of exploitation is sexual exploitation, 69%, of which women and girls are the vast majority; 95% of them are women and girls. We also have trafficking for forced labour, it's 19% of the reported cases, and it affects mostly men and boys. I also want to say that two thirds of the victims in the EU are EU citizens, the ones that are registered. Now this could be because we are better at identifying the EU citizens, but nevertheless there is a large number of people from the EU that are being trafficked. So tackling migration policies is a very important parameter of the work that we do, but it is not the only parameter, when we talk about EU citizens being trafficked by EU citizens, we want to talk about data, because it is useful to guide our work and it is useful to guide our policy.

But when we talk about the woman that I referred to in the beginning we also need to think beyond numbers. It is not only about the scale of the phenomenon, but it is about real people in real life situations. So as I said, we have the EU legislation that is a milestone, I think, in terms of how ambitious a criminal law instrument it is. And our member states, our 28 member states in the EU had to translate this into national law two years ago, the deadline was two years ago. Twenty-five member states have already told us that they have translated this into national law, and we are still expecting Belgium and Germany to send us this information.

I heard a little bit of the conversation yesterday in the room, and I want to also highlight that for the EU it is very important that we are clear about concepts. So, for example, we talk about trafficking in human beings and slavery interchangeably, and I think we have to make sure that we don't do that. Slavery, together with trafficking is prohibited, of course, by the Charter of Fundamental Rights. But they are two different legal and social phenomena. So why is it important to know that? Because not all trafficked people will necessarily be slaves, and not all slaves will necessarily be trafficked, and the more we are clear about that, the more we stand a chance to help all of them properly.

I also want to clarify the difference between human trafficking and human smuggling. We talk a lot about the people, the horrifying situation in the Mediterranean right now, and especially in Italy, that we know of, all these people arriving on the boats. Human smuggling is a horrifying situation, but it doesn't necessarily mean that it is trafficking. And why do I say that? Because the first thing that we need to remember is the issue of consent. It is a difficult issue to talk about, but people who are smuggled

pay an amount of money, they are extremely vulnerable, and they consent that they will take the trip to come, for example, to Europe, in order to work. For trafficked people, consent is irrelevant. I want to go back to what you said yesterday. Legally speaking, whether they consented or not, it is irrelevant. Especially think about children! We shouldn't even be talking about consent.

When this woman went to this other country to work, she consented to go and work. What she didn't consent to was the continuous exploitation that resulted from that. Also, when it comes to trafficking, people don't need to cross borders. You can be trafficked as an Italian citizen within Italy, for example. When it comes to smuggling people, certainly there is a cross-border element. And the most important thing, when we talk about trafficking, we are talking about a person whose individual rights have been violated. When we talk about smuggling, this is a little bit different, in the sense that it is a crime against the state, as opposed to a crime against an individual. So why am I saying all that? I'm saying all that because the more we understand this phenomenon, the better able we'll be to help the victims and protect them accordingly.

Beyond criminalization: we need to understand the nature of the problem as a problem that affects women and men, boys and girls, but not always in the same way, as the data demonstrates. For example, when it comes to the issue of trafficking for sexual exploitation, the European Union understands it as a structural form of violence against women. So when we talk about gender, we always think about trafficking of women and girls for sexual exploitation. This is not the whole story, this is part of the story, so when I talked before about statistics, this is what the member states told us. They included exploitation for prostitution or other forms, in the areas of street prostitution, window prostitution, private flats, brothels, strip clubs, bars, pornography production companies, escort services, massage parlours, modelling agencies, hotels, private clubs, everywhere.

Why am I saying all that? Because what is important to remember is that there are very strong links between prostitution markets and exploitation, trafficking and organized crime. If we don't accept that, then we cannot help the people who are in this high-risk sector, and I want to be very clear, I am not here to say that all prostitution is trafficking; this is not what I'm here to do, nor my mandate to explore. But as one of the Chiefs of the German Federal Police said, all sex trafficking they identified was in the prostitution sector. So we need to understand that this is a high-risk sector. We also need to understand that we need appropriate spaces for



men and boys. In most of our countries we tend to identify women and girls for sexual exploitation as the only form of human trafficking. Well, this is not the case. We have an extreme number of people who are abused into forced labour. And we need to be able to protect these people, who tend to be predominantly men and boys. We need to have specific shelters and facilities for these people and we need to understand all these parameters. And that's why the European Commission has prioritised on labour exploitation, and we have a number of areas in which we work. We have almost finalised a study of case law in all our member states to understand more and to help prosecutors. We have given extensive funding and we are working a lot with labour inspectors. I will not bore you with that.

Let me get to the most important parameter of the work we *should* be doing – I don't know if we do enough – which is children. There are no contested issues here. We are not here to talk about consent, we are not here to talk about work and workers' rights, we are not here to talk about forced labour of children. We are here to talk about child trafficking and it is extremely clear what that means. This is something we have to prioritise. In the European Commission we have issued a lot of guidelines, we have done a lot of work on that, we have given extensive funding, some people say 'you give too much funding for children', and I don't know what too much is when it comes to children and protecting children. We also need to remember that a lot of the people who end up being forced into labour, forced into sexual exploitation, forced into sham marriages, as adults, it starts off as children. So by protecting children we are also protecting potential people who will become adults and continue to be exploited. So, for us, victims and children are at the very heart of our legal and policy framework.

As I said before this morning at the sermon, we seem to talk all the time about the traffickers and I'm very glad to hear the ILO talk about – of course we agree on criminalization, we are here to ensure that the law speaks of our values and our norms in society. Criminals have to be subject to justice, and we are here to talk about the victims, and we talk about the victims and how to help them, but we never talk about the real issue. Here are the criminals – here are the victims; who is standing here in the middle? Who is using the services of those people? Who is buying the cheap products? Who is employing those people illegally? Who is forcing them into labour? Who is raping those women and girls and those boys and sometimes men, on an everyday basis? Most of the time it is not the trafficker, most of the time it is the people around us, it is the users, and

because it is the people around us, the clients, the customers, the users, the procurers, we are very uncomfortable talking about it. So for every victim of trafficking there are many, many, many more perpetrators, and this is what we need to address. And I am telling you this as a policymaker, because it is my job to remind the member states that they have a legal obligation, according to the EU law, to discourage and take action to reduce demand. It is not because I think that personally, it is because it is a legal obligation.

Our directive, our legislation, also says that the member states have to at least – and I stress *at least* – consider making it a crime to use the services of victims of trafficking with the knowledge that the person is trafficked. This is extremely serious, because again this goes back to criminalisation in another way. I have to draft a report to see how the member states translate the EU law into national law, and I am very eager to see what the member states are doing to take action to reduce demand in a legal manner, and whether they are considering the criminalisation part. And I have a question for you, which is a question that I have to reply in a report in 2016, legal obligation again: are you aware of any other area of crime where the person is *knowingly* – I stress the ‘knowingly’ – involved and is not criminalised? I have spoken to prosecutors time and time and time again, and they cannot think of an example. And my difficult job is to draft a report on what the member states have done on this issue. As Beate Andrees said before me, the law has a normative effect. Criminalising those responsible is important. The document of the Vatican talks about criminalising the traffickers, but I am not referring to this, I am referring to criminalising those who knowingly make use of the services. And many people will say, “Ah but you know it is very difficult to gather evidence”. So what is the law doing? Do we say, “Oh, with murder it is very difficult to find evidence so we don’t criminalise”. Do we do that? Is that what the law is there for? Of course we have to have good laws that help the evidence-building process, but that doesn’t mean we shouldn’t consider it.

And we need a comprehensive approach on prevention in order to do that. And what we are doing at the moment is we have launched a study to look at what all these prevention initiatives that we have done and we have funded throughout the EU, what have they achieved. Have we got less trafficking? When we have all these awareness-raising activities, do we stop potential traffickers? Do we stop potential users or buyers? Do we stop potential people who might become less vulnerable to being trafficked? We need to understand that more, to do better policy in the future.

If we also want to talk about going beyond criminalisation I said in the beginning that I understand trafficking as being about demand, and I think I covered that part, and about money. The ILO tells us that forced labour across the world is worth 150 billion dollars annually. Around 50 billion of that, very broadly speaking, is around the European areas, some of that. Who is making that money? I'm not just talking about money for the traffickers; I'm talking about money for illegal sectors, legal sectors engaged in illegal business, and legal sectors engaged in legal business. If we want to understand trafficking, if we want to help people, if we want to help victims, if we want to help that woman who was forced to marry the third country national and then repeatedly raped, we need to see who is making money out of it. These are the people we need to convict and criminalise. These are the people who need to be sanctioned. We need to follow that money and we need to see who profits and why.

I won't go into the Internet, but a lot of those activities take place online. So we need to understand more about how to work with the private sector as well. I will come to that in a minute, but I can tell you that our legislation, again very progressive, stipulates that legal entities are *accountable* for human trafficking. So it's not just individuals, but it's also businesses that are accountable. I am not aware, to this date, in Europe, of a business having been convicted of the crime of human trafficking. This is where the money is; this is where we should be focusing.

So if we want to move beyond criminalisation, we also need to cooperate. We need to build partnerships between the private, the public and the non-governmental bodies. In the European Union we have launched a European Civil Society Platform, 120 non-governmental organisations – some of them faith-based organisations – who work together collectively from different walks of life, to address trafficking. We are also about to launch a European business coalition. As I said, if we don't work with the private sector, we don't really stand a chance. And we need to move beyond corporate social responsibility. Excuse my language, "Blah blah". We need to see how to hold the private sector accountable. And I don't know, if I were a businessperson, which I'm not, I cannot think of a better advertisement than ensuring that your supply chains are slavery free, that you don't employ, recruit, force slaves, knowingly or unknowingly – sometimes it's unknowingly – but you have to make every effort to ensure that this is not the case.

We also need to build partnerships between all sectors, the judiciary, law enforcement, border guards, social workers, consular services, immigration authorities, labour inspectors. I can tell you very confidently that the Eu-

ropean Commission has joined forces with all these different sectors, and we are working very closely with them, because it is the only way to get things done. And we also need to form partnerships between third countries and regional organisations. We have launched very close partnerships with non-EU countries, and this is at the heart of the work that we do. My job is to monitor the EU policy framework, the EU strategy against trafficking from 2012 to 2016. And a big part of this work was precisely to see who are the priority countries to work with, because if a person comes to Europe and then ends up being trafficked for forced labour, they come from somewhere. How do they come? What happens in that place of origin? How can we help in that place of origin? And how can we help that person, if they are extremely lucky to be identified as a victim – because very few of them are – if they are repatriated? How can we ensure that they don't end up being re-trafficked? Because many of them end up being re-trafficked, so we are engaged in this vicious circle.

I could give you a very long list of all the work we have done but I don't need to do that today: we have a website, it's all there. What I can very proudly tell you is that we have delivered on everything we have promised to, up to now. What can the European Union do? We can legislate. And I think it's not perfect, nothing is perfect in this life, but we can go as far as we are able to do, and I think we have very good legislation. We have very good policy that is accepted by the NGOs, by our member states, by our parliamentarians. And that makes me think that we are working in the right direction. And we have funding. So we can link the policy into the funding. Sometimes it makes people uncomfortable because, again, it is about money, but it is about making good use of your taxes and ensuring that those taxes go to the victims and not to advertising and paying salaries of people.

So we do all that, but this is what the European Commission, what the European Union can do. If we don't implement all this, if it's just words on paper – legislation is fundamental but at the end of the day, it's just words – we don't stand a chance. And there our member states have a long way to go. There are a lot more efforts now than there were a few years ago, and that we need to recognise. We will be drafting, it is my legal responsibility to draft a report by the end of the year, on the state of play in relation to trafficking in the EU. And we will take all these efforts into consideration, but more needs to be done. If we all do our job properly, I can assure you, we all know that we will have a lot less trafficking. Maybe we will not eradicate it, but it will certainly decrease to a very large extent.

If we really want to eradicate trafficking, we need to follow the money and we need to discourage the demand that fosters all forms of trafficking of human beings. We need to discourage this demand. What is standing between the criminals and the victims is *us*, the citizens, who are responsible. There are much better people with me in the room speaking afterwards on economics, but to me, if there is no demand, at least there is less supply. So we can talk all we like in this room, but, I think, if we fail to make use of all the possibilities that we have available, and we have a lot of possibilities, we have a lot of power in this room, we have legislation, we have policy, we have money, we have commitment, we have convictions, we have values. If we fail to use all of these possibilities to the maximum, we fail the victims, we fail that woman whom I talked about in the beginning, and we need to take a personal responsibility. We need to go beyond criminalisation. But we need to think about criminalisation, because criminalisation is not just on paper. We need to take our responsibility and have laws that have a normative effect that explains what is acceptable and not acceptable and then to convict people, not just have it on paper. So we need to move beyond criminalisation, but first we have to do that too.

I think we all have a role from each path of life, from the police, from policy, from charity, from faith, and our focus has to be those victims whom we have all met, we all know, and we have to remember that at the end of the day we are working for them, for nobody else. We are working for them.

Thank you.

# **THE ROLE OF THE UN AND ITS SUSTAINABLE DEVELOPMENT GOALS IN SEEKING TO REDUCE/ELIMINATE HUMAN TRAFFICKING BY 2020**

**JEFFREY SACHS**

Thank you very much, and I'm honoured to be part of this very important gathering and I want to talk about one specific thing, and that is the relationship of this mission, this purpose of ending modern slavery in all its forms and ending human trafficking, with the upcoming Sustainable Development Goals at the United Nations. This is a work in progress, the SDGs, and I think this meeting and the Holy See can help to shape the SDGs, both their final content and how they are implemented in the future, to help succeed in the quest that is the purpose of this meeting.

So I wanted to give you a background to the Sustainable Development Goals, a bit of the current process and then some suggestions, of how the next few months could be most effectively used so that we can see the Sustainable Development Goals as a tool that will be an important instrument for many things, including the fight against modern slavery.

The background of the Sustainable Developments Goals really begins fifteen years ago with the Millennium Development Goals. As everybody recalls, in September 2000 the UN General Assembly adopted the Millennium Declaration. I would like to say that Pope John Paul II played, as expected, a very important role in highlighting the importance of the Jubilee Year and the importance of the new millennium for raising the aspirations for humanity. Then-Secretary General Kofi Annan put the Millennium Declaration before world leaders, there were about 163 world leaders assembled in September 2000. They adopted the Millennium Declaration. Within the Millennium Declaration were a number of development goals. They weren't even identified as a separate category at the time of the Declaration, but the next year, Secretary General Kofi Annan told them in 2001: "By the way, you adopted Millennium Development Goals, and here they are, check out the following pages". And the General Assembly then voted to take a portion of the Millennium Declaration and call them "Eight Millennium Development Goals". I was greatly honoured at that time, that

moment, when Kofi Annan asked me to become his advisor and the UN's advisor on the implementation of the Millennium Development Goals and I've been in that capacity now for the last fourteen years, working with then-Secretary General Kofi Annan, and now General Secretary Ban Ki-moon. So I've watched the Millennium Development Goals as a tool.

They are not a treaty. They are not legally binding. They are a statement of global aspirations, and they are meant to be a focal point, a way to get the attention of the world. I believe more and more that attention is the key in our world; the world is so noisy, competing images and now virtual images as well as others, that attention to what's important is a large part of our battle. And the Millennium Development Goals did serve in an important way – I wouldn't say in a decisive way but in an important way – to draw attention to the plight of the poorest of the poor. Because the Millennium Development Goals were goals addressed to reducing extreme poverty, illiteracy, children out of school, and preventable and treatable disease. So they focused on extreme poverty, and they called, among other things, for reducing the extent of extreme poverty by at least half, comparing the 1990 rate of extreme poverty as the World Bank measures it, with the 2015 rate. That goal, broadly, will be achieved, in that the global rate of extreme poverty has come down significantly during this period, and there have been hearteningly many other areas of progress, including the reduction of the deaths of children, especially from preventable and treatable causes. Thirteen million children under the age of five died in 1990. Now the number is still shockingly high, but lower, 6 million. So from 13 million to about 6 is more than half reduction. This is because the causes of death of young children are almost entirely preventable and treatable. It is still a blot on humanity that as many as 6 million children die each year of preventable and treatable causes, largely because they don't have access to the most basic preventative and curative health services, and they live in poverty. The numbers are coming down thankfully but there is a long way to go.

Now in 2012 the UN Member States convened on the twentieth anniversary of the Rio Earth Summit. This was a different process, largely around environmental themes. And you'll recall, of course, that in 1992 at the Rio Earth Summit, three major treaties had been adopted: one on climate change, which we still battle to implement; one on biodiversity; and one on combating the spread of deserts, or combating desertification. When the member states convened in 2012 again in Rio, they had to take note of an extraordinarily sobering reality, which was that not one

of the three treaties had been implemented. These were treaties that had been adopted at the highest degree of political leadership; heads of state and government from around the world had signed them, more than 190 governments had ratified them, and yet we are on a catastrophic environmental trajectory as well.

So in 2012 the governments, looking at this rather bleak twenty years of failure, took note of the at least moderate success – I don't want to overdo it, but I would say moderate success of the Millennium Development Goals – and said that the idea of global goals, to help orient the global discourse, the attention of young people and the acts of government, should apply more broadly, to expand the Millennium Development Goals to a broader concept that would include the continued fight to end extreme poverty but would add two other crucial dimensions. One is the dimension of environmental sustainability, to draw attention to our coming catastrophe if we don't change course on climate, on eliminating biodiversity and so on, and the third dimension is social inclusion, that even though economic development had proceeded, economic growth had taken place and poverty had come down, the extent of inequality in our societies, inequality of income, of power, of wealth, had widened, and the crisis of social exclusion was widening not narrowing.

So the governments in June 2012 adopted a new vision of sustainable development, which I strongly subscribe to myself, which is that sustainable development means to combine economic development, including the end of poverty, with social inclusion and environmental sustainability. Or we say in shorthand, that sustainable development means a holistic approach to economic, social and environmental objectives. I find this a powerful concept, that we should have a holism of economic, social and environmental aspirations. We should be teaching our children and we should be teaching our governments, that pursuing GNP is not enough, that pursuing economic growth is not enough, but that economic growth needs to be combined with social inclusion and with environmental sustainability in a holistic framework.

Rather remarkably, in a world that agrees on almost nothing, governments have come to agree to adopt this concept. This is rather valuable for us because I can only stress how hard it is at a diplomatic level to get agreements on anything these days, even *within* governments, much less across 193 diverse governments. So in June 2012 the governments said we should adopt Sustainable Development Goals by 2015, and that means that we are in the year of adopting the Sustainable Development Goals. In early



2013 a working group, the so-called Open Working Group of the General Assembly of 30 countries and 60 additional countries that participated in this – so it was 90 countries – negotiated a draft of the Sustainable Development Goals. And the draft has a hierarchy of goals and targets.

Last June 2014, the Open Working Group gavelled a decision of recommendations to the General Assembly. It's online, and is called "The Open Working Group Proposal For Sustainable Development Goals". They agreed, but they agreed on something somewhat cumbersome I have to say. So the goals are 17 in number and the targets are 169. So it's a long and complex document; a little bit, in my view, contradictory to the purpose of global education, because it's a lot of education here, a lot of text, a lot of different elements. On the other hand, I think it is also true to say that this is a complex reality we face, because harmonising economic, social and environmental objectives is not a simple matter, it's not a simple matter conceptually, it's not a simple matter – one could say – philosophically, and it is not a simple matter especially operationally, because no government in the world that I know of is ready for this integrated holistic agenda. Governments do not have Ministries of Sustainable Development; governments do not have a holistic vision of issues, and I could recite chapter and verse of governments that resist this kind of holism because it is difficult and because vested interest groups at every point intervene and interfere in this.

Be that as it may, we are on the verge of adopting Sustainable Development Goals. This is extremely important for us to take note of. And I want to update you therefore on what the goals say, what the process will be and how the challenge of human trafficking and ending all forms of modern slavery fit into the process right now, and how the process could be improved to strengthen the ability of the Sustainable Development Goals to support this agenda. First, the notion is that there is a hierarchy: goals; targets; indicators. And the goals and the targets were proposed last year.

The General Assembly voted last December that the proposals would be the basis for the agreement this September. It didn't say that they would be exactly this form but it said that the recommendations of the Open Working Group would be the basis for the agreement this coming September. The governments also agreed that there should be indicators, these are quantitative indicators, they could include the numbers of people in each country subjected to all forms of slavery for example, or estimates by country of the numbers of individuals caught in human trafficking, because of course such estimates exist even if there are difficulties of having them precise. Because the indicators are a technical issue, the General As-

sembly said that the heads of state would not adopt them but rather would accede to a technical process, which is now underway. And the indicators will be adopted in March 2016. So take note, if we want indicators on these issues, that's where and when the indicator list will be adopted. Why an indicator list? Because every country will be asked to report every year on the agreed list of indicators.

The other aspect of this that I want to highlight is a political process that's been created called the High Level Political Forum, or HLPE. This will be a new political designation within the UN, which will have the political responsibility for guiding the Sustainable Development Goals. It will be convened by heads of state, and the heads of state will meet in quadrennial summits around the Sustainable Development Goals – so perhaps 2018 or 2020 – and then every four years thereon, which is at least the vision right now, although it's not been settled. And in the intervening years, the governments will meet at the ministerial level to review progress towards the Sustainable Development Goals. So the idea is to embed the Sustainable Development Goals within a high-level political process of the member states of the UN. This is extremely important, of course, it is the only way that there can be ongoing accountability and ongoing awareness of government leaders, that they are jointly responsible and accountable for the political oversight of the Sustainable Development Goals.

The Sustainable Development Goals will be adopted, as I understand it now, on September 25<sup>th</sup>. There will be a three-day head-of-state summit. It will be the largest gathering in world history of heads of state and government. It also happens to be on the 70<sup>th</sup> anniversary of the United Nations. So it is really a remarkable occasion. I think even more remarkable is that the gathering will be opened by Pope Francis. He will be speaking to the assembled heads of state and government on the morning of September 25<sup>th</sup>. I think this is absolutely the most important and wonderful point, to infuse the moral authority and the moral importance and the critical significance of this concept of holism into the work of the world's political leaders. It is an opportunity one could only dream of, but it is going to happen.

We have therefore the months between now and September, to help sharpen, if possible, the goals and targets and the months between now and next March to help set indicators, and the period up to 2030 to achieve the Sustainable Development Goals. Because it's like a homework assignment, it only *starts* on September 25<sup>th</sup>, it doesn't *end*. I tell my students that their homework is to end poverty, but I tell them that they have 15 years to do

it, that it's open book and that they can work in groups. So they get some relief out of that, and they will get more relief when they know that the whole world is the group that they should be working in, that this is truly a global process.

Where do we stand on the SDGs in regard to the topics of concern? Both the human trafficking and I would say more generally, the fight to end modern slavery in all its forms. First, I can tell you there are a lot of good things in this document. In many places the targets have very important statements and I wanted to just highlight a few of them briefly for you: Goal no. 5 is to achieve gender equality and to empower women and girls, and target 5.3 under that goal is to eliminate all harmful practices such as child early enforced marriage, and female genital mutilation.

So forced marriage is on the agenda, it is one of the goals, it is one of the norms that is being adopted here and one of the things that should also be monitored and measured. Goal no. 8 is to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. So there are many aspects of this agenda that obviously intersect with the challenges being discussed at this meeting. Let me highlight three. Target 8.5 says "By 2030 achieve a full and productive employment and decent work for all women and men". Target 8.7: "Take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, eradicate forced labour, and by 2025 end child labour in all its forms, including the recruitment and use of child soldiers". Target 8.8: "Protect labour rights and promote safe and secure working environments for all workers including migrant workers, in particular women migrants and those in precarious employment". So these are areas of obvious overlap.

SDG 10 is to reduce inequality within and among countries, and target 10.7 is to facilitate orderly, safe, regular and responsible migration and mobility of people. SDG 16, as it's now drafted, includes in target 16.2 "End abuse, exploitation, trafficking, and all forms of violence against and torture of children". And SDG 17 is to strengthen the means of implementation, including enhancing international partnerships and enhancing data collection.

So you can see that the various parts of these 17 goals include several aspects of the agenda. However, I think that if you do a careful reading, and that is what I recommend for us to do, a careful reading of the goals and targets, there are definitely missing sections, missing words; the word "slavery" does not appear anywhere in the document. This seems to me to be a

mistake and a shame, because it's also not only a primary moral term, but it's also a legal term under ILO charters. It's globally defined, there are many covenants and practices around it, and it should be in the document. Many of these targets, in my view, are not adequately phrased right now. Some seem to refer only to child trafficking, not to adult trafficking. They are ambiguous. They have sections about children, but then they say "end trafficking", not being clear whether it's adult trafficking or child trafficking.

This was written by a committee, a committee of Ambassadors by the way, so all the more understandable that the language is not precise in some places, or ambiguous. Now here is the problem: the problem is that it was so hard to reach an agreement that, from the moment the agreement was reached, a number of governments said "don't touch a comma, don't touch a word, don't you dare put a word 'and' here, don't you dare say 'adult *and* child trafficking'" or anything like that. So we have fought right now, I have fought a painful battle for almost a year now to make changes or to suggest changes. So far every single comma, every single word has been held at bay under the argument that if anything is opened, everything can unravel. To my mind this is not adequate for the rational deliberations of mankind, because we should be able to rationally deliberate without jeopardising the consensus by having a few words altered here and there. And that is what I recommend we try to do.

There are two co-facilitators of this process. They are the Ambassadors of Ireland and Kenya. I, of course, work with them on a daily basis. They have said not to touch anything, because that is what they hear from the G77 and many powerful member states, and the European Union has not been too helpful on this I have to acknowledge, because it has also taken the view not to touch any word. This of course takes place in many different venues, so I am only reporting how it gets transmitted to New York, and the process. I believe that there is still time to make some changes. And I do believe that since many of the targets are incorrectly stated – I'll go that far – not just poorly stated, but made technical errors in their formulation, that these changes do need to be made, and that this gives an opportunity for some opening of the text. I don't propose that at this moment we review exactly the textual lines, but there are a few places where the objectives here could be strengthened inside the text and what I can say also categorically, is that the indicators that we need can be put in next March; that is an open agenda still, not a closed agenda.

Just to stop therefore, I would like to suggest the following five points. First, I believe that we should all strongly support the Sustainable Devel-

opment Goals, even as they are currently formulated: they are a powerful, indeed vital global consensus on key issues that will not easily be achieved again, and they are important for us. Second, we should make and I would suggest 'we' being the Pontifical Academy of Social Sciences and, of course, the Holy See and others, make recommended textual changes in a few places; not to dream of major changes, because I can tell you we are not going to succeed in that, but specific changes on this agenda I think are important, and I think they can be conveyed to the Secretary General, they can be conveyed to the co-facilitators, they can be conveyed to the European Commission and they can be conveyed to key member states of the UN through the Holy See and through other means. Third, I hope that under the guidance of this new framework, that we can help to promote a global partnership around this theme because we are invited to, by the structure of the Sustainable Development Goals, that is, to bring the agencies, the civil society, governments, academia, and other key organisations, to bear. Fourth, there is a conference in July called the Financing For Development Conference, which is a prelude to the SDGs, to put resources on the table to promote the Sustainable Development Goals. The fight against human trafficking and the fight to end all forms of modern slavery requires financial resources. I can elaborate a bit more on that in discussion if there is interest. And finally, I hope that the Holy See and others propose to the High Level Political Forum, which is taking shape, that this agenda should be one of the points that is considered regularly in the review of the Sustainable Development Goals in the years ahead.

Thank you very much.

## ► THE ROLE OF NATIONAL LEGISLATION



# A UK PERSPECTIVE ON HUMAN TRAFFICKING: ASPECTS OF THE MODERN SLAVERY ACT 2015

JOHN F. MCELDOWNEY

## Introduction

Human trafficking and slavery are crimes proscribed by domestic and international law. Attempts to regulate this area of the criminal law invariably involve command and control systems of regulation. This includes arrangements for prevention, detection and control that engage with the main prosecution authorities including the police and courts. In many instances detection is difficult, if not impossible, and this leaves the authorities the problem of how to protect victims. In addition to the criminal law, regulatory systems may also be used to address the economic and social aspects of human trafficking. In that context, Terrence Daintith makes an important distinction between *imperium* based on command and control by government and *dominium*, the use of wealth to regulate an activity through economic sanctions.<sup>1</sup> Human trafficking has predominantly involved command and control forms of regulation and because of its criminal nature this has been based around detecting offenders and finding mechanisms of control. Opening human trafficking and slavery to other forms of regulation beyond the criminal law is beginning in the UK. The UK, for example, has attempted to provide economic regulation such as minimum wage controls and the licensing of Gangmasters in a twin track approach to deter crime but also to address the need to protect victims. This has proved to be complicated involving inter-State co-operation and asylum controls. There are overpowering reasons for strengthening different forms of non-penal regulation. The corporate dimension of human trafficking involving the exploitation of workers throughout the world largely for the benefit of western consumers is a case in point. Regulating multi-national corporations is an important part of prevention and deter-

<sup>1</sup> T.C. Daintith, "Legal Analysis of Economic Policy" (1982) 9 *Journal of Law and Society* 191-224 at p. 211, T.C. Daintith "Regulation by Contract: The New Prerogative" [1979] 32 *Current Legal Problems* 41-64. Generally see: A. Ogus, *Regulation*, Oxford: Oxford University Press 1994 and M. Cave, M. Lodge, *Understanding Regulation*, 2nd edition, Oxford: Oxford University Press, 2012.



rence of human trafficking. Public opinion is a vital element in economic regulation. The human tragedy and suffering of many victims has gained some degree of public concern and there is undoubtedly public empathy with victims of trafficking. This is an important aspect of seeking effective social control that is harnessing public opinion to assist in the prevention and detection of a serious crime. Tackling the economics of human trafficking requires financial controls as well as incentives to prevent trafficking taking place. The breadth of what constitutes human trafficking or slavery is wide, making it hard to disaggregate the different approaches required for effective regulation and prevention.

This paper provides an outline and assessment of the main provisions of the Modern Slavery Act 2015 and argues that the interests of victims need to be given priority when interpreting and applying the legislation. The Act should be interpreted as a beginning – not an end in itself. Criminal law is only one part of the approach. Changing public opinion to support strategies to prevent, detect and deter modern slavery is important and necessary. The Act should be viewed as setting a framework for the future that needs to be re-visited in the light of practical experience. The importance of economic regulation of the exploitation of the slave trade suggests that joining up the various techniques available under the Modern Slavery Act with financial and corrupt practices is essential.<sup>2</sup> As experience of the working of the new legislation develops, it will be possible to identify more clearly the strengths and weaknesses of the legislation.

Important lessons from the UK legislative experience emerge as the Bill was heavily amended during its passage into law. The absence of political consensus on how to address human trafficking led to weaknesses in the policy-making and legislative process and the original Bill was much less effective than the final legislation. Even so some opportunities were missed to address some important issues. The Act fails to articulate that the protection of victims and their interests are paramount and should be given the highest priority when interpreting the legislation. There are continuing tensions between law enforcement responses involving the criminal law and attempts to protect victims. Achieving both protection and enforcement creates major challenges for the authorities. The criminalisation of a problem may also make it inherently more difficult to solve and the victim may be hard to protect within the criminal justice system. The Act

<sup>2</sup> T. Prosser, *The Economic Constitution*, Oxford: Oxford University Press, 2014.

gives victims statutory protection where there is evidence that victims are placed under pressure to undertake criminal acts but it remains to be seen how effective this will prove to be. Victims may struggle with the language and may fear the authorities intervening in their case because of the possibility of deportation, ill treatment or criminal prosecution. Strengthening the penalties for trafficking and human slavery may act as a deterrent against slave traders but it may also raise the stakes and make economic regulation difficult to achieve. Repatriation is also an important aspect of victim support. The new Act does not address this issue with repatriation remaining a major problem. The Act leaves much to be resolved such as the lack of an absolute legal right for overseas domestic workers to escape tied contracts and obtain a new contract that does not put in doubt their visa arrangements. Parliamentary debate on overseas domestic workers and the use of tied employment contracts provides a revealing insight into the issues associated with human trafficking and the political sensitivities of their resolution.<sup>3</sup> During the passage of the Bill, there were many attempts to create a climate of fear associated with illegal immigrants. One example is the use of viral emails sent to Members of Parliament throughout the debate on the Bill, making false claims about the financial benefits being given to illegal immigrants. This led to the unprecedented publication of a House of Commons Library Paper to members of Parliament addressing the use of viral emails and the false information they contained.<sup>4</sup>

The main outline of the paper is as follows. We begin with the role of the criminal law that proscribes slavery and human trafficking. The Modern Slavery Act 2015 is examined in outline with attention being given to the victim's defence, the role of the new Anti-trafficking Commissioner, the protection of overseas domestic workers and the future direction of regulation. How the Act might be interpreted to give priority to the protection of victims is explained.

### **Human Trafficking in Context**

Human trafficking covers a widely defined range of activities under the general heading of human slavery, servitude and forced or compulsory

<sup>3</sup> See House of Commons Library: *Modern Slavery Bill: Progress of the Bill* SN/HA/7006 (13 March 2015) and also Lords Amendments to the Bill, 5 March 2015 Explanatory Notes Session 2014-15.

<sup>4</sup> See House of Commons Library, *Viral emails protesting about financial assistance for illegal immigrants/refugees living in Britain*. SN05621 (26 March 2015).

labour. The exploitation of the victim is at the centre of the definition of human trafficking. It may involve deception, coercion, abuse of power or abuse of someone's vulnerability. There are many related motivations including sexual exploitation, removal of organs, securing various services by force, threat or deception and also the exploitation of children and vulnerable people. Young people are trafficked so that they can be exploited domestically or economically. There are a variety of situations where victims are taken into forced labour and where victims are forced to pay off debts and the debts are passed down to their children. There are examples where victims are made to undertake work against their will with long hours for little or no pay, which are subject to verbal or physical threats of violence against themselves or their families. The scale of such abuse includes exploitation in the areas of food packaging, the agricultural sector and mining as well as tarmacking and a wide variety of work in the hospitality industry. There is also a wide range of sexual exploitation linked to the sex industry. Estimates vary as to the extent of the problem but the Home Office in 2008 and 2009 estimated that there are at least 4,000 victims of sexual exploitation in the UK.<sup>5</sup> There are related crimes associated with criminality such as drugs and pickpocketing. Finally there is the use of victims in exploitative situations such as domestic work in private households for little or no pay and with limitations on the victims' freedom.

Attempts to detect and deter human trafficking have invariably required the use of the criminal law and this has involved a wide variety of legislative responses. The range of offences reflects the diverse range of activities as well as the way in which legislation has been forthcoming to address each sector. Human Trafficking in the UK is hard to quantify. Estimates are based on information drawn from official statistics. The Inter-departmental Ministerial Group in October 2013 suggested that annually there were 1,168 victims of human trafficking, but more worryingly there appeared to be an incremental increase of 25%. The majority were females (786). Most were adults but there were 371 children. Civil unrest and wars contribute to the problem as well as famine and poverty. Nigeria, Romania and Albanian are some of the main areas where trafficking occurs. Romania, China

<sup>5</sup> Generally see: House of Commons Library Note: *Human Trafficking: UK Responses* SN/HA/4324 (13 January 2014). Home Office, Regulatory Impact Assessment of Ratification of the Council of European Convention on Action against Trafficking in Human Beings, 6 October 2008 and also see the Home Affairs Committee, *The Trade in Human beings: Human Trafficking in the UK*, 6 May 2009 HC 23-1 2008-09.

and parts of the Middle East also come high up on trafficking. Syria is also a source of trafficking today.<sup>6</sup>

An accurate assessment of the extent of human trafficking is difficult. The International Labour Organisation has collected statistics and estimates: almost 21 million are victims of forced labour, many exploited by private individuals as well as enterprises. There is also a category of 2 million related to State or rebel groups. It is estimated that 4.5 million are victims of forced sexual exploitation. States where trafficking is most prevalent are: Mauritania, Haiti, Pakistan, India, Nepal, Moldova, Benin, Cote d'Ivoire, The Gambia and Gabon. The alarming trend is that human trafficking is increasing and the likelihood is that current global instability will lead to further increases. Attempts by the authorities to address human trafficking are likely to require resources and political commitment beyond the term of office of any single government.

### **The criminal law and other regulatory techniques in the regulation of human trafficking**

The breadth of the criminal law in England and Wales applicable to human trafficking is most striking. Trafficking for sexual exploitation is an offence under the Sexual Offences Act 2003. Trafficking for any exploitation such as slavery, forced labour, or organ removal is an offence under the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. The law has also been extended to apply to offences committed abroad by UK nationals and offences committed by foreign nationals in the UK.<sup>7</sup> Various forms of slavery including servitude, forced and compulsory labour are criminal offences under the Coroners and Justice Act 2009.<sup>8</sup>

The Modern Slavery Act falls into the category of maintaining a strong emphasis on the criminal law and framing the human trafficking problem in terms of making criminal prosecution possible. The UK has also attempted to regulate human trafficking through economic methods. The minimum wage regulated by the Low Pay Commission is intended to provide a legal framework for a minimum wage that is enforceable. Adopting this approach has the potential of making it more difficult to exploit

<sup>6</sup> See: House of Commons Library: *Human trafficking: UK responses* SN/HA/4324 (13 January 2014).

<sup>7</sup> The Protection of Freedoms Act 2012 amended the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc.) Act 2003.

<sup>8</sup> There are similar offences in Scotland and various related offences.

workers. In terms of human trafficking, however, it may drive the traffickers underground to avoid detection and surveillance. The detection and prevention of abuse requires large resources and this may not be easy to find under the present economic circumstances.

Public pressure and concern about gangmasters led to the setting up of the Gangmasters Licensing Authority under the Gangmasters (Licensing) Act 2004. This was aimed at agriculture, horticulture and shellfish gathering and is an attempt to ensure that employment standards are being met. This is employment-focused and has the potential to address some long-standing exploitation in particular sectors of activity. Section 55 of the Modern Slavery Act provides that the Secretary of State must undertake a review of the legislation and report to Parliament.

An important strategy in prevention and deterrence is linked to monitoring to attempt to prevent human trafficking in the first place. Various UK organisations are engaged in this activity. The UK Human Trafficking Centre was set up in 2005 and is integrated into the National Crime Agency (NCA). There are also co-ordination groups and the EU Directive on human trafficking requires Member States to put in place a national rapporteur on trafficking that is undertaken by the Inter-departmental Ministerial Group.

The UK also set up the National Referral Mechanism (NRM) in 2009. This is a UK obligation intended to assist victims under the Council of Europe Convention on trafficking in human beings. A person who the authorities has reasonable grounds to believe is subject to human trafficking is entitled to a 45-day recovery period and can receive support services. This is known as the National Referral Mechanism and is the subject of a Government review that reported in November 2014.<sup>9</sup>

Outside official agencies there are numerous charities including the Salvation Army that are engaged in supporting victims. Since July 2011, the Salvation Army has managed the Government's Adult Human Trafficking Victim Care contract. There is an on-going pilot scheme that includes the

<sup>9</sup> The Modern Slavery Act 2015 provides for a statutory framework relating to guidance on how to operate a national referral mechanism to support and identify victims. This is a form of "soft law" regulation, namely trying to discover the extent of the problem of trafficking and then addressing this aspect of the problem. In the UK there is an on-going review of the NRM process amidst concerns that the system was failing. Linked to the use of the NRM are related issues regarding visas and establishing the confidence of victims.

use of child trafficking advocates. The pilot scheme has been the basis for including Child trafficking advocates in the Modern Slavery Bill. This is a promising development, and one that might assist in giving children support when they need it most. Equally important is the emerging analysis that places trafficking at the centre of a human rights focus. A focus on rights tends to cross many of the sectorial boundaries. A human rights focus allows priorities to be set and sends a message that protecting victims should be considered when crimes are being defined and prosecutions taken. Trafficking is exploitative of the weak, the vulnerable and the less articulate. Despite these factors or because of them, the UNCHR has been less successful than many hoped in advancing the protection of victims. The lead role for trafficking appears to have fallen to the UN Crime Commission and this has led the way in mapping the terms of the subject. The multi-disciplinary nature of the challenge should not be underestimated and its complexity is often off-putting even for the most astute lawyer. Tackling the financial rewards of human trafficking includes identifying criminal activity and recovering assets based on trafficking. The Proceeds of Crime Act 2002 allows the seizure of assets that are the result of illegal activities and crime. Prosecutions are also possible through the Crown Prosecution Service. The Home Office may also seize assets and on a 50:50 split share the profits from the seizure with police, local authorities and other agencies. This is a clever and innovative approach combining criminal sanctions with economic consequences.

Prostitution is often involved in human trafficking and this raises the question of whether it should be illegal to pay for sex. The Sexual Offences Act 2003 amended by the Policing and Crime Act 2009 introduces a new offence. It is illegal to pay for the sexual services of a prostitute who is subject to force, coercion or deception. The sexual Offences Act 2003 also makes it illegal to pay for the sexual services of a child. The Policing and Crime Act 2009 also makes it an offence to solicit a prostitute in a public place or to cause, or incite prostitution for gain.

The very low numbers of criminal convictions for trafficking between 2005 and 2011 provide ample evidence of the challenges facing the authorities. In 2005 there were no successful prosecutions for exploitation and only 12 for trafficking involving sexual exploitation. In 2011 there were still no successful prosecutions for exploitation and only 8 successful prosecutions for trafficking for sexual exploitation.<sup>10</sup> Overall the number

<sup>10</sup> HL Deb 25 July 2012 cWA 165. Also see: House of Commons Library: *Human Trafficking: UK responses* SN/HA/ 4324 (13 January 2014).

of prosecutions for specific forms of exploitation involving domestic servitude or labour exploitation, including children, was only 116. The reasons for the failure to have an effective prosecution of trafficking offences is indicative of the problems in finding evidence and uncovering the facts surrounding trafficking in general. It may more generally question the wisdom of making the criminal law the main focus of the new legislation.

## **The Modern Slavery Act 2015**

### *The passage of the Bill: the parliamentary and constitutional context*

At the outset it is necessary to outline the main features of the UK's legislative system. The UK has a bicameral chamber, an elected House of Commons (currently 650 members) and an appointed House of Lords (currently 784 eligible members). Public Bills are subject to three readings in each House before Royal Assent. The Modern Slavery Act was also subject to pre-legislative scrutiny. This is a relatively new innovation in providing a form of scrutiny through the involvement of a parliamentary committee that is intended to improve the general quality of legislation and, in theory, smooth the passage of the Act through Parliament. The Committee provides an in-depth report and assessment of the relevant Act and this provides a basis for discussion through the various stages of parliamentary debate. The result of the Committee's scrutiny is intended to give better transparency and raise the subsequent parliamentary standard of debate as well as give greater clarity on some of the technical policy issues. In the case of the Modern Slavery Act, the subsequent debate revealed large areas of disagreement between the Government and MPs. There were many amendments and revisions to the Act, including through the debates in the House of Lords some important changes relating to overseas domestic workers.

### *A general overview and synopsis of the Act*

The Modern Slavery Act<sup>11</sup> has a very broad remit and is composed of seven distinct parts. Parts 1-3 provide for criminal offences, prevention orders, maritime enforcement and various orders relating to slavery and trafficking. Most important is that the legislation provides for an increase in penalties to life imprisonment for the main trafficking and slavery offences. The Act is also reforming by introducing the following changes:

<sup>11</sup> The Act mainly applies to England and Wales. There are ongoing discussions for Wales and Northern Ireland.

- The introduction of two new civil preventative orders the Slavery and Trafficking Prevention Order and the Slavery and Trafficking Risk Order;
- New maritime enforcement powers in relation to ships;
- The setting up of a new Independent Anti-Slavery Commissioner;
- New victim support measures, including a statutory defence for victims and special measures for witnesses protections and civil legal aid;
- New disclosure powers to access information from businesses.

Pre-legislative scrutiny was undertaken by a Joint Committee of both Houses chaired by Frank Field MP, vice-chair of the Human Trafficking Foundation and a member of the Advisory Council for Social Justice. The committee took extensive evidence, as part of a general consultation process, and published its findings on 16 December 2013, *Establishing Britain as a world leader in the fight against modern slavery: report of the Modern Slavery Act Evidence Review*. The Joint Committee also received evidence from the Inter-departmental Ministerial Group on Human Trafficking, as part of the obligations under the *EU Directive on preventing and combatting trafficking in human beings and protecting its victims*.

Some preliminary observations are important. The Act proved more controversial than was expected, attracting extensive debate and analysis during its passage. Originally the Act was intended to create a new regime to address human trafficking. The new offences included were slavery of children and adults; child exploitation; child trafficking, and trafficking and facilitating the commission of an offence of modern slavery. The Government rejected attempts to tackle the supply chain between the traffickers and the businesses through more robust intervention and the use of the criminal law. Instead the Government preferred to set up better collaboration with businesses to tackle abuse and favoured better annual reporting responsibilities. The previous government set up a protection for anyone for whom the authorities have “reasonable grounds” to believe has been trafficked to be entitled to a 45-day reflection and recovery period during which they can access services such as those provided by the Salvation Army.<sup>12</sup> This is set to continue.

The Government accepted some of the recommendations on the role of the Anti-Slavery Commissioner and introduced a statutory defence for

<sup>12</sup> House of Commons Library, *Human Trafficking: UK responses* SN/HA/4324 (13 January 2014) p. 9.



victims of trafficking. Perhaps the setting up of the Anti-Slavery Commission is the most important step advanced in the Act. Independence in the office is a key part of its functioning effectively. Proceeds of crime was also the subject of intense debate and proposals to ensure that crime was traced and assets seized were not all accepted. Prostitution and its links with trafficking led to acrimonious arguments about what should be legal and whether payment for sex should be made an offence. The issue of criminalisation was not easy to resolve, but the Opposition amendment to review the links between the sex trade and human trafficking were defeated. There was also considerable debate about the Gangmasters Licensing Authority and attempts to extend its remit beyond the three sectors, agriculture, horticulture and shellfish proved unsuccessful in the debate on the Act. Instead a review is to be carried out within one year of the Act's passage.

### *Criminal law*

Part 1 of the Modern Slavery Act 2015 provides for penalties for slavery, human trafficking and exploitation. The offences are all widely drawn and supplement the existing criminal law. There are tougher penalties up to life imprisonment and related confiscation of property and goods. Sections 1 and 2 of the Act create specific offences of slavery or forced compulsory labour as well as human trafficking offences. There is also a definition of exploitation and the offence of human trafficking may be committed outside UK territory but remain subject to trial in the UK if the person is a UK national. Non UK nationals are subject to trial in the UK if the offences are committed in the UK. The breadth of the offences is widely drawn to allow a large discretion in criminal prosecution. The terms of the criminal law are quite vague, such as section 3 containing the meaning of exploitation "...where something is done to or in respect of the person that includes a wide range of offences relating to sexual exploitation or securing services or the commission of any related offence".

### *The Independent Anti-Slavery Commissioner*

The Independent Anti-Slavery Commissioner is established under part 4 of the Act with statutory powers that encourage good practice for the prevention, detection, investigation and prosecution of offences under the Act. There was considerable debate about the remit and independence of the Commissioner. Various models of regulatory independence were considered such as the independent Reviewer of Terrorism Legislation,

the Chief Inspector of Borders and Immigration and the Children's Commissioner.

A number of issues on the independence of the Commissioner were discussed, including the terms of appointment process and procedures. A Lords amendment provided budget independence and powers to appointment staff and establish its own range of expertise. This is a welcome development as budgetary independence is an important pre-requisite of functional and operational autonomy. There is also an important duty on various public authorities to co-operate with the Commissioner and any reasonable and practical request to do so must be considered by the public body (section 43 of the Modern Slavery Act).

Accountability of the Commissioner is achieved through a number of Parliamentary procedures and practices:

- An annual report to Parliament including a strategic plan;
- Oversight by select committee;
- Responses to proposals from the select committee;
- Scrutiny in Parliament through Opposition Day debate; Back-bench debate or Westminster Hall debates.

Section 41 (7) of the Act allows the Secretary of State to direct the Commissioner to omit from any report before publication matters that the Secretary of State considers:

- Would be against the interests of national security;
- Might prejudice the safety of any person in England and Wales or;
- Might prejudice the investigation or prosecution of an offence under the law of England and Wales.

Section 42 makes similar restrictions for publication of annual reports and strategic plans. Similar powers to restrict publication exist for Scotland, Wales and Northern Ireland. There is also an important approval power vested in the Secretary of State for the approval of strategic plans to be undertaken by the Commissioner. Vesting such powers in the relevant Secretary of State raises the question of how the "independence" of the office of the Anti-Slavery Commissioner will be respected and upheld. One possibility is for a House of Commons select committee to take a pro-active oversight of the work of the Commissioner and this would secure an appropriate channel for debate and oversight.

There is also a restriction on the Commissioner from exercising any functions in relation to an individual case, but this does not prevent con-

sidering individual cases and drawing conclusions from such cases (section 44).

The appointment of a new Independent Commissioner offers considerable scope for developing networks and best practice. This would enable a wide range of expertise to be brought together and if a proactive approach is adopted the Commissioner “model” might be followed throughout EU member states as well as internationally. Developing informal and formal relations will ultimately determine the success of the Commissioner.

### *The Victim’s defence and protection of victims*

The use of the criminal law is problematical – especially if the victim is implicated in the criminal activity itself. This raises the question as to what extent does a victim of human trafficking have a defence against a criminal offence. Very often victims are difficult to separate from the offenders who manage trafficking. Last year the Court of Appeal provided guidance to the lower courts on the question of how to treat victims of human trafficking and how to avoid prosecution. Some general guidance is provided in the leading case of *Rave L* [2014] *Criminal Law Review* 150 [2014] 1 All ER 113, a case that involved co-joined consideration of four unrelated cases some general guidance is provided. The main issue is how child victims should be treated when they are caught up in criminal activities. The question is partly to do with the role of the police and the Director of Public Prosecutions. It is also to do with how the courts should treat such cases. The court considered that there is a strong case for recognising some form of victim immunity. This is not, however, a task that a court is able to direct, the discretion rests with the Director of Prosecutions. There remains a defence available to the victim of trafficking and the matter of victim protection is paramount. Some guidelines relating to prosecution discretion and the victim’s defence are available at the *Attorney General’s Reference No 3 of 2000* [2001] UKHL 53 and [2002] Cr. App. R. 29 (p. 360)

Interpreting the guidelines and establishing whether or not a “victim” is in fact a victim for the purposes of protection is, in the first instance, largely determined by the police or other front-line agencies. Similarly the age of the victim is almost always difficult to determine and requires evidence from the police, medical experts and related specialist experts. The UK Human Trafficking Centre has established some reputation in immigration cases and their expertise is invaluable and should be consulted. Determining the age of a victim has to be determined by facts and is a matter for the court, appropriately informed by specialist expertise. The Court of Appeal is robust

in its view that protecting the victim is paramount but not always definitive in every case. In such cases there is clearly a distinction between the practical application of rules and their theoretical consideration in the form of judicial guidance offered by the courts. There is also a knowledge “gap”. The UK courts have only recently begun to take into account the full extent of “victim” exploitation in criminal activities associated with human trafficking. Their role is partly because of the application of Article 26 of the Council of Europe Convention Against Trafficking in Human Beings and partly because of the creation of clearer guidance from the Crown Prosecution Service and greater discussion in the media. The Court of Appeal has set out some helpful guidance in the form of the steps required when considering prosecution which must include the following questions to determine whether there is a victim of human trafficking or slavery involved:

- Has the defendant been trafficked within the meaning of the Council of Europe Trafficking Convention on the EU Trafficking Directive?
- Was the defendant recruited, transported, transferred, harboured or received for the purpose of exploitation, such as forced labour or services, sexual exploitation, criminal activities or the removal of organs?
- If so, is there evidence that the exploitation was achieved or intended to be achieved through the use of coercive means? Or is it possible that the defendant at the time of the exploitation was a child, defined as being under 18 years of age, making coercion irrelevant?
- Does the defendant’s status as a trafficked victim protect from prosecution for the offence charged?
- Is the requisite causal connection between the trafficking and the offence charged established?
- If so, does the court agree with the decision to prosecute?

The complexity of the above guidance and the difficulty of ensuring compliance leaves many uncertainties in determining whether someone is a victim, one of the important. The question of how to ascertain who is a victim will remain uncertain.

The Modern Slavery Act incorporates the victim’s defence into a statutory form of the defence. Part 5 of the Modern Slavery Act provides a statutory protection to victims of slavery or trafficking and also extends to special measures for witnesses in criminal proceedings and the grant of civil legal aid to slavery victims. These are welcome developments that should provide victim protection from penalties and ensure the non-prosecution of victims. It also sends an important message regarding the need to iden-

tify victims in the first place and so ensure that protection begins at the earliest possible time. This is also consistent with the Trafficking Directive and has the support of the UNHCR, who would prefer the Act adopt a holistic approach to protection by advancing a clear policy to combat victim abuse through measures to establish the trust and confidence of those being trafficked. Once victims are under protection it is unlikely that they will be victimised and subject to re-trafficking. The main problem is that criminal law is often not the best solution in many cases, as it is frequently difficult to enforce when there is an underlying need for victim protection. A separation between the criminal law and protecting victims has been slow in coming and remains challenging.

### *Independent Child Trafficking Advocates*

Section 48 of the Modern Slavery Act 2015 empowers the Secretary of State to establish Independent Child Trafficking advocates. The advocates are intended to advance “the best interests” of the child victim. This is an important development in the legislation and recognises that the victim’s interests should be overriding. The advocates are expected to represent the interests of the child in accessing services and become a focal link between various agencies and professionals. Allowing child victims a “voice” is very important, especially when vulnerable children are involved. In the debate on the Bill, one issue that proved problematic was how “independent” the advocates might be when confronted with criminal cases that may not always be taken in the interests or for the protection of the child, but primarily to prosecute. Indeed, how legally independent would such advocates be from local authorities and other statutory bodies? Unlike advocates appointed by a court, the independent child trafficking advocate is promoted by the Secretary of State. Regulations are promised, setting out the arrangements for the appointment and independence of the advocates. Despite some vagueness and uncertainty over their exact role and functions there is considerable potential for independent child advocates to take a lead role in advancing the interest of the victim and ensuring that victims are protected. This part of the legislation may prove to have the most potential to bring about changes in the protection of victims. However, the independence of the advocates is critical to their success.

### *Overseas domestic workers*

One of the most contentious issues in debate was the visa arrangements for domestic workers. On average there are around 16,000 domestic mi-

grant visas issued annually. In 2012 the Coalition government introduced a system of tied visas whereby the employee (the domestic worker) was bound to one employer and if they left employment with that one employer their visa would be forfeited. In the analysis offered by many organisations domestic workers, in common with many sectors, are unduly vulnerable and susceptible to exploitation with little obvious solution. Large sections of tied workers report bad treatment, abuse or at the minimum long hours of work with low pay. In the Commons debate on the Act, the plight of domestic workers was the subject of a division, which the Government won by the narrowest of margins, that rejected any change in the visa arrangement. In February 2015, the Government announced a review of the visa arrangements of overseas domestic workers<sup>13</sup> to be undertaken by James Ewins and to be concluded by June 2015. The review is to consider the appropriate steps needed to protect overseas domestic workers consistent with immigration considerations and victim protection.

A significant advance came from a Lords amendment that was intended to give overseas domestic workers the ability to change employment while in the UK. This was linked to a right to renew their visas for up to 12 months as well as the right to a temporary three-month visa to allow a visitor to live in the UK and seek alternative employment to domestic work. The Government was opposed to this amendment and tabled an amended version that would restrict employment to domestic work in a private household and allowing a change of employer. The Home Secretary would be given pro-active powers to settle guidance and take enforcement action to ensure no breach of visa conditions or overstaying their time in the country. The matter was debated on 25 March 2015 in the House of Com-

<sup>13</sup> The terms of reference of the review include whether the arrangements for issuing Overseas Domestic Workers are effective in protecting victims from abuse and whether there is any evidence that the terms of the visa, including the link to the specified employer, have led to the trafficking or slavery of domestic workers; whether the policies and processes for (i) identifying and (ii) providing support to victims of modern slavery amongst those who entered the country on an Overseas Domestic Workers Visa are effective, including whether there are any barriers to access to support which need to be addressed. The Review should take account of the recent review of the National Referral Mechanism, but look specifically at the issue of access by holders of Overseas Domestic Workers visas; whether the policies and processes for pursuing those accused of perpetrating modern slavery offences against those on an Overseas Domestic Workers Visa are effective; the need to maintain the integrity of the immigration system.

mons and the Lord's amendment was defeated.<sup>14</sup> The various differences of opinions and debates, however, resulted in section 53 of the Act. This is a broadly discretionary section leaving the power with the Secretary of State to issue guidance on the visa and immigration arrangements for overseas domestic workers that will be the subject to further consultation and review in the light of the Ewins report.

The debate about overseas domestic visas is indicative of the problem of attempting to combine two approaches to human trafficking – namely criminal sanctions to regulate visa misuse and at the same time the protection of victims.

This is an area that illustrates very clearly the problem for the Government of attempting to maintain the integrity of the visa system as well as protecting victims. It is common ground that migrant domestic workers are particularly vulnerable to abuse, and for many years the visa system provided minimum protection.<sup>15</sup> Evidence collected by the Home Affairs Committee showed that victims who are “owned” by the traffickers best described a wide variety of abusive practices. Often the job arrangements were exploitative and day-to-day life effectively under the control of the employer. Poor regulation of the minimum wage left many workers economically dependent on their employer. The Committee considered that the ability of the employee to change employment was “the single most important issue” in preventing forced labour and preventing abuse. Even though the visa arrangements had been accepted as compliant with human rights and the International Labour Organization (ILO) best practice at that time, there was evidence from a wide range of international sources that abuse was prevalent. The system of visas was effectively unable to satisfactorily address arrangements to counteract abusive employment of migrant overseas domestic workers. In June 2011 the ILO adopted a more robust Convention on Domestic Workers. The new Convention requires that domestic workers must have the same basic labour rights as other workers including hours of service, rest and holidays, as well as clear information on terms and conditions of employment.

The Modern Slavery Act prompted the Government to identify safeguards on domestic migrant workers. Broadly these include the following:

<sup>14</sup> House of Commons Library calls to change migrant domestic visa conditions SN/HA/4786 (18 March 2015).

<sup>15</sup> Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK* HC 23-1 (14 May 2009).

- Employers have to prove to immigration officers that they have a pre-existing employment relationship with their domestic worker, including documents such as pay slips;
- Victims have access to the National Referral Mechanism and protection from the authorities;
- Various organisations are able to access a number of organisations who can help including the police, the Pay and Work Rights Helpline and Employment Tribunals.

Regulating overseas domestic workers includes general visa conditions set by the Home Office that include a contract of employment being issued; employment with their employer for 12 months, a letter informing workers of their rights. However, in the specific case of overseas domestic workers there is no need for a pre-existing employment relationship nor is there a need to establish that there is a previous relationship of 12 months or more.

There are currently no statistics on the operation of the National Referral Mechanism by overseas domestic workers. Curiously there is considerable evidence that diplomatic missions are increasingly the subject of criticism of their treatment of overseas domestic workers. Recently, the Court of Appeal has ruled that State immunity claimed by diplomats does not allow derogation of the rights of overseas domestic workers, including the right to an employment contract.

The plight of overseas domestic workers is the subject of research undertaken by Human Rights Watch and Kalayaan, an independent pressure group with expertise in this area. Their findings, based on various surveys undertaken over the past few years, are as follows. Migrant workers tied to their employment are twice as likely to be abused as those that were not. The conditions of many migrant domestic workers included lack of privacy, the need to share rooms and long working hours as well as poor pay. Almost two thirds of cases referred to the National Referral Mechanism were in tied contracts of employment.

The operation of the criminal law is particularly problematic. In many cases victims may seek protection from enforcement action by the authorities but leave them even more vulnerable to violence or threats. There is a strong case for allowing a change of contract for overseas domestic workers but the government argues that if overseas domestic workers were allowed to change employer, this might encourage moving from one abusive employment arrangement to another, making it more difficult for the



authorities to track victims and offer them protection. Victims of trafficking should be encouraged to seek help from the authorities rather than be allowed to change employer. The Government's stance has support from the police.

### *Enforcement powers in relation to ships*

Increasingly trafficking involves ships used in the slave trade. Many ships do not have any nationality and seek protection within international waters on the high seas. Tracking ships suspected of the involvement in the slave trade is an important part of prevention and detection. New powers are intended to provide the necessary arrangements to tackle this aspect of the slave trade.

### *Prevention orders*

Part 2 of the Modern Slavery Act provides for slavery and trafficking prevention orders as well as risk orders. The new orders are a form of monitoring and surveillance device to ensure that the police may regularly keep an oversight of risk and take precautionary measures. Fines may be imposed for any breach of an order. They are part of the judicial process and are subject to application by the authorities, namely the Director General of the National Crime Agency or the immigration authorities. The orders are aimed at prevention and risk assessment. Their operational use is that once victims are identified it is possible to give judicial protection through the application of the orders.

### *Corporate supply chains*

The original Bill did not address the problem of corporate supply chains, despite their importance to the prevention of slavery. In the debate on the Bill, it was broadly accepted that the company supply chain was the most important aspect of addressing modern slavery and that the Bill should include this aspect of the problem. The requirement to have quoted companies report on the impact of their supply chains on social, economic and human rights issues connected with slavery was considered an essential aid towards prevention and deterrence. After much debate it was agreed that a new clause requiring corporate organisations to publish a "slavery and human trafficking statement" for each financial year should be introduced. This is a general responsibility and might well fall short of what is required when the details of the statement are insufficient. If so, then they would need to provide an understanding of how the law might be improved and

enforced. One of the roles of the Independent Anti-Slavery Commissioner is to monitor and report on the various statements on an annual basis. Part 6 and section 54 of the Modern Slavery Act provide for some transparency in supply chains. Commercial organisations are required to prepare an annual slavery and human trafficking statement. This includes the steps an organisation is taking, including information and transparency on the risk of human trafficking, and the statement must be approved by the Board of Directors. The Secretary of State may make regulations to approve the statement and ensure that it is effective. There are discretionary powers to make further amendments through the regulations.

It remains to be seen how this aspect of the legislation will be effective. Regulating supply chains is critical to the success of anti-trafficking and slavery initiatives.

### **Repatriation and International Law**

There are a variety of regulations under international law that the UK has to be compliant with. The Trafficking Protocol<sup>16</sup> defines in international law the term “trafficking” for the first time. The role of international law in this regard is a welcome development. It signals the responsibility of the State on human trafficking and this has strengthened the determination of many States to adopt their own laws or provide additional forms of protection that go beyond the requirements of international law. In this area of international law, however, it is always better not to expect too much. The Trafficking Protocol provides a broad all-embracing definition and criminal offences for practices across States as well as within the State itself.

The UNCHR has a responsibility to protect refugees, asylum seekers, internally displaced people, stateless persons and others and ensure that they do not fall victim to human trafficking. This includes the principle that vulnerable people should not be repatriated. The issue of repatriation is at the centre of the attempts under international law to address trafficking.

The terms of the 1951 Convention, international human rights law and the European Charter of Fundamental Rights are all applicable to the victims of trafficking. Protecting victims from repatriation may take several forms. There is a general obligation to protect victims but often a

<sup>16</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against Transnational Organised Crime UN Doc A/45/49 Vol. 1 2001 agreed November 2000 and entered into force December 25 2003. Hereinafter the Trafficking Protocol.

difficulty in combining this protection with asylum seekers, and the interplay between the two is challenging. States are strong in their protection of national borders. Victims forcibly repatriated run the risk of being trafficked. There are competing principles – the entitlement to return and the principle of *non-refoulement*. Victims of trafficking are entitled to State protection and even remedies, but this is often difficult to achieve. Permanent residency for victims is a potential solution, but this is difficult to take forward as the prior requirement is to be able to identify victims. Trafficked victims are often regularly returned to their own country and may run the risk of being re-trafficked. Such cases may be regarded as a result of failed returned policies. There is a clear dissonance between legal theory and practice. The country of destination of the victims bears the highest burden to protect victims. This includes identification, family tracing and undertaking the necessary documentation. The complexity of the problem relates to organisation and bureaucracy. Even third countries may be involved if the country of origin is un-cooperative.

The international legal arrangements are by their nature highly dependent on member states and a positive interpretation of their remit. The terms of the Protocol on trafficking are vague. Repatriation is based on an assumption that it “shall preferably be voluntary”. This may mean that the repatriating State has few legal responsibilities. Countries of origin are also expected to accept the returned citizen without delay but with regard for their safety. This includes documentation and arrangements for verification of nationality. There is also a further expectation that countries will co-operate and treat the standards under the Protocol as a minimum that may be improved upon. Repatriation should only be undertaken with the “rights, safety and dignity” that are consistent with the needs of victims and their protection. There are various UN Trafficking Principles and Guidelines that emphasise safety and that there is a legal basis for citizenship in the returning country. Assessing the risk involved in any repatriation is difficult when there is civil unrest or disruption within the country. The UN Protocol requires that there is a positive obligation upon Government to ensure that there is no danger of retaliation or threat to the victim of trafficking. The right to return is therefore protected, but that protection is hard to oversee and enforce. It is clear that arbitrary detention or arrest would be against the protocol and violate the victim’s rights.

## Conclusions

Human trafficking is a complex and multi-disciplinary problem. It operates, often undiscovered, deep within the hidden economy and across frontiers and countries with relatively little obstruction. It is trans-boundary, trans-national and readily becomes embedded within the economy and social structure of a society. Its economic benefits often outweigh any risks and set substantial boundaries for deterrence and detection strategies.

Knowledge about the extent of human trafficking is one of the most fundamental challenges facing this area of law and policy. More information and well-informed media reports are needed to keep the issues in the public domain. Protecting victims through the asylum process and their human rights is possible, and may give rise to victim protection through the legal process. However, the human rights approach has serious limitations in terms of being able to gain access to legal advice and lawyers.

Human rights are also subject to considerable debate and their observance is difficult to guarantee. One of the real dangers of human rights is that they may be subject to reversal should the UK decide to abolish the Human Rights Act or remove the UK from the European Convention on Human Rights. This would measurably reduce the available protection for vulnerable victims.

The Modern Slavery Act 2015 is an innovative legislative initiative. However, it has limitations, not least because politicians are often susceptible to the belief that legislation provides a solution and once enacted the problem will disappear. Viewed as a regulatory problem, modern slavery is a complex problem that will require close attention over the coming years. The intensity of the problem and its growing importance based on economic and financial factors make its solution beyond the application of the criminal law or even effective regulation. It will require time to assess proposed solutions. The Modern Slavery Act is an important legislative first step. It tackles the problem of human trafficking through two approaches simultaneously – strengthening the criminal law and providing victim support. It is not always possible to see the two approaches working consistently. It is likely that the success or failure of the legislation will be judged on whether there is an increase in criminal prosecutions. The operation of the criminal law, however, may not ultimately prevent human trafficking or protect victims. Instead the legislation should be judged on the criteria of whether victims are better protected. Priorities need to be set and established to achieve this end. The newly created position of an Independent Anti-Slavery Commissioner is an important milestone in

addressing the problems of human trafficking. Linked to the Commissioner's role is the potential for developing long-lasting global networks that will assist in intelligence gathering and developing strategic approaches to prevention, detection and control. The potential for the Commissioner to develop suitable strategies and networks should be supported throughout civil society, the Church and social workers. In addition setting up child trafficking advocates is a major achievement because it provides support at the level of vulnerable children. This may provide reliable information and allow multi-agency co-operation at the most important level of engagement with the problem.

Policymaking and future strategy will depend on the success of the Commissioner and the willingness to engage with institutions, voluntary organisations and pressure groups. A key aim must be to encourage pro-active measures to support engaging with victims and ensuring that support and care are available. The challenges set by the overseas domestic worker highlights the problems of the twin track approach adopted in the Act addressing the criminal law as well as attempting to provide victims support. Reconciling these approaches will require careful judgement and a fine balance to be drawn between conflicting values. Engaging with victims is likely to reveal their vulnerability and addressing their needs may mean giving greater priority to their safeguarding than to the enforcement and sanction of the criminal law. The Modern Slavery Act opens up an on-going debate that is likely to need careful review as the evidence accumulates. The Act sets an agenda that has the potential to re-define the approach to human trafficking that might possibly become a model of its kind for other countries. Adequate resources and political support are essential if the legislation is to be effective. Successive generations of victims will not be satisfied by anything less.

# AN EVALUATION OF REPATRIATION IN FRENCH LAW

YVES CHARPENEL

## Introductory remarks

Ladies and gentlemen, it is an honor to have been invited to present, as part of the 21st Plenary Session of the Pontifical Academy, the sensitive issue of the return to the countries of trafficked victims under French law.

While we speak, over 21 million people, mostly women and nearly 25% of children, are victims every day of trafficking in human beings. Various reports, public and private, all show a worrying increase in this criminal phenomenon.

The violent exploitation of the most vulnerable has indeed become very lucrative. Thus, in 2014, ILO estimated profits of nearly \$ 150 billion, of which 100 billion only for sexual exploitation.

This threat extends to the point of making human trafficking one of the three most profitable vehicles for organized crime with drug trafficking and arms trafficking. International organizations have gradually recognized this trend has only worsened since the adoption in 1949 of a founding Convention by the United Nations.

Since 2005, the Warsaw Convention from the Council of Europe has initiated a process of supervision of legality of migrations, identification of victims and the guarantee of their rights. Yet it must be noted that the development of this crime, motivated by profits from the commodification of bodies, is still faster than the pace of effective transposition into national legislation with international standards.

These trends are analyzed each year by the Foundation Scelles which has a base document and an observatory fed by 20 years of work on a criminal market that is often hidden under the appearance of a single economic activity. In the last 20 years it has observed an increase and acceleration of human trafficking based on unbridled globalization and the substantive and cynical search for criminal profits. This is confirmed by the work of the national coordination against trafficking created in 2013, in line with the European recommendations.

We will see, with the example of France, the particular difficulties of this necessary fight, to confront three specific pitfalls: the first is the

indifference of public opinion, which underestimates or ignores the scale and reality of the phenomenon; the second is inherent in the complexities of the fight against transnational organized crime in terms of mutual legal assistance and expansive investigation tools; finally, the third is that many victims of trafficking are also, under national legislation, perpetrators of offenses on illegal immigration.

Indeed, we must keep in mind, whenever it comes to human trafficking, that one of the obvious consequences of the globalization of our world is the increasing risk of opposition between two public policies: one granting priority to the fight against human exploitation by improving assistance to the victims; the other aiming to control the flow of migrants.

Due to the growth of the undetermined number of people involved, willingly or unwillingly in human trafficking, and because of the considerable cost of assistance, for years, in the host country, of victims in great physical, psychological and financial distress, the temptation is to choose a different path, for example, to prefer rapid repatriation rather than on-site monitoring.

### **The French law in matter of immigration**

Another constraint is the delicate coordination with immigration laws. This problem is even more acute because the vast majority of victims present in our country are of foreign origin, and usually irregular.

Up to now, the rights granted to victims by the Code for the Entry and Stay of Foreigners and Right of Asylum (CESEDA) have not generated meaningful effects. Two provisions were introduced in the 2003 law for victims of trafficking, as an alternative to forced return expected in case of violation of immigration law: the first one from article 316-1 that puts the attribution of a temporary residence permit under the condition of lodging a complaint against the trafficker – if the trafficker's conviction is definitive, a normal residence permit is allowed; the second one from article 313-141 that allows a Prefect to deliver a residence permit for humanitarian reasons.

Unfortunately, the high vulnerability of these victims, the long wait for a final conviction – over three years on average – jeopardize the effective attribution of the permits which condition the access to legal work and therefore the possible integration of human trafficking victims.

The French office for immigration and integration (OFII) is normally responsible for return assistance of foreigners illegally present in France, as well as foreigners legally on French territory who are in a situation of deprivation and great financial insecurity. The OFII assists in obtaining

travel documents, covering the air ticket fare and providing financial assistance on the day of departure (300 euros per child and 2000 per adult). This option provided by Article R316-9 CESEDA and Article 5223-1 of the Labour Code remains virtual in the case of victims of trafficking.

### **Human trafficking in France nowadays**

According to the ILO (International Labour Organisation) my country counted in 2014 270,000 victims of all forms of trafficking, including 40,000 for sexual exploitation. Countries of origin are mainly from Eastern Europe, sub-Saharan Africa, North Africa, Brazil and China. Victims of sexual exploitation are 90% foreign nationals and 95% women, of which about 6000 juvenile. These are the ones that pose the most acute problems of repatriation, due to the nature of their exploitation directly related to the extreme violence of organized crime, the massive vulnerability of victims and the considerable profits, with little risk, for traffickers. The question of the fate of the victims once they are identified arises in France acutely. The fact is that we have a constant dilemma: our Government places the fight against illegal immigration at the heart of its priority, especially at election time; however, it cannot ignore the dangers to which the victims of human trafficking may be exposed in the case of repatriation.

A country of destination and transit, France is indeed faced with the question of the return of victims to their country of origin. Three constants can give an idea of the difficulty specific to the situation in France: firstly, investigations last on average three years before the trial of traffickers, which implies a long and costly assistance in the territory of our country for victims followed; secondly accommodation problems and reintegration are complicated given the threats posed by criminal networks, mostly of foreign origin. Finally, most of the victims were sold in their country of origin, mainly by relatives, which makes their return even more problematic.

According to article 7 of the United Nations Trafficking in Persons Protocol, France is encouraged to take specific measures on repatriation of trafficking victims. According to article 8, these measures should provide, in case of return of victims to their home countries, that their safety is assured and is consistent with the rule of law in both countries. In all cases, the voluntary nature of their return should be preferred.

To sum up, the issue of repatriation is made more difficult in that policy fight against trafficking in human beings, quantitatively as qualitatively, faces a legitimate desire to control legal and illegal migration. You can



easily understand that, with 12 million immigrants residing in France, with an estimate of about 200,000 illegal immigrants, and with 3,000 foreign unaccompanied children supported by welfare, the few dozen identified victims of trafficking weigh little.

The contrast is strong between the number of deportations, 27,000 in 2013, decided in the context of immigration laws, the 210,000 residence permits granted (52,000 asylum applications submitted in 2014), and the few successful cases of repatriation for victims of trafficking. In the latter case the specialization of agents, duration and cost of operations often remain an insurmountable obstacle.

### **Objectives and principles**

France, respectful of its European and international commitments, is also required to apply the European Directive 2011/36/UE from the European Parliament and the Council of Europe which enhanced harmonization of systems intended to fight against human trafficking by improving protection and assistance to victims. According to specialized organizations, five main topics are usually related to the monitoring of trafficked persons: Health, Housing, Education, Vocational Training, Employment and Repatriation. Reintegration is the ultimate goal.

We all know, by experience, that the process of reintegration, as such, begins when a person decides to return to live in her country of origin. This whole notion of 'going back' is predicated on rebuilding life relationships in a country, a community and a family. Returning to one's country of origin can be just as difficult, if not more so, than leaving it in the first place, bearing in mind the social and economic disruption that naturally takes place when a person emigrates.

NGOs that work with victims of trafficking in France state that, given the choice, the majority of women will choose to remain in the host country in spite of the difficult socio-economic conditions that most face. This is linked to a desire with women to find economic independence and/or to support their families, as well as a wish to turn their experience into something positive. It is also linked to an understandable fear of retaliation, because of the role of organized crime within trafficking and the fact that often it is the relatives of victims who have led them into exploitation.

Where the return is, more rarely, requested or accepted, the main motivation of women wishing to return to their home countries may be related to family ties, especially if their partners and children remain in the countries of origin. It's a point that traffickers have understood,

as seen more and more frequently, where children born in France are literally kidnapped and taken back to the country by traffickers to exert strong pressure on the remaining mothers on our territory. It is therefore evident at any repatriation policy faces a persistent **dilemma** between two policy imperatives: the first designed to protect and reintegrate victims of trafficking, and the second aimed at combating the development of illegal immigration.

While the awareness of the reality of human trafficking in my country is relatively recent, barely more than 10 years, the issue of immigration is at the heart of fierce political and social debates in France for more than forty years. Public opinion is not ready, probably due to almost non-existent awareness campaigns, to spontaneously join long-run policy for the benefit of foreigners uncooperative with the investigation services and still widely seen as criminals rather than victims.

Behind the caution to develop significant resources to assist victims of trafficking there is also the fear that this system diverted to traffickers by making false statements would be borne by the fund to help the living expenses of people who would still be exploited.

By the way criminal networks in several cases provide false requests for asylum, stereotyped, to victims in order to unduly benefit from public support in the field and regular residence permits, facilitating trafficking. The classic profile of victims of trafficking in France shows that the traffickers have a very good knowledge of our legal systems and know how to choose between two conflicting situations. The first one concerns irregular migrants arriving on our territory by air, with a stereotypical asylum application that gives them six months respite pending the examination of this unjustified demand. During this period they are subject to heavy exploitation without risk of deportation. The second one concerns migrants in a regular situation, temporarily and apparently, that will be exploited until they receive their visa or provisional employment contract. These papers, whether they are genuine or cleverly counterfeit, are sold to future victims in their home country, for sums around 60,000 euros. This debt, impossible to pay back, will cause the victim both to accept exploitation and to refuse possibilities of return.

Whether it is successful or not, repatriation simply does not mark the end of story. It rather marks a beginning: awaiting them upon return, much of the home economic and social conditions may be the same as when they left, or sometimes even worse, as standing obstacles that would interfere with their reintegration process and reestablishment of a new life.

The risk of second and third time trafficking would be increased in such environment. Naturally it's currently a key issue in the bilateral agreements that France is conducting with country like Romania, Bosnia and Bulgaria.

The legal and institutional French framework now formally meets international standards. This is particularly the case with the recent implementation of the European Directive adopted in 2011 by the European Parliament and the Council of Europe. It enhances harmonization of systems intended to fight human trafficking by improving the protection and assistance to victims. New legal provisions have been adopted in my country since 2003. Recently, an Act of 5 August 2013 transposing the Warsaw Convention created new offenses relating to forced labor, servitude and enslavement. A national action plan is currently implemented for the period 2014-2016. This plan includes three priorities: identify and support victims of trafficking, prosecute and dismantle criminal networks and make trafficking a wholly public policy. Twenty-three measures were announced, among which were highlighted victim identification, construction of a prostitution exit route, adoption of specific measures for minors and the strengthening of bilateral cooperation.

It is interesting to note that the plan does nothing related to repatriation. This function is provided by the dozen specialized NGOs who provide contacts with comparable structures of the countries concerned, where they exist. The establishment of a network of private and public contact points could allow to properly respond to urgent requests. However, since 2013 a new project, **CARE**, has taken a coordinated approach to the rehabilitation of victims of trafficking in the field of assisted voluntary return from Austria, Spain, France, Portugal and the United Kingdom.

The project offers individual tailor-made assistance to victims of trafficking identified in the five participating countries to help them reintegrate into their home country. It puts in place a coordinated mechanism including prior activities initially, assistance on arrival, as well as monitoring over a period of 12 months after their return. When trafficked people decide to return home, assistance given to them should be global (including through access to assistance for the socio-economic reintegration, psychosocial support, temporary housing...), and adapted to their individual needs for the transition to take place as smoothly as possible, so that the risk of re-trafficking is reduced. The project will provide assistance to 130 victims of trafficking, including 10 minors. Eligible beneficiaries are all victims of trafficking who wish to return voluntarily to a third country (outside the EU).

A circular was sent on January 2015 to prefects and prosecutors to better tailor their response to the scale and novelty of these problems. The Minister of Justice asked the 36 general prosecutors and the 180 local prosecutors to mobilize around four criminal policy areas: facilitating international cooperation in this field, the designation of special tribunals to try these cases and investigation, seizure and confiscation of proceeds of trafficking, and support to victims. The latter emphasizes the priority of the safety of victims, but says nothing of repatriation.

### **An external evaluation**

However, the assessment of the reality on the ground which was conducted in 2012 by the experts of **GRETA** shows the path that lies ahead for an effective implementation of these measures:

The independent evaluators noted that a very small number of victims had received assistance measures.

Accordingly they sent France three strong recommendations:

- Create a specific system of repatriation support for all victims of trafficking, in order to avoid re-trafficking.
- Assess the risks of re-trafficking specific to children victims, with systematic care of their best interest.
- Strive to develop co-operation with the countries to which trafficking victims are returned in order to improve their reintegration and rehabilitation.

The following example will show you how difficult, but not impossible, it is to move from good intentions to effective and positive reality.

### **Three encouraging examples of bilateral cooperation**

Due to the presence in Paris of many minors engaged in begging, pickpocketing and prostitution in the early 2000s, France engaged in an innovative process of cooperation with the authorities of the country of origin, once it recognized the inadequacy of protective measures for minors in danger classically put in place in our country since 1945.

#### ***Between France and Romania:***

A French-Romanian bilateral agreement was concluded in 2002 with measures related both to the minors' return to their country and to combating exploitation networks. A second agreement was concluded in 2007 after a mitigated success, which dealt with just 50 children. During

this second period dozens of minors, mostly from the Roma community, were repatriated to Romania after controversial police operations in several camps. A premium of €300 per child was paid to each repatriated minor, arousing the greed of the traffickers. The premium system was abandoned in 2012 and cooperation between public officials and NGOs in both countries was intensified. A multidisciplinary working group published in 2014 a good practice guide of cooperation for the return of the child victims of trafficking, to which Germany is associated.

***Between France and Bulgaria:***

A first experimental agreement was reached between 2003 and 2006 for the benefit of 24 people, sexual exploitation victims, who chose to return to Bulgaria voluntarily. Since then, police, administrative and social cooperation has developed on the model tested with Romania.

***Between France and Bosnia:***

More recently the same kind of cooperation has been engaged in with Bosnia, associated with close cooperation in criminal investigations. It is held in a climate of mutual trust, with the efficient use of the European arrest warrant and joint investigation teams. The European Commissioner for human rights, in his report on his recent visit to France, noted however the persistence of problems related to the removal of Romanian and Bulgarian Roma migrants, but he particularly noted that since 2013 the number had fallen by 84% compared to 2012, although still involving more than 10,800 people.

These examples show the way forward in my country. No tangible and lasting results can be expected if they are not based on three main conditions: the affirmation of a political will to consider trafficking as a priority issue on a national scale; the establishment of a comprehensive strategy combining victim identification; strengthening the fight against networks and intensive practical cooperation. Such bilateral reintegration aid arrangements are currently operational in 18 countries from Eastern Europe and Africa.

**To conclude**

I hope that the plenary session contributes to the international debate on the support for victims of trafficking in human beings. We know in fact the five key points in this field: better respect for international conventions on immigration in the light of the dignity and rights of migrants; more

evenly applying the measures to assist victims; promoting support for victims who will not or cannot cooperate; better training of practitioners; and raising public awareness.

My opinion is that the exchange of information between organizations, private and public, in different countries on this issue is a tool of fundamental importance for improving the situation of these children and grown-ups and for promoting their independence and empowerment. In 2011 UN Secretary General Ban Ki-moon summed up our topic exactly:

When their rights are violated, when they are marginalized and excluded, migrants cannot bring anything, neither financially, nor socially, to the society they have left or the one they are joining.

By contrast, when migrations are supported by an effective policy and human rights' protection, they can constitute a factor of progress as much for the persons as for the countries, whether they are countries of origin, transit, or destination.

Finally, let me quote Mr Nils Muiznieks, European commissioner for human rights of the Council of Europe, in a 2015 declaration: *“never forget that human rights are not a problem, but the solution”*.

# **SUPPORTING VICTIMS-SURVIVORS AFTER TRAFFICKING: RECOVERY, RETURN AND REINTEGRATION PROGRAMS IN THE PHILIPPINES**

**MARUJA M.B. ASIS**

## **Introduction**

This year marks the 15<sup>th</sup> anniversary of the adoption of the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter the Palermo Protocol). The 3Ps stressed by the Protocol – prevention, protection and prosecution – have become part and parcel of anti-trafficking efforts at all levels, spanning the local to the international. Initially, whether it was research, policy, advocacy or action, the attention focused on the migration-related aspects of trafficking – recruitment, transport, harboring and so forth – to the neglect of the protection dimension – the conditions of victims of trafficking which call for support and assistance. In recent years, the shift to the victim-centered approach draws attention to the manifold needs of victims’ life after trafficking: the process of recovery, reintegration and return. In a study of return and reintegration programs in the Balkans, Surtees and de Kerchove (2014) documented gaps in this area, the disinterest of funding agencies to support these programs, and the challenges faced by NGOs in providing and sustaining these needed services. Although the importance of re/integration has been stressed by other studies as a critical component of anti-trafficking response, they noted that “it remains largely under-studied, under-theorised and a low priority for most donors”. The *Global Slavery Index 2014* report makes the same observation based on an assessment of 167 countries on five indicators which include the identification and support of survivors to exit and remain out of slavery. According to the report, “Victim assistance for men, women and children is a weakness of all government responses. No country scored 100% on these activities while the majority of countries scored 50% or lower. Most countries either only provide short term assistance, neglecting long-term reintegration, or provide support solely for female or child victims” (p. 22).

This paper examines the recovery, return and reintegration of victims of trafficking in persons in the broader canvas of large-scale and sustained international migration in the Philippines.<sup>1</sup> The paper has a two-fold objective: to discuss the legal, institutional and policy framework of return and reintegration interventions and to examine how stakeholders assess the Philippine government's response to the return and reintegration of victims-survivors of trafficking. A review of the laws, policies, programs and data relating to return and reintegration victims-survivors of trafficking was carried out. This was supplemented by interviews conducted with seven key informants representing the main government agency mandated to coordinate and provide return and reintegration services, the Department of Social Welfare and Development (DSWD), the Commission on Filipinos Overseas or CFO (n=4), and civil society organizations (n=3), including a faith based organization. The interviews were conducted between 30 January and 6 March 2013.<sup>2</sup>

As of December 2013, 10.2 million Filipinos were based overseas, roughly 10% of the country's 100 million population. Of the total stock estimate, 4.9 million (48%) were permanent settlers, 4.2 million (41%) were temporary migrants (largely temporary migrant workers), and 1.2 million (11%) were irregular migrants (CFO, n.d.). Unabated international migration since the 1970s has been sustained by the establishment of institutions and legal framework to govern the migration process. In particular, the country's participation in international labor migration not only increased the volume of out-migration but has also led to the presence of Filipinos in all the world's regions. In 1975, the country deployed about 36,000 workers, mostly to the Middle East. In 2013, the numbers rose to 1.8 million, distributed in about 200 countries

<sup>1</sup> The paper adopts the related terms recovery, reintegration and return which are the terms used in the Philippines rather than repatriation. These terms are defined in the National Referral System as follows: "*Recovery* is a process by which a trafficked person is stabilized and his/her well-being restored psychologically, socially and physically ... *Reintegration* is a process focused on reuniting the trafficked person with his/her family and community or on integration in a new community ... *Return* is going back to one's country or place of origin which involves not only the physical transfer of the trafficked person but also mechanisms to ensure that the return is safe and dignified. Recovery starts during the return process ..." (DSWD and ILO, n.d., 10).

<sup>2</sup> I thank the research participants for their availability and willingness to share information and perspectives on the reintegration of trafficked persons. Their names have been withheld to protect their identities. I shared a copy of the draft version with the key informants and organized a meeting on 25 June 2015 to seek their comments to the paper and to discuss possible areas for cooperation. Additional information from the meeting has been incorporated in the paper.



and territories. In addition to the large numbers of overseas workers, an average of 70,000 Filipinos migrants leaves the country every year for permanent settlement in other countries. This number includes Filipino nationals, overwhelmingly women, who leave the country as international marriage migrants, a phenomenon which is feared to have possible links to trafficking.<sup>3</sup>

The institutionalization of international migration, as evidenced by the development of institutions, laws, policies and programs, is a major factor contributing to the rise of the Philippines as a major source country of workers for the global labor market. Initially oriented to finding labor markets, the overseas employment program incorporated protection measures for Filipino workers (IOM and SMC, 2013; Asis and Roma, 2010). The latter goal has resulted in the passage of the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act or RA 8042), which was most recently amended in 2010 (RA 10022). This law specifically aims to promote a higher level of protection to overseas Filipino workers at all stages of migration, i.e., before migration, while they are overseas, and upon their return to the Philippines. Actions to promote the protection of workers expanded in the areas of bilateral and multilateral engagements. The Philippine government has actively participated in these arenas to engage countries of destination and the international community in protecting the rights of workers. Although the protective mechanisms of international labor migration in the Philippines are well established, the system is not immune to irregular migration and trafficking in persons. Moreover, even for those who are legally deployed as workers, the working and living conditions of overseas Filipino workers are far from ideal. Indeed, the occupational profile of overseas Filipino workers is diverse, but the large concentration of workers in less skilled occupations raises concerns. The participation of women in labor migration and their concentration in domestic work has been a cause of national anxiety for years. The inhumane conditions faced by migrant workers, especially those in domestic work, call to mind traffic-like conditions (e.g., see Asis, 2007; see also UN Women, n.d.). The annual Trafficking in Persons Report of the US State Department has also commented on the protection deficit of overseas Filipino workers. In response to the global campaign to combat trafficking, the

<sup>3</sup> The concerns led to the passing of the Anti-Mail Order Bride Law of 1990 (Republic Act or RA 6955) which criminalizes the practice of matching Filipino women with foreign nationals on a mail order basis, including advertisements, flyers or brochures for this purpose. In 2013, House Bill 222 was filed in the House of Representatives to amend the 1990 law to cover commercial mail order bride services through emails or Internet websites (<http://congress.gov.ph/press/details.php?pressid=7215>).

Philippine government signed the Palermo Protocol on 14 December 2000, ratified it on 28 May 2002, passed the Anti-Trafficking Law in 2003 (RA 9208), and this was later amended by the Expanded Anti-Trafficking Act of 2012 (RO 10364).

## **Trafficking in the Philippines**

### *Magnitude and Profiles of Trafficked Persons*

The Philippines is mostly a source country of trafficked persons. Data on the magnitude of trafficking in persons from the Philippines are difficult to ascertain, although it is commonly believed to be significant given the intense and extensive international migration from the country. Part of the problem is distinguishing victims of trafficking from the general population of overseas Filipinos, or even from the specific population of overseas Filipino workers or irregular migrants. The definition of trafficking and the rule of thumb to identify victims of trafficking – i.e., establishing the act, means and purpose – does not easily translate to designing a system to report and collect data on trafficking. Three types of data gathered by government agencies provide clues to different aspects of the phenomenon: convictions, victims-survivors provided assistance, and request for assistance recorded by a hotline service.

As provided by the Anti-Trafficking Act of 2003, the government established the Philippine Anti-Trafficking Database to collect and share trafficking-related information and to use this information as basis for policy-making, action, monitoring and evaluation. It has two components: data on convictions, coordinated and managed by the Inter-Agency Council Against Trafficking, under the Department of Justice; and the National Recovery and Reintegration Database (NRRD), which was set up to facilitate and coordinate the programs and services to victims of trafficking, implemented by the Department of Social Welfare and Development (DSWD), in coordination with service providers and NGOs. The NRRD is a web-based mechanism intended to improve the referral system of organizations and service providers and to provide guidelines for the delivery of a range of services to victims of trafficking. As will be shown later, the trafficking data captured by these data sets represent only a small subset of what is widely believed to be a huge phenomenon.<sup>4</sup>

<sup>4</sup> For example, a 2006 report estimated that internal trafficking involved some “300,000 to 400,000 women and from 60,000 to 100,000 children were trafficked annually” (US State Department, 2007). Other than citing government and NGOs are cited as sources for this estimate, the report does not indicate how these estimates reached.

From 2005 up until 15 June 2015, the IACAT has recorded 187 cases of conviction involving 209 convicted persons.<sup>5</sup> The low number of prosecutions is a primary reason why the Philippines slipped to Watchlist-2 in the US Trafficking in Persons Report in 2004, 2005, 2009 and 2010 (IOM and SMC, 2013: 80). The expanded Anti-trafficking Law of 2012 was partly motivated by the need to improve the country's prosecution record. Towards this end, the amended law increased the penalties for traffickers and criminalized attempted trafficking, among others.

Since the passage of the anti-trafficking law, some progress has been achieved in the area of reintegration programs. One concrete step is the implementation in 2010 of the guidelines of the National Referral System for the provision of services to trafficked persons during the pre-return and post-return periods and the establishment of the NRRD.<sup>6</sup> These mechanisms build on and supplement the other tools which have been developed earlier, namely, the DSWD Manual on the Recovery and Reintegration of Victims-Survivors of Trafficking, the Guidelines on the Protection of the Rights of Trafficked Children, and the Guidelines on the Protection of the Rights of Trafficked Women.

Since the launch of the National Referral System, the DSWD and its partners had been able to document and track the victims-survivors they had provided assistance to (Table 1).<sup>7</sup> The notable increase after 2012 includes not only actual trafficking cases but also attempted trafficking cases. This reflects the new provision introduced by the Expanded Anti-Trafficking Act which defines attempted trafficking as a crime "where there are acts to initiate the commission of a trafficking offense, but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance".

<sup>5</sup> <http://iacat.gov.ph/index.php/human-trafficking-related-statistics>

<sup>6</sup> The guidelines for the referral system were part of the DSWD-International Labour Organization Project on Developing Systems, Tools and Capacities to Improve Delivery of Recovery and Reintegration Services to Victims of Trafficking. The project was in collaboration with other stakeholders, including government agencies which are part of IACAT, and NGOs.

<sup>7</sup> The IACAT data refer to cases which have filed legal complaints whereas the DSWD data refer to the number of cases assisted, regardless of whether or not they have filed legal complaints.

**Table 1. National Referral System: Victims-Survivors Served, 2010-2014**

Year	Victims-survivors served
2010	1,218
2011	1,011
2012	1,376
2013	1,979
2014	2,060

Source: For 2010-2013, Annual Report, DSWD; for 2014, CY 2014. Accomplishment, Recovery and Reintegration Program for Trafficked Persons, DSWD.

Over the years, the sites of trafficking, the purpose of trafficking and the profile of victims have not changed much. Based on data from DSWD (2014), of the 2,060 cases served in 2014, the following observations can be noted:

- The top three regions which figured as sites of trafficking are the National Capital Region or Metro Manila – 618, Region 9 (Zamboanga Peninsula) – 534, and Region III (Central Luzon) – 176.
- Forced labor is the topmost purpose of trafficking, followed by sexual exploitation and prostitution. Males are more likely to be trafficked for forced labor while females are heavily represented among those trafficked for sexual exploitation and prostitution.
- Victims-survivors include both males and females, although the latter are more numerous. By age group, those in the ages 18-30 are the largest group. Minors comprise 17% of those trafficked.

Data from the 1343 Action Line mirror the patterns and profiles based on the NRRD; the only difference is that the 1343 data include overseas cases. The Commission on Filipinos Overseas (CFO) has implemented the hotline since 2011. The CFO has secured the cooperation of a private company, DOS1, in providing a 24/7 hotline service which the public in general and trafficking victims in particular can access for support and assistance. DOS1 is a business processing outsourcing company and is involved in this important work as part of its corporate social responsibility. It provides “call takers”, who are trained to serve as front liners who receive the calls, assess the request for assistance, and then forward the requests to the relevant authorities for action. For the period 15 March 2011 to 30 June 2013, the hotline has received 17,203 calls, out of which 233 were further investigated. Seventy percent of the victims were fe-

males, 30% were males. The 233 cases include 70 cases of human trafficking, 66 cases of illegal recruitment, 8 cases of mail order brides, and others, 83. The countries where the 233 cases are distributed are mostly in the Philippines (64%), suggesting the higher incidence of internal trafficking compared to cross-border trafficking. Of the 85 reported cases overseas, almost half of the cases were in Saudi Arabia (29.4%) and Malaysia (20%).<sup>8</sup>

As elsewhere, the appreciation of trafficking in persons in the Philippines has been initially dominated by concerns for women and girl victims of trafficking and an inordinate focus on the sex industry. It is a perspective that shapes the perception that “men migrate, women are trafficked”.<sup>9</sup> The neglect of men and boys as victims of trafficking was noted by a research by Verite (n.d., ca. 2008).<sup>10</sup> The study focused on the maritime, construction and agriculture sectors, sectors which male dominated and where poor conditions have not received much scrutiny. These sectors are characterized by labor which are rife for abuse, exploitation and traffic-like conditions – physically demanding work (e.g., work that entails carrying 60-kilo palm fruits) or work which entails risks to physical safety (e.g., seafaring, work in war zones).<sup>11</sup> At the time of the study, there were no programs either by public, private or civil society organizations which address the trafficking of Filipino men. Based on interviews with 67 men, the study concluded that “the trafficking of Filipino men is strongly linked to labor migration patterns, and the means of exploitation is through forced labor, or conditions akin to slavery” (p. 36). The study also points out that trafficking in men have not been reported or determined as trafficking owing to the reasons: reluctance of trafficked men to report being exploited,<sup>12</sup> misclassification of

<sup>8</sup> Statistics from 1343 Action Line are available at <http://1343actionline.ph/statistics.html> For details regarding the process flow of the response to the calls, see <http://1343actionline.ph/process-flow/online-reporting.html> and <http://1343actionline.ph/process-flow/call-1343-actionline-procedure.html>

<sup>9</sup> <http://www.unwomen-eseasia.org/projects/migrant/04aexploring.pdf>

<sup>10</sup> The date of publication is not indicated. According to the methodology, it was an 18-month project which started with a round of consultations in 2008. During their research, they uncovered leads on cases of organ trafficking and sex trafficking involving male victims. Due to lack of data and access to actual victims, the research focused on labor trafficking.

<sup>11</sup> For research on trafficking of men in the sea-based sector, particularly those working on fishing vessels, see Simmons and Stringer (2014), Stringer et al. (2013), and Yea (2014).

<sup>12</sup> Of the 67 male interviewees who shared their experiences of exploitation or conditions that constitute trafficking, only seven approached an agency or organization to facilitate the filing of a legal complaint. None of them eventually pursued a case in court (p. 34).

trafficked victims as irregular migrants rather than as victims of exploitative conditions, cases of exploitation of male OFWs are filed and prosecuted as cases of illegal recruitment rather than trafficking, and the insensitivity of detection tools to detect trafficking men (i.e., they are more attuned to detecting trafficking women and children for sexual purposes).<sup>13</sup>

### *The Philippines' Response to Trafficking*

As mentioned earlier, the Philippines was fairly quick in signing and ratifying the Palermo Protocol and in passing a national legislation that hews closely to the Protocol. The Anti-Trafficking Law of 2003 (RA 9208) set into place policies to combat trafficking, punish traffickers, protect victims, and establish mechanisms to implement the necessary programs and services. As amended by RA 10364, the law mandates the Inter-Agency Council Against Trafficking (IACAT) as the overall national policy and coordinating body with a secretariat established by the Department of Justice. The members of the IACAT include the officials of the following government agencies: Secretary, Department of Foreign Affairs; Secretary, Department of Labor and Employment; Secretary, Department of the Interior and Local Government; Administrator, Philippine Overseas Employment Administration; Commissioner, Bureau of Immigration; Chief, Philippine National Police; Chairperson, Philippine Commission on Women; Chairperson, Commission on Filipinos Overseas; and Executive Director, Philippine Center for Transnational Crimes. In addition, the NGOs shall include one representative each from the women, overseas Filipinos, and children sectors, who shall be nominated by the government agency representatives; the NGO members have a term of three years. The IACAT structure is replicated in the regions down to the municipalities to coordinate and implement anti-trafficking actions at these levels.

Several instruments have been developed to measure governments' actions to combat trafficking, their impact, and how they compare with each other. One is the US State Department Trafficking in Persons Report, which has been undertaken since 2000 (the first report was published in 2001). The US assessment is part of the monitoring required by the Trafficking Victims Protection Act (TVPA). Countries are rated on a four-tier system based on whether or not they are taking actions to comply with the TVPA's minimum standards.<sup>14</sup> The

<sup>13</sup> These conditions also apply to women and child victims of trafficking; they may be more pronounced when it comes to trafficked men.

<sup>14</sup> Tier 1—countries whose governments fully comply with the TVPA's minimum standards; Tier 2—countries whose governments do not fully comply with the TVPA's

Philippines' ranking in the TIP report has changed little; mostly is it in Tier 2, before or after the anti-trafficking legislation was introduced (Table 2).

**Table 2. Tier Placement of the Philippines, US TIP Report, 2001-2014**

Year	Tier Placement
2001	2
2002	2
2003	2
2004	2 (Watchlist)
2005	2 (Watchlist)
2006	2
2007	2
2008	2
2009	2 (Watchlist)
2010	2 (Watchlist)
2011	2
2012	2
2013	2
2014	2

Source: US State Department (various years), Trafficking in Persons Report.

The 3P Index is another rating system which also started in 2000. Compared with the US' tier-system, the 3P index evaluates a country's performance in terms of the Palermo Protocol's 3Ps. Each component receives a score (1 is lowest; 5 is highest) and the three are combined for a summary score, with 3a slowest and 15a highest. While the US TIP was developed and is implemented

minimum standards, but are making significant efforts to do so; Tier 2 Watch List-countries are similar to Tier 2-ranked countries, and in addition, the absolute number of victims of severe form of trafficking is very significant or is significantly increasing; or there is no evidence of increasing efforts to curb severe form of trafficking from the previous year; or a country is making significant efforts to comply with minimum standards was based on commitments it made to take additional future steps over the next year; and Tier 3-countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

by the US Government, the 3P Index is an academic undertaking (see Cho, and Neumayer, 2014; Cho, 2014). In general, the Philippines has a good standing based on the 3P Index (Table 3). Prosecution is a weak area from the perspective of the US TIP Report while in the 3P score, the Philippines rates highly in this aspect, reaching the maximum score of 5 since 2010. Similarly, prevention has scored a 5 while protection is down to 3. Clearly, the scores whether by component or the 3P show marked improvement after 2002, the year before the anti-trafficking was enacted in 2003. In comparison with the US TIP assessment, 2010 was the time when the Philippines slid into Tier 2 Watch List, whereas in the 3P Index, 2010 was the beginning of improved performance.

**Table 3: Anti-Trafficking Index: The Philippines, 2000-2013**

Year	Prosecution	Protection	Prevention	3P
2000	2	2	4	8
2001	2	2	3	7
2002	4	3	4	11
2003	4	4	3	11
2004	4	4	4	12
2005	4	4	4	12
2006	4	5	5	14
2007	4	5	5	14
2008	4	4	4	12
2009	4	4	4	12
2010	5	3	5	13
2011	5	3	5	13
2012	5	3	5	13
2013	5	3	5	13

Source: 3P Anti-trafficking Policy Index Data (2000-2013, 188 countries, Excel file). Available at <http://www.economics-human-trafficking.org/data-and-reports.html>

The third and most recently developed tool is the Global Slavery Index, an initiative started in 2013 by the Walk Free Foundation. Its definition of modern slavery encompasses trafficking in persons (as defined in the Palermo Protocol), slavery and slavlike conditions (The Slavery Convention of 1926 and Supplementary Slavery Convention of 1956), and forced labor (ILO Forced Labour Convention, 1930, No. 29) (Walk Free Foundation, 2014:8). The tool estimates the number of people in modern slavery in 167 countries,



governments' response to eradicate modern slavery, and the conditions or contextual factors that make people vulnerable to modern slavery. Worldwide, some 35.8 million people are living in some form of modern slavery; in the Philippines, the estimate is 261,200 people or a prevalence of 0.266. Of the 167 countries, the Philippines ranked 29th in terms of prevalence of the population to modern slavery; 19th in terms of the absolute estimate of modern slavery. The Philippines was cited, along with Georgia and Jamaica, as having set in place criminal justice responses, in the face of limited economic resources. The country's BB rating (AAA is highest) placed it as 29th in terms of government response to end modern slavery. In the AsiaPacific region, out of 33 countries, the Philippines ranked third, after Australia and New Zealand, in terms of government response to end modern slavery. Of the five indicators, the Philippines' ratings are (from highest to lowest): criminal justice, 71.4; survivors are supported, 61.1; coordination and accountability, 58.3; attitudes, social system and institutions, 56.1; and business and government, 0 (p. 34).

Overall, the three external measures assess the Philippines' response to trafficking in a positive light, although improvements are called for. They differ though in their appreciation of the strengths and weaknesses of the country's response to trafficking.

## **Recovery, Return and Reintegration**

### *Legal Bases*

The Philippines has developed many good practices in managing different aspects of labor migration and for this reason, the Philippine experience has been used as an example to other origin countries. The one area that is still a work in progress is the return and reintegration of migrant workers (IOM and SMC, 2013; Go, 2012).

RA 10022, which amended RA 8042, has two specific provisions concerning the return and reintegration of overseas Filipino workers. Sec. 16 pertains to the mandatory repatriation of underage migrant workers while Sec. 17 establishes the National Reintegration Center for OFWs as the responsible agency for supporting and facilitating the reintegration of returning migrant workers.

SEC. 16. Mandatory Repatriation of Underage Migrant Workers.<sup>15</sup> Upon discovery or being informed of the presence of migrant workers whose

<sup>15</sup> Underage workers are those below 18 or those below the minimum age requirement of specific occupations. For example, migrants who will take up domestic work overseas must be at least 23 years of age.

ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate said workers and advise the Department of Foreign Affairs through the fastest means of communication available of such discovery and other relevant information ...<sup>16</sup>

SEC. 17. Establishment of National Reintegration Center for Overseas Filipino Workers. A national reintegration center for overseas Filipino workers (NRCO) is hereby created in the Department of Labor and Employment for returning Filipino migrant workers which shall provide a mechanism for their reintegration into the Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

Return migration is structural in the context of temporary labor migration. However, although labor migration is supposed to be temporary (usually a two-year contract), contracts can be renewed. In the case of Filipinos, they tend to renew their contracts, or seek employment in other countries, and as such, returning to the Philippines permanently tends to be postponed. As suggested by Sec. 17, the NRCO is envisioned to facilitate the reintegration of returning migrant workers by assisting them to find local employment or to facilitate brain gain or skills transfer. The NRCO also aims to facilitate the creation of businesses by returnees.<sup>17</sup>

However, the migration project does not end up happily for everyone. Not all returning migrant workers are successful and many have encountered difficulties during their stay abroad. The government also has programs for distressed workers. The NRCO offers programs and assistance specifically to women distressed workers, a general category which includes victims of trafficking. The main window of assistance for distressed workers is the *Balik Pinay! Balik Hanapbuhay!* (Filipina Returnee, Back to Livelihood) Program launched in 2011 to enable women OFW returnees to start and operate a selfemployment venture. The program consists of livelihood skills training and

<sup>16</sup> The rest of the provision discusses the penalties to be meted to the errant recruitment agency.

<sup>17</sup> The Commission on Filipinos Overseas also has programs to facilitate skills or knowledge transfer by the Filipino diaspora. For Filipinos who have been permanently settled overseas, their return to the Philippines is short-term or temporary or even virtual. For details, see <http://www.balinkbayan.gov.ph/>

the provision of starter kits. The Overseas Workers Welfare Administration (OWWA), the lead government agency tasked to promote the welfare of migrant workers and their families, also provides assistance to distressed workers, both women and men alike. However, the programs are limited to OWWA members, thereby excluding irregular migrants and trafficked persons.

What were described above are the programs and services migrant workers can avail of upon their return to the Philippines. We will backtrack to the time when they are abroad, particularly when they encounter problems. During this critical period, when workers encounter problems overseas, they can seek assistance from the Filipino Workers Resource Centers (FWRCs), facilities which are established within the premises and under the administrative jurisdiction of the Philippine Embassy. The FWRCs are administered by the Philippine Overseas Labor Offices and staffed by the labor attaches, Foreign Service Personnel, welfare officers and other service attaches or personnel who represent Philippine government agencies abroad.<sup>18</sup> These centers are open 24 hours daily (they have a counterpart 24-hour information and assistance center in the home office to facilitate coordination). By law, these centers should be present in countries where there are large concentrations of overseas Filipino workers. Due to resource constraints, 34 centers have been established in 29 countries with sizable Filipino populations.<sup>19</sup> The personnel in the POLOs may be augmented by the assignment of Social Welfare Attaches, which is part of the DSWD's International Welfare Services for Filipino Nationals. Social Welfare Attaches provide support to migrant Filipinos and other Filipino nationals in crisis situations and those in need of special assistance.

For victims of trafficking, the FWRCs are the primary contact point of distressed migrant workers (including those who had been trafficked) for accessing assistance from the Philippine government. As provided by the Migrant Workers and Overseas Filipinos Act of 1995, Philippine embassies and consulates are bound to provide assistance to all Filipino nationals, regardless of whether they are documented or not. Unless they are identified as victims of trafficking, their cases are likely to be treated under illegal recruitment, irregular migration, or as distressed workers. The identification of trafficking

<sup>18</sup> Secs. 17-22 of RA 10022 provide details about the services, personnel, administration, operation and budget of the centers. The service offered by these centers are counseling and legal assistance, welfare assistance, information programs, training and skills upgrading, orientation programs for returning migrant workers, and conciliation of employer-worker disputes. Distressed workers, including trafficking victims, can be sheltered in these centers.

<sup>19</sup> As of 7 April 2015 (<http://www.dole.gov.ph/pages/view/24>)

victims is critical so that specific interventions can be extended to them while they are in the centers and for follow-up services upon their return to the Philippines.

Turning specifically to the Anti Trafficking Law of 2012, Sec. 16 of RA 10364 defines the division of labor of the various government agencies in undertaking “preventive, protective and rehabilitative programs for trafficked persons”.<sup>20</sup> With respect to repatriation and reintegration, the three key agencies and their main responsibilities are as follows:

- a. Department of Foreign Affairs (DFA). In relation to trafficked persons overseas, the DFA shall provide free legal assistance and counsel, repatriate trafficked Filipinos with the consent of the victims, and, in coordination with the Department of Labor and Employment (DOLE), it shall provide temporary shelter and other services to trafficked persons through the Overseas Filipino Resource Centers.
- b. “Department of Social Welfare and Development (DSWD) shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community. It shall establish free temporary shelters, for the protection and housing of trafficked persons to provide the following basic services to trafficked persons:
  - (1) Temporary housing and food facilities;
  - (2) Psychological support and counseling;

<sup>20</sup> The Anti-Trafficking Law of 2003 has three sections defining the scope of services concerned government agencies should make available to trafficking victims. The “mandatory services” are: emergency shelter or appropriate housing; counselling; free legal services; medical or psychological services; livelihood and skills training; and educational assistance to a trafficked child. The law also specifies supervision and follow through to monitor the progress of recovery and reintegration of trafficked persons (Sec. 23). Secs. 24 and 25 concern assistance to trafficked persons overseas. These include legal assistance (as provided by the Migrant Worker and Overseas Filipinos Act), services offered by the FWRCs, and the Country Team Approach as the guiding scheme in responding to the needs of trafficked persons. Sec. 25 pertains to the repatriation of trafficked persons, whether documented or not. In other words, the services for migrant workers, as provided in RA 8042, also extend to trafficked persons.

- (3) 24hour call center for crisis calls and technology based counseling and referral system;
- (4) Coordination with local law enforcement entities; and
- (5) Coordination with the Department of Justice, among others”.

**Implementation of Reintegration Programs for Trafficking Victims**

As mentioned earlier, the AntiTrafficking Law established the InterAgency Council Against Trafficking (IACAT) whose key functions include the formulation of a comprehensive program, the monitoring of the implementation of the AntiTrafficking Law, and coordination of projects and services of various government agencies. From the national level, the same multistakeholder structure is established to coordinate and implement anti trafficking programs at the regional and local levels (see Figure 1).

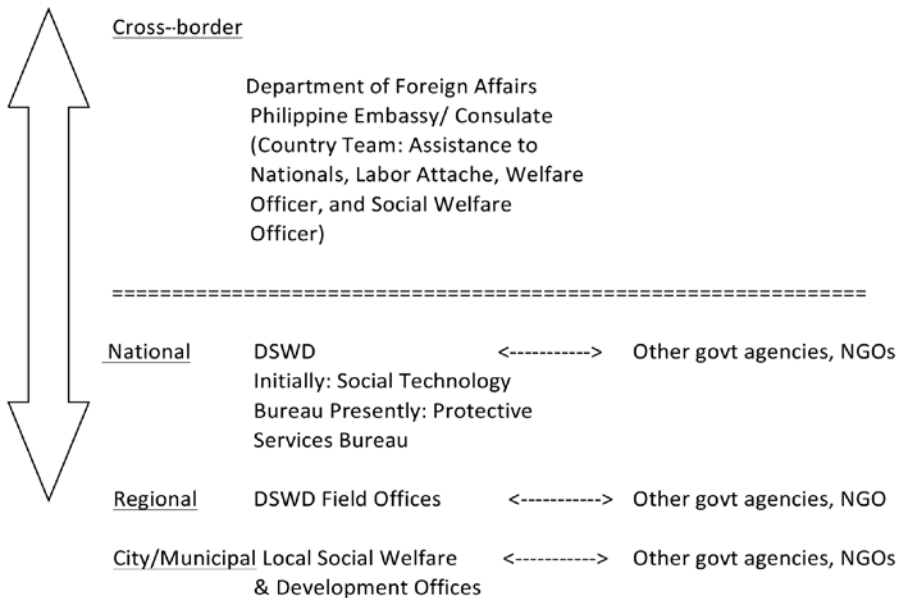


**Figure 1.** Organization of Anti-Trafficking Policies and Actions in the Philippines.

For the delivery of reintegration and protective programs for trafficked persons, the coordination of actions from the national to the local levels is outlined in Figure 2. The schema is a simplified version of process flows at the prereturn, return and reintegration phases (for details, see DSWD and ILO, n.d.). For crossborder victims of trafficking, another layer of coordination and two other agencies – the Department of Foreign Affairs (DFA) and Depart-

ment of Labor and Employment (DOLE) – are involved in the process. It is important for DFA and DOLE personnel to have a trafficking lens so that they can identify victims of trafficking from the other cases they handle – illegal recruitment, labor, human rights and other violations. The DSWD has conducted such trainings for DFA personnel in the last 23 years (Interview with key informant).

DSWD is the coordinating agency for reintegration programs, but at the same it also implements and delivers programs for trafficking victims. It cooperates with other government agencies or NGOs in delivering these services. For example, skills training programs may involve the Technical Skills Development Authority; training for entrepreneurs may be conducted in coordination with the Department of Trade and Industry. DSWD’s programs and services for trafficking victims are either residential based or community based. DSWD’s shelters are not exclusive to trafficking victims; they also accommodate victims of other abuses. In 2014, a total of 3,875 services were extended to trafficking victims by the different field offices of DSWD (Table 4). The most common assistance provided to victims.



**Figure 2.** Organization of Recovery, Return and Reintegration Response to Trafficked Persons.

**Table 4. Assistance Extended to Trafficking Victims, 2014**

<b>Assistance rendered</b>	<b>No. of services</b>
Psychosocial counseling	1,583 (40.9%)
Temporary shelter	1,011 (26.1%)
Financial assistance/return to the province	517 (13.3%)
Livelihood assistance	473 (12.2%)
Referral	154 (4.0%)
Support for victims/witnesses	82 (2.1%)
Skills training	55 (1.4%)
<b>Total</b>	<b>3,875 (100.0)</b>

Source: DSWD (2014)

According to the DSWD respondents, there is no difference in the approach and the support programs for those who were internally vs. internationally trafficked, except that in the latter case, the coordination of agencies has a transnational dimension. In destination countries where the DSWD has deployed Social Welfare Attaches, the attaches provide assistance in the identification of victims of trafficking. As such, the needs and situations of trafficking victims can be duly taken into account in assisting them while they are overseas and in coordinating services for them upon their return to the Philippines.

When asked whether gender is a consideration in the delivery of programs and services, key informants from the DSWD responded that the agency's programs are for women and men alike. However, women are more likely to seek assistance or to be assisted than men. The shelters also accommodate men and boys who are trafficked.<sup>21</sup>

#### ***Assessment of Reintegration Programs: Findings from Research***

A number of studies have looked into the reintegration programs for trafficking victims in the Philippines (e.g., Go, 2012; ILO-ROAP, 2009; IJM Cebu, n.d.). The International Justice Mission Cebu's experience with Project Lantern, a three-year project aimed at reducing the availability of women and

<sup>21</sup> The shelters run by the Philippine foreign missions abroad mostly cater to women distressed workers.

children for sexual exploitation in Metro Cebu, offers insights on what happens to victims-survivors through time. During the three-year project (2007-2010), IJM Cebu social workers monitored and reviewed the status of the 94 victims-survivors rescued by law enforcers. IJM Cebu coordinated with DSWD-Region 7 and social workers of other NGOs in the provision of medical care, counseling and case management services. Two years after their rescue, 58 (61.7%) had not been trafficked, 15 (16%) had been re-trafficked, and the status of the remaining 21 (22.3%) had not been confirmed (p. 8). Project Lantern also developed an Economic Self-Sufficiency and Project to increase opportunities for self-sufficiency for trafficking survivors. The project involved assessing existing community services related to economic self-sufficiency and reintegration, identification of target industries most likely to provide employment to former trafficking victims, funding job skills training by a local after care provider, developing a Job Readiness Training Course, upgrading DSWD-Region 7's vocational training program, and entering agreements with business partners for job placement. In 2009-2010, 42 trafficking survivors completed the Job Readiness Training Course, and 16 were successfully placed with local business partners (p. 9).

Based on interviews with 59 women who had been trafficked (30 Filipino women and 29 Thai women), the ILOROAP study (2009) sheds some light on life after trafficking. The findings of the study question the common notion of reintegration – in the sense of returning to her former community – to rebuild her life. Based on what the women shared, the findings suggest that rather than reintegration, a more appropriate goal would be to recover a woman's ability to make decisions about her life. Having lost autonomy and control as a trafficked person, goal after trafficking should not be limited to returning home, but more about integration, i.e., regaining autonomy and control and making informed decisions about her life (ILOROAP, 2009:78). The importance of a holistic approach to support trafficking survivors was stressed.

The recommendations by the various US TIP reports to enhance support services to trafficking victims have implications for DSWD's coordination and implementation of reintegration programs and services: increasing support services for victims nationwide (US TIP Report 2011), further improving the tracking, identification and monitoring of Filipino trafficking victims abroad (US TIP Report 2013, 2012, 2011), expand the use of victim processing centers to more localities to improve identification of trafficking victims for victims to ensure that they are given assistance (US TIP Report 2013), increase victim shelter resources and expand the government shelter system to help more victims, including male victims (US TIP 2014, 2013).



### ***Recovery, Return and Reintegration Programs: Stakeholders' Views***

The views of key informants from government and civil society organizations were sought to know how they see recovery, reintegration and return programs in the country. With the exception of one key informant, the rest considered recovery, reintegration and return programs as needing further improvement. One respondent shared that their organization is strengthening the aftercare component of their work to complete the package of programs that they had already implemented, i.e., capacitating local governments in anti trafficking work and support to strengthen the criminal justice system. Another respondent strongly felt that reintegration programs that should receive more attention and support from the government. Given the unmet needs of many trafficking victims, she would like to see the government committing more funds to reintegration programs.

It is noteworthy that the DSWD holds an annual assessment of the Recovery and Reintegration of Trafficked Persons Program. According to one key informant, most of the issues that emerge in the annual assessment are administrative matters. The yearly accomplishment report of the Recovery and Reintegration Program for Trafficked Persons also provide a summary of activities implemented, service statistics, and some assessment of the facilitating and constraining factors. The availability of funds is an important facilitating factor.

The DSWD key informants cited the National Referral System and the NRRD as good practices. On the other hand, they also acknowledged that the NRRD could be made more effective. Problems, such as poor Internet connections and quick turnaround of cases, make it difficult to enter or update data. The usefulness of the NRRD among service providers needs to be assessed. It was shared that monitoring of victims is carried out, but it seems that recording these activities and their outcomes are not done. One key informant was of the view that the livelihood programs would have to be expanded. A key informant involved in the operation of shelters mentioned the lack of staff to attend to the needs of residents with diverse needs. Funding is not a problem, but the lack of takers. Among others, one reason for not availing of assistance may have something to do with the stigma of being in need. It is also possible that trafficking victims are not aware about the programs that they could avail of. Or the criteria or requirements are difficult to meet. The availability of funds for the reintegration program was cited as one of the facilitating factors for the accomplishments of the Recovery and Reintegration Program for Trafficked Persons for 2014 (DSWD, 2014).

Key informants from civil society organizations commented on the limited and short-term support and other limitations of existing reintegration programs.

- a) Trafficking victims or distressed workers are not informed about the programs and services that they can avail of. Those who return on their own and are in need are left to fend for themselves. Detecting the trafficking of men and boys and responding to their needs was also highlighted.<sup>22</sup>
- b) Once assistance has been given (e.g., starter kit for a livelihood project, or financial assistance to return to the province of origin), often times, there is no follow up on what actually happened to the victims after the assistance has been provided.
- c) Shelter-based programs need further improvement.
  - *Overcrowding in shelters* – As mentioned earlier, the shelters are not exclusively for trafficking victims but for victims of various abuses or difficulties. The mix of residents in the shelters is also a cause of concern. Overcrowding also means less personal space and less privacy.
  - *Security issues* – Traffickers and/or employers of trafficked persons can threaten the rescued victims or staff of shelters where the victims are housed. Another problem is that some trafficking victims regard the traffickers as the “good guys” and the rescuers as the “villains”. Some victims escape the shelter to return to their traffickers. The control of traffickers over the trafficked persons is difficult to break.
  - *Lack of staff* – Social workers have a heavy caseload and this affects the quality and amount of time given to each case of trafficking. One informant saw the need to train and retrain staff to be mindful of the guidelines of the treatment of trafficking victims. Auxiliary staff, such as security guards, should be included in such trainings to avoid situations where in they become romantically involved with a resident.

<sup>22</sup> This was raised by participants during the June 26, 2015 meeting.

## Conclusion

The challenges of recovery, return and (re)integration of trafficking victims are issues beyond criminalization that require the attention and commitment of various stakeholders. The experience of the Philippines in providing assistance to persons who had been trafficked underscores some steps forward as well as significant gaps and limitations. International migration laws and policies, which were established prior to the passage of the Anti-Trafficking Law, provided some safety nets to victims of trafficking overseas. The protection of trafficked persons has been elaborated with the Anti-Trafficking Law; moreover, the law has been instrumental in establishing institutions and mechanisms to develop and implement a range of programs and activities to meet the 3Ps of the Palermo Protocol.

As suggested by external assessments of the Philippine government's response to trafficking, it is important to improve the identification of victims of trafficking. The succeeding steps of entering information about trafficking victims in the database, initiating contact with them, knowing their needs, and responding to their needs depend on this fundamental information. The need for continuing training of government personnel on trafficking in persons cannot be overemphasized. Given the significance of international migration in the Philippines, government personnel in Philippine Foreign Service missions constitute a critical target for such training programs. A related issue is data collection, recording and dissemination. The potential uses of the National Recovery and Reintegration Database have yet to be maximized. A review of the system and the coordination between DSWD and service providers would thresh out problem areas and identify potential solutions. Also, it would be useful to look into the databases and data-related protocols of other organizations (e.g., International Organization for Migration and International Justice Mission, among others) which may offer relevant guidelines and learning points.

Data on trafficking victims confirm that women and men can be trafficked. Thus far, studies on the return and reintegration of trafficking victims are largely based on the experiences of women. The experiences and voices of trafficked men also need to be studied and to be included in the design and assessment of (re)integration programs.

Considering the roles and contributions of different stakeholders in reintegration programs for trafficking victims, the links between programs at the national level and at the level of local governments need to be strengthened. Support to strengthen the programs and services of local government units is crucial on account of their immediate links to victims of trafficking.

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► ISSUES OF RESETTLEMENT INITIATIVES FROM VOLUNTARY ASSOCIATIONS



# LESSONS FROM TWO DECADES OF CASEWORK

## *How to Restore Survivors and Communities*

GARY HAUGEN

### **Introduction: Slavery Can Be Stopped and Victims Restored**

Throughout the developing world, fear of violence is part of everyday life for the poor. In fact, in developing and middle-income countries, poor people often name violence as their “greatest fear” or “main problem”.<sup>1</sup> The scale of this “everyday” violence is massive. One in five women will be a victim of sexual violence.<sup>2</sup>

Nearly 2 million children are exploited in the commercial sex industry.<sup>3</sup> In the developing world, impoverished children and families are uniquely vulnerable to violence because their justice systems do not protect them from violent people; they find that “police and official justice systems side with the rich, persecute poor people and make poor people more insecure, fearful and poorer”.<sup>4</sup>

His Holiness Pope Francis has rightly drawn international attention to one of the most pervasive crimes against the poorest of the poor: slavery. In his 2015 New Year address he called on all nations to fight “modern forms of enslavement” and human trafficking, stating:

Yet, even though the international community has adopted numerous agreements aimed at ending slavery in all its forms, and has launched various strategies to combat this phenomenon, millions of people today – children, women and men of all ages – are deprived of freedom and are forced to live in conditions akin to slavery.

Many in the slavery abolition movement use the terms “slavery” and “trafficking” interchangeably, as is the case in this paper. Because the term “trafficking” is commonly associated with cross-border activities, it is important to clarify that under international law (specifically the Protocol to Prevent,

<sup>1</sup> P. Amis and C. Rokodi. (1995). Urban Poverty: Concepts, Characteristics and Policies. Habitat International, 19.4, 403-405.

<sup>2</sup> United Nations. (2008). Unite to End Violence Women: Fact Sheet.

<sup>3</sup> UNICEF (2004). Childhood under Threat. State of the World's Children 2005.

<sup>4</sup> The World Bank. (2000). Anxiety, Fear and Insecurity. Crying Out for Change. (Chapter 8, 163).



Suppress and Punish Trafficking in Persons, especially Women and Children – also referred to as the Palermo Protocol to the Convention against Transnational Organized Crime) defines trafficking as:

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the 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.<sup>5</sup>

Many of the people living as slaves in the world today are citizens of their own countries subjected to exploitation within their own nation's borders.

Nearly 36 million people are held as slaves.<sup>6</sup>

The crime of slavery is simultaneously a gross abuse of an individual's right to life and freedom and a profitable economic arrangement for those who perpetrate it. The institution of slavery also degrades whole communities of people who live on the margins of society: the low-caste or tribal group, the ethnic minority, the despised and stigmatized – the poorest of the poor.

Because the sheer numbers of those victimized are so great and the violence they experience so acute, it is reasonable to ask whether the monstrous injustice that is slavery can be curtailed and its victims restored. IJM answers both of those questions with a very strong affirmative. *Our belief that slavery can be stopped and its victims and their communities restored is based upon nearly two decades of work in slavery-burdened countries.* With our local government partners, we have innovated processes to rescue thousands of victims of labor slavery and of commercial sexual exploitation and restore them to lives of freedom.

At IJM, we help local authorities combat slavery in Africa, Latin America, South Asia and Southeast Asia. Our approach is to work with the authorities to make their own national laws against slavery *real* for the victims whose labor and lives are exploited and abused for the enrichment of others. At the heart of our work of combatting slavery is the rescue and restoration of individual victims. For all of the talk of slavery today, remark-

<sup>5</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Protocol-TraffickingInPersons.aspx>

<sup>6</sup> Walk Free Foundation. Global Slavery Index 2014.

ably few victims are actually rescued from the control of slave-owners and restored to freedom.

IJM has undertaken to engage in that actual rescue, and in so doing, we have learned a great deal about the impact of slavery on individual human lives and on whole communities. And, by walking with victims of slavery from the moment we identify them until they are restored and living in freedom in their communities, we have learned a great deal about their needs and how best to address them.



**Meet Marian\***  
*In early 2012, Marian\* was selected to be one of the first four IJM clients to join the S.M.A.R.T. mentorship program. The program trains trafficking survivors who have demonstrated consistency in making healthy choices and proven a desire to lead others in the same journey of restoration.*

At a training for the S.M.A.R.T. mentors, Marian stood before her peers holding up a piece of paper with an oak tree crafted from colored pieces of paper.

She says the tree is like a metaphor for her life, at first without leaves: “It is not nourished; it’s leaves are gone, dry. It’s practically dead. In my life before...it’s as if I was no longer in this world.” Remembering the trauma she endured she says, “It’s as if I was no longer here.”

**But now, says Marian, her tree has green leaves and many fruits.**

Everything is different.

\*A pseudonym has been used for the protection of this IJM client.

**Figure 1.** Marian, a survivor of sex trafficking, holding up the tree she has drawn that she says is a metaphor for her life, now full of growth and joy.

We believe the experiences from nearly two decades of working on behalf of tens of thousands of slaves offer some lessons for the modern-day abolition movement.

*We have learned that victims can be restored, communities made whole and vulnerable people protected.*

## Care for Victims: The Key to Ending Slavery

IJM's anti-slavery model is based on investigation of the crime, which involves locating actual victims in their places of enslavement. We work with local authorities to remove the victims from exploitation and our social workers accompany them throughout the restoration process.

It is important to recognize that care for victims of slavery is not only required as a matter of moral necessity, it is also an essential component to actually ending the crime itself. Why?

*Because slavery will only end when perpetrators are brought to justice and punished for the crime. Survivors of slavery have an essential role to play in that process.*

Their testimony in local courts is almost invariably the most important evidence of the crime.

Without it, perpetrators will walk free and are almost certain to find other vulnerable people to take the place of those who have been rescued.

In our companionship with and assistance to thousands of victims of slavery (including both labor slavery and forced sexual exploitation), IJM has found that with psycho-social support, physical security and the assistance of our lawyers and social workers, many victims of slavery are not only able to testify in court against those who abused them, but they are eager to do so.

**We have found that the very act of standing up in court and telling their stories – and frequently seeing perpetrators held to account for their crimes – has an extraordinary healing effect on victims.**

**They are believed, their suffering is acknowledged and someone is held responsible for it.**

Furthermore, particularly in the collectivist societies where IJM works, the altruism of testifying is often an incentive to participate – victims feeling they are part of protecting others, preventing additional victimization of others. This is not to say that all survivors should participate in legal processes against perpetrators. IJM strongly opposes engaging survivors in legal processes against their will. IJM also opposes conditioning survivor benefits on their willingness to engage in prosecutions.

In IJM's anti-slavery programs, thousands of courageous individual survivors of slavery have testified against their abusers and thereby secured

the convictions of hundreds of traffickers, pimps, brothel owners, and slave owners. Each individual case makes fragile justice systems work better the next time. Years of successful prosecutions actually start to dry up the prevalence of the crime itself.

### **Rescue Is Possible**

Despite the fact that international law and every nation's own domestic laws prohibit slavery, there are shockingly few occasions in which slaves are actually rescued and restored to freedom. The most recent data available in the State Department's annual *Trafficking in Persons Report* indicated that in 2013, there were 45,000 slaves identified. We don't know if all of those identified were rescued, but if we assume that they were, that number represents .12 percent of the estimated 35.8 million slaves alive today.<sup>7</sup>

In most of the countries where we work, we at IJM have experienced the first meaningful rescues of slaves that the authorities have ever conducted. For example, when IJM began working with police to rescue individual young children enslaved in brothels in Southeast Asia, it was to our knowledge one of the few occasions where such interventions had occurred in these communities. When we rescued the first group of bonded labor slaves in South Asia we attempted to secure for them an official document that acknowledged their former enslavement and their release from it. No such document existed because no slaves had been rescued in those jurisdictions, despite the fact that bonded labor slavery had been illegal on the sub-Continent for five decades.

How can we explain the very low numbers of slaves rescued? There are several factors.

First, poor and powerless people are overwhelmingly those who are trafficked and exploited, thus slavery is often erroneously considered to be an extreme form of poverty, as opposed to the violent crime it actually is. Thus government institutions and leaders in many countries simply shrug off slavery as the natural consequence of poverty, or, at worst, a labor violation.

Another factor contributing to the low number of rescues is that local authorities in slavery-burdened countries are frequently complicit themselves in the enslavement and exploitation of children and adults. Corruption of local authorities is common – indeed, IJM has experienced it in

<sup>7</sup> Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report* 2014. Rep. U.S. Department of State, June 2014. Web. June 2014.

every country where we have worked. In our early years of engagement, rescue operations (particularly on behalf of children in the commercial sex industry) were routinely tipped off.

Though degrees of police complicity in trafficking-related crimes is rampant, it is a mistake to think it can't be corrected.

We have also seen in Asia, Africa and Latin America that even the most broken and under-funded law enforcement institutions include people of integrity and good will who are committed to upholding the law. We partner with those individuals, providing training, capacity building and political support.

The impact of such support on the institution on slavery is profound.



**Figure 2.** In Chennai, India, IJM is partnering with the local government on a System Reform project to substantially improve the response to forced labor slavery.

## Professional Policing Is Possible

When IJM began working in Cambodia in 2002, the open sale of pre-pubescent girls for sex was wholly tolerated by authorities. There were virtually no arrests and convictions of those who sold children as young as four to sex tourists. The police, including the special anti-trafficking unit, were themselves complicit in the exploitation of children.

In 2002, for example, police “rescued” a number of minor Vietnamese girls from Phnom Penh brothels, and then promptly arrested them for immigration violations. Some of the girls were taken from the police station and returned to the brothels by the police themselves. This is a perfect example of abuses committed in the context of supposed “rescue” that has generated cynicism about the possibility of a legitimate law enforcement response to the crime of sex trafficking.

Yet today, things are very different in Cambodia’s sex industry. While police investigators still occasionally find a 16 or 17-year-old girl in a massage parlor or brothel, the routine sale of young children on the streets of Phnom Penh, Siem Reap and other cities has ended.<sup>8</sup> Over 100 trafficking perpetrators have been convicted and jailed; deterrence is growing throughout Cambodia.

This deterrence has been made possible by the increasing excellence and professionalism of Cambodia’s Anti-Human Trafficking and Juvenile Protection Police (AHTJP).

*Under effective national leadership, the anti-trafficking police went from taking kickbacks from traffickers to becoming their fiercest opponents.* IJM has partnered with the AHTJP and provided over 10 years of professional training, mentorship and support, to over 500 of its officers. We have witnessed their clear progress over the years: improved capacity, increased cases moving through the justice system, consistent numbers of victim rescues and criminal convictions, child-friendly procedures consistently utilized and strong government ownership over the fight against trafficking.

*Today, Cambodia’s anti-trafficking police are proactively, independently and successfully pursuing and responding to sex trafficking cases and public trust in the force is growing.*

IJM has seen similar evidence of police professionalism elsewhere. When IJM began working in the Philippines in the early 2000s, for example, police did not routinely rescue children from prostitution nor did they appre-

<sup>8</sup> Shaw, Dave. Commercial Sexual Exploitation of Children in Cambodia. IJM.org. International Justice Mission, 2013. Web. 27 Mar. 2015.

hend traffickers and customers. Bribes to the police from brothel owners offering minor girls for sex were common. But years of training, mentorship and most important of all, collaboration between IJM, the National Bureau of Investigation and the Philippines National Police (and its specialized regional anti-trafficking units) on hundreds of individual cases of child sex trafficking has resulted in a sea change in police professionalism.<sup>9</sup>

Today, the model of a regional anti-trafficking police unit that was piloted in the Philippines' second largest city of Cebu has been replicated in Manila and Pampanga with similar excellent results. The government of the Philippines is now poised to replicate the model throughout the country.

IJM has also seen superb results when individual specialized anti-trafficking units are deployed to rescue victims and apprehend perpetrators of bonded labor slavery. The south Indian state of Karnataka has over the past year trained and deployed its police anti-trafficking units to rescue bonded laborers. It is having a visible impact on bonded labor and reflects extremely well on the local authorities and the state police.

### **Victims of Slavery Can Be Restored**

Because all forms of slavery are violent, virtually everyone who is removed from exploitation requires specialized care and services, including psycho-social and medical services for mental and physical trauma, and protective care to reduce the risk of re-victimization. IJM has found that with assistance and collaboration, quality care and restoration of trafficking survivors are possible even in some of the poorest countries in the world.

**The modern-day abolitionist movement is still young, but best practices with regard to care and restoration of slavery survivors are available.**

**In collaboration with our partners, IJM has developed standards of care for all aspects of care, including shelter, community reintegration, economic self-sufficiency and trauma recovery.**

<sup>9</sup> Jones, Andrew, Rhonda Schlangen, and Rhodora Bucoy. An Evaluation of the International Justice Mission's "Project Lantern". Impact Evaluation. N.p., 21 Oct. 2010. Web. 25 Mar. 2015.

For example, when IJM collaborates with local police to remove minor children and forced adults from brothels, our social workers are present at the rescue and accompany the victims every step of the way, from their first statements to police until their last court appearance and then for many months thereafter as they are restored to independent healthy lives. In Cebu, the Philippines, the Department of Social Welfare and Development in partnership with IJM has secured a separate facility outside of the police station so that victims of commercial sexual exploitation have a clean private space to rest upon rescue and be interviewed separately from pimps and brothel owners. The model is now being replicated in Manila.

Similarly, survivors of labor slavery also require sensitive procedures, particularly with regard to interface with law enforcement. Many victims of labor slavery (as well as sexual exploitation) have experienced local police in a highly negative way. In South Asia, for example, we have cases in which slave owners rely on local police to return runaway slaves to their masters. Because slaves have not generally experienced police in a positive light – and have been warned by their owners against contacting police – they are understandably frightened during rescue operations. In our collaborative cases with local police and magistrates, IJM accompanies the victims/survivors throughout the process of telling their stories to officials and alongside the public prosecutor represents in court those individuals whose cases are prosecuted.

*An essential element of recovery is safely processing traumatic experiences.* Although training in trauma-focused therapy is not commonly offered in social work curricula in the developing world, IJM's Aftercare Department, led by a licensed psychotherapist, created its own training materials and protocols so that our social workers, who are citizens of the countries where they work, can offer our clients the care they need. IJM also provides training in trauma-focused care and other best practices to government social workers and care-givers at partner organizations.

In addition to trauma care, every IJM client receives an individual treatment plan based on a needs assessment, developed by the aftercare team in collaboration with the survivor. There is no “one size fits all” plan for everyone. Each survivor of sex trafficking has had a unique experience and therefore has specific individual needs. A young child needs something very different than an adult woman held for many years against her will.

A treatment plan will cover everything from medical care (including, for many of our clients, HIV treatment), education, life skills training, job training and placement, housing, and, where possible, family reunification





**Figure 3.** A trafficking survivor was taken to a safe temporary shelter where she received crisis care from Philippine Government social workers and IJM staff. Cebu, the Philippines.

and community reintegration. IJM works with various partners, including government social service providers and non-governmental after care homes, job-readiness training centers and other local non-profits to provide opportunities (including job skills training or education) and connect survivors to a supportive community.

Even in the midst of seeing significant progress for individual clients, providing services without a clear understanding of the long-term impact for individual survivors is insufficient. IJM needed a tool to measure the extent to which these services contributed to clients' successful restoration and ability to function in society in safety. Thus IJM developed and implemented the IJM Aftercare Successful Outcomes (ASO) form. After a review of the literature and a search for relevant organizational tools, the ASO form presents as the most comprehensive evaluation tool available for each of IJM's casework types. The form categorizes areas of client need into domains of care relevant to restoration, based on IJM field experience, including economic empowerment, health, protection, social supports and trauma recovery.



**Figure 4.** Today, slavery is principally characterized by extraordinary violence. An estimated near 36 million people are living as slaves today.

IJM is in the process of validating the assessment tool and improving our aftercare programs with the findings we have obtained. It is our hope that in the near future the tool can be useful to other organizations that serve survivors of trafficking and slavery by measuring their clients' progress and restoration.

### **Slavery Is a Violent Crime, Requiring Perpetrator Accountability**

When we look back on centuries of chattel slavery in the United States, no one is in doubt about the extraordinary violence that was a lynch pin of the institution. *Today, slavery is principally characterized by this same extraordinary violence.* Beatings, murder, kidnapping and rape are common tactics used by those who exploit the bodies and labor of adults and children to terrorize them into submission – and warn others against escape.

In short, slavery is at its heart a violent crime: for every trafficked and enslaved child, woman and man, there is at least one person who inflicts abuse, restricts movement, confiscates earnings, and benefits financially from the victim's coerced labor or exploited body.

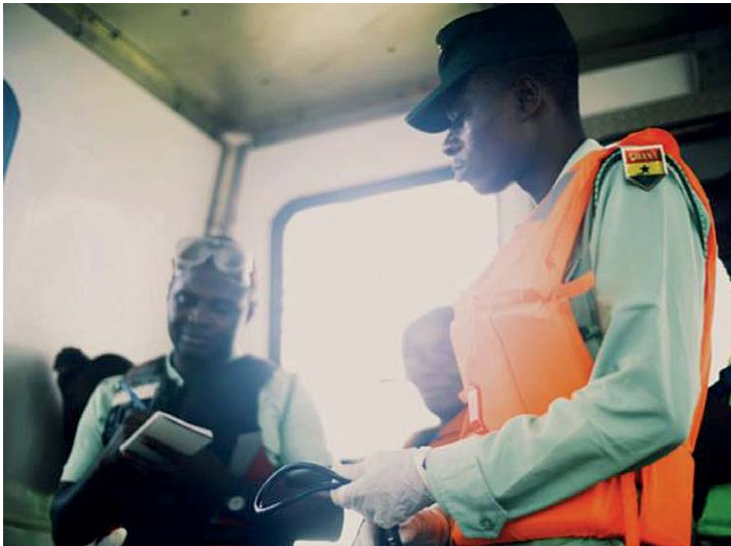
Because poor and powerless people are overwhelmingly those who are trafficked and exploited, some modern-day abolitionists view slavery less

as a crime than poverty at its most extreme. Through this lens, assistance to make local and family economies less precarious represents a key anti-slavery initiative. Education, health and income generation programs are valuable in their own right. But these funds have not had a measurable impact on slavery. Why? Because they do not affect the calculations of the central player in every situation of enslavement and exploitation: the perpetrator.

Perpetrators of trafficking, slavery and debt bondage, whether they are unscrupulous labor recruiters in Qatar, brothel owners in Southeast Asia, or pimps in the U.S. have one thing in common. *They are making money from the subjugation of others.*

Consider Ghana, a lower-middle income, democratic nation that has had robust economic growth for the past five years. Ghana is a favored partner of the World Bank, whose current grants, loans and credits total \$3.49 billion. The U.S. Government is a generous donor, as well, providing \$154 million for health and development last year.

But a third of Ghana's children work, and neither economic growth nor foreign assistance protects thousands of them from actual enslavement in fishing, domestic servitude, artisanal gold mining, begging and prostitution. Prevalence studies conducted by IJM on Lake Volta over the past 18



**Figure 5.** Ghanaian EMT officials participate for the first time in a rescue operation to free children from slavery on Lake Volta. Here they provide urgent care as soon as the boys are on board the boat.

months revealed that 60 percent of the children fishing on the lake were clearly slaves, bearing tell-tale signs of violence, depredation and terror.

IJM, the U.S. Government and other donors are partnering with the Government of Ghana to modernize, equip, train and deploy anti-trafficking police to rescue children and apprehend slave owners. Child slavery prevalence will go down, not because Ghana is less economically disadvantaged but because traffickers will respond to increasing prospects of apprehension, conviction and stiff jail terms. Fishing and other enterprises will have to hire – and pay – adult workers.

### **Slavery Can Be Stopped**

A dozen years ago, Cambodia had one of the worst records in the world for child prostitution. Prepubescent children were readily available for exploitation and Cambodia was a magnet for foreign sex tourists, because there was perceived and actual impunity towards this crime.

In other words, it was common knowledge that there was virtually no risk whatsoever for selling or buying a child for sex. Statistically reliable quantitative data is not available from this earlier period, but various studies estimated that children represented 15 to 20 percent of those in the sex industry. The Cambodian Government's own estimate was that children comprised 30 percent of those in prostitution.<sup>10</sup>

But after more than a decade of concentrated effort by the Phnom Penh government, by NGOs, and by foreign donors (including the U.S. and Australia) there has been a transformation in Cambodia with regard to the exploitation of children for commercial sex.

In 2012, IJM and several partners conducted an intensive prevalence study in Cambodia's three largest cities – formerly the areas of highest availability of children for sexual exploitation. We found that young minors (ages 15 and younger) represented less than 1 percent of those in prostitution. Older minors (ages 16-17) represented only 7.41 percent of the total.

Since then, IJM's experienced undercover operatives and police partners have investigated every single potential lead provided on child sexual exploitation throughout Cambodia. We've found almost *no* children under

<sup>10</sup> Planning, M.o. (2000). Cambodia Human Development Report 2000: Children and Employment. Phnom Penh: Royal Government of Cambodia. Retrieved August 7, 2013, from <http://planipolis.iiep.unesco.org/upload/Cambodia/Cambodia%20HDR%202000.pdf>

**A country that was once “ground zero” for child exploitation is now a model for how to develop effective law enforcement, prosecution, and victim restoration in the fight against trafficking.**

the age of fifteen and a substantial reduction in older minors (age 16–17) in entertainment venues.<sup>11</sup>

We’ve seen similar results in the Philippines. In 2007, IJM received a grant from the Bill and Melinda Gates Foundation to begin operations to reduce child sex trafficking in the Philippines second largest city of Cebu. Before we began our collaboration with local police, IJM contracted with an independent criminal data collection firm to execute a baseline prevalence measurement of commercial exploitation of minors in Cebu’s substantial sex industry. To our knowledge, it was the first scientifically-based, statistically-significant prevalence study of child sexual exploitation ever conducted.

The purpose was to measure the impact of law enforcement on the crime. We at IJM had anecdotal evidence that law enforcement had a substantial impact on child sex trafficking from our work the Philippines and elsewhere. But we did not have the quantitative data to support those observations.

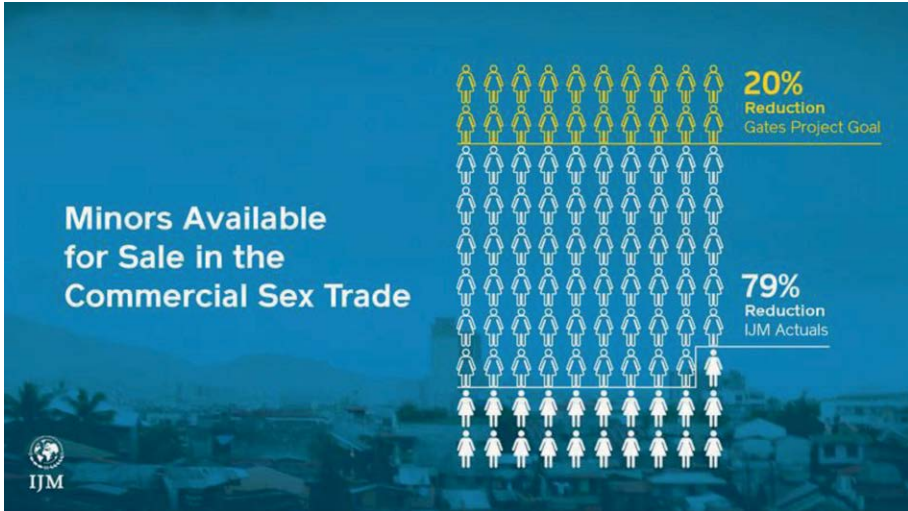
IJM initiated collaboration with the Philippines National Police (PNP) in Cebu to rescue minor girls from sexual exploitation and apprehend perpetrators. With our Philippines Government partners, we developed best practice protocols for victim rescue, forensic interviewing, data collection, apprehension of suspects, victim-friendly courtroom procedures and victim care.

Over the next three years, IJM and its PNP partners investigated hundreds of establishments, rescued over 225 victims of trafficking, and apprehended 77 suspected perpetrators.

Because trafficking is a non-bail offense under Philippines law, those suspects remained in jail, many of their businesses shuttered. Professional enforcement of laws prohibiting sex trafficking had a marked impact on social norms in the Philippines’ sex industry.

*When those offering underage girls for exploitation faced increasing risks of apprehension and prosecution, they got out of the business.* The independent

<sup>11</sup> Shaw, Dave. Commercial Sexual Exploitation of Children in Cambodia. IJM.org. International Justice Mission, 2013. Web. 27 Mar. 2015.



**Figure 6.** The independent investigators conducted a mid-term study and a final study at the end of the 3-year period. They found that the availability of minor girls had plummeted by 79 percent in Cebu.

investigators conducted a mid-term study and a final study at the end of the 3-year period. They found that the availability of minor girls had plummeted by 79 percent in Cebu. There is still a sex industry in the Philippines, but it is increasingly difficult to find minors within it.<sup>12</sup>

The lesson we learned from our on-the-ground field experience is that the crime of trafficking and slavery is uniquely responsive to effective law enforcement. Indeed, we have seen that the crime is much more markedly affected by law enforcement than other crimes, such as rape.

This is because of the characteristics of perpetrators of trafficking and slavery. These individuals engage in the exploitation of others for one reason: to make money. Theirs is not a crime of desperation (such as a starving person stealing food). Nor is it a crime of pathology, such as child sexual assault. It is a crime of opportunity and greed. In that sense, it is a *discretionary* crime. *The perpetrators choose to traffic and enslave because it is to their economic advantage, and they perceive that the risks are low.*

<sup>12</sup> Jones, Andrew, Rhonda Schlangen, and Rhodora Bucoy. An Evaluation of the International Justice Mission’s “Project Lantern”. Impact Evaluation. N.p., 21 Oct. 2010. Web. 25 Mar. 2015.

And indeed, in many countries in the world, the risks are very low. With those odds, it is little wonder that the crime of slavery has flourished briskly throughout history – and continues to do so to this day. On the other hand, the great and good news is that when law enforcement actually does its job, slave owners, pimps, brothel owners and traffickers are quickly put to flight.

### **Businesses and Corporations Can Play a Role**

Slavery is a hidden crime, but it is not invisible. A number of credible, independent investigations have been conducted in the past several years that revealed substantial labor slavery in several export industries, including fishing and electronics. Consumers around the world are repulsed by such reports and demand of major corporations that they eradicate slavery from their supply chains. A common response is for corporations to adopt codes of conduct and monitor working conditions on the shop floor.

But slavery won't be eradicated from electronics, fishing or any other industry unless and until national and local governments protect workers – including migrant workers – by enforcing laws against forced labor and trafficking and sending slave owners and traffickers to jail.



**Figure 7.** IJM Kolkata rescued Suhana in 2007, then she was re-trafficked. She was found in Mumbai. In 2010, three Kolkata traffickers were convicted, followed by the 2012 conviction.

Corporations can play an important role by insisting governments do their part in ending impunity; and then supporting these governments as



they professionalize police, regulate labor recruiters and prosecute those who traffic and exploit workers. Corporations can also incentivize governments to treat slavery like the crime it is by including an assessment of the competence of countries' criminal justice systems in their risk assessments when considering where they wish to invest, locate or source their products.

## **Conclusion**

The anti-slavery movement is at a critical time in our history. We are seeing moral leadership from the highest levels of the faith community, including from His Holiness Pope Francis. We are seeing transformation of police and justice systems in some of the poorest countries of the world that have resulted in apprehension and prosecution of traffickers and a marked decline in victimization. We have seen some of the biggest corporations in the world take substantial steps to eradicate slavery from their supply chains.

*More challenges lie ahead.* We need citizen movements to demand slavery eradication in their own countries. We need replication and scale-up of best practices in law enforcement, victim rescue and restoration and perpetrator accountability. We need major corporations to condition their investments on government's political will to enforce their own laws.

We need innovation in tactics to identify and rescue hard-to-reach victims, such as women in domestic servitude and child victims of online sexual exploitation. We need development institutions such as the World Bank to help poor countries develop and sustain professional justice institutions. And we need for protection for the poor from common criminal violence to be a Sustainable Development Goal in 2015 to help drive resources, innovation, and political support in the coming decade.



## CLIENT STORIES

### MIEN'S STORY • IJM CAMBODIA



**Figure 8.** Mien's journey to freedom from sex trafficking in Svay Pak, Cambodia.

Mien grew up in Svay Pak, a marginalized community in Cambodia that was once notorious for offering young girls for sex. Mien's family had emigrated from Vietnam, and they lived in extreme poverty. Her father spent what little money they earned on alcohol, and her mother felt helpless to stop his abuses.

Like many other girls growing up in the poor community, Mien was sold to a brothel one block from her own home when she was just 14 years old.

Night after night, Mien was sold to sex tourists and men who came to Svay Pak because they knew they could find young girls. The nightmare became a routine. Although she was minutes from her childhood home, Mien was trapped.

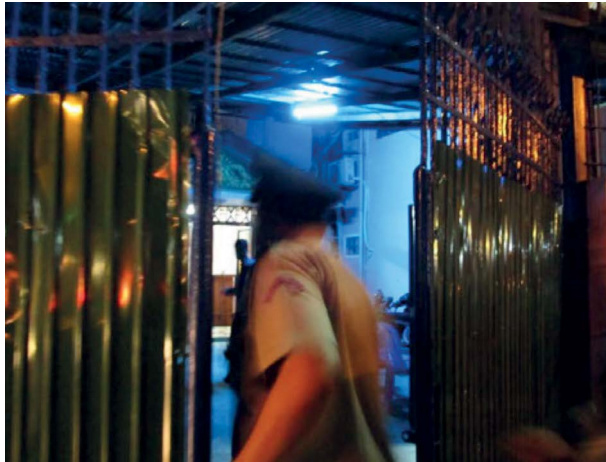
In 2003, IJM assisted the Anti-Human Trafficking and Juvenile Protection Unit of the Cambodian National Police with its first-ever rescue operation. 37 girls were rescued from sex slavery – the youngest was 5 years old. But Mien hid, afraid of the police – who were actually there to find

her – because the brothel owners had told her lies, claiming that *she* would be the one who was arrested, not them.

In the following months, Mien’s family migrated north. Mien was again sold to be exploited in brothels in Siem Reap near the Angkor Wat temples, a popular tourist destination. Mien was sold night after night to men who paid to rape her – and she became her family’s only source of income.

Years later, Mien would describe how she felt crushed by the violent abuse, but also by the weighty responsibility of becoming her family’s sole breadwinner through the exploitation in the brothel. She said: “*I despair – my life does not have meaning...I feel like I don’t want to do this anymore, but what else can I do? I have no skills and my family depends on the money I send to them every month*”.

IJM investigators started to gather evidence in the very same brothel where Mien was being exploited. The brothel was disguised as a massage parlor, but IJM soon documented evidence to reveal girls had been trafficked there to be sold for sex.



**Figure 9.** A Cambodian police officer on a rescue operation, taken in 2013.

In 2007, IJM worked with an anti-trafficking unit of the police in Siem Reap to rescue women and girls who had been trafficked to a brothel – including Mien and seven other girls, most of whom were minors. Mien was taken to a short-term aftercare shelter, where she received crisis care and started a new life of freedom.

IJM assisted the prosecutor to develop a strong legal case against the pimps and traffickers. At the end of the trial, justice was delivered: five perpetrators were convicted.

Justice is part of a trafficking survivor's journey of restoration, but much of their healing comes from the loving relationships they develop from counseling and skills-training or education they receive in long-term after-care shelters and the relationship they develop with their IJM social worker.

In Cambodia, there is a proverb that says: *Men are like gold and women are like cloth*. The meaning is that men can “dirty” themselves through sexual promiscuity, then wash themselves off to shine like gold again. In contrast, a woman is believed to become “stained” forever, like a white cloth, tainted and worthless. That strong stigma, often leading to a feeling of worthlessness or loss of hope, is one of the greatest challenges for IJM aftercare teams.

After a couple of months at a short-term, transitional aftercare shelter, Mien moved to an aftercare home where she could put down roots. The home is located in the same community where Mien had grown up. But the home has transformed the neighborhood – in fact, the very same brothel where Mien was first sold was bought by the aftercare home and turned into a community center for youth.

Mien remembers what it was like to drive back into her old neighborhood: “For my first time at the community center, when the car stops, I feel so scared to get out. But when I do get out it is good. Everything has changed”.

Mien began to thrive. She became a confident young woman, a mentor for others. She started to volunteer at the community youth center, reaching out to kids in the area – the very same neighborhood she had grown up in, and the place where she was first exploited.

Today, Mien is married and lives with her husband; they are saving money in hopes of owning their own home someday. She sews beautiful silk pillow covers and other textiles, including uniforms for another microenterprise businesses.

As Mien said, “Everything has changed”.

## CHARINA'S STORY • IJM THE PHILIPPINES



**Figure 10.** IJM met Charina in our first-ever rescue operation in Cebu in 2007.

Cebu, The Philippines – Charina\* is one of the first young women to stand and walk to the front of the room to sign her name to the bill of rights. She is proud of the declarations she and the other girls have written together: *I have the right to be loved. I have the right to live peacefully. I have the right to my own body. I have the right to express my feelings.*

Charina, 20, is participating in a meeting with the Reintegration Support Network, a support group for trafficking survivors. The network is an innovative partnership between IJM Cebu and the local government. Government social workers, staff from IJM and volunteers from the community provide medical and psychosocial support. The young women received trauma-focused care in aftercare shelters, and they have now returned to their home communities. The support network offers them a chance to keep learning about topics that promote psychosocial well-being and healthy living. *IJM met Charina in our first-ever rescue operation in Cebu.*

\*A pseudonym has been used for the protection of this IJM client.

She was one of two girls rescued in IJM's first undercover operation in 2007. IJM investigators had been building a case against the pimp, who was notorious for selling young girls to men for sex. Charina was only 15 years old, but she looked even younger. The pimp exploited her youthful looks, selling her for sex to the men who were willing to pay a higher price for younger girls to abuse.

Charina was all too familiar with the routine on the streets. Pimps sold the younger girls and women; prostitutes stood on corners of the street or waited by the pier for customers to drive by to negotiate a price. So Charina thought it was just another night when a pimp told her that she would go to a hotel along with a couple other girls for a private party.

But it was not just another night: The men negotiating with the pimp were undercover police. They were not interested in abusing Charina; they were there to free her.

At first Charina was confused. IJM aftercare staff was on the scene to accompany Charina and the other girls and women to the police station. The IJM social workers explained what was happening and reassured the girls that they were not in trouble. Charina and two of the girls were taken to an aftercare shelter, where they received crisis care and counseling.

*But after years of trauma and learning to survive on her own, building trust was extremely difficult.*

After her father died when she was a young girl, Charina had been sent to live with her grandmother. Aside from the abusive and angry visits from Charina's mother, the home was warm and loving – but very poor. Although Charina's grandmother sold small rice cakes, a popular Filipino snack food, there was never enough.

After completing fourth grade, Charina dropped out of school. Eager for acceptance and desperate for an escape from the hardship that had defined her young life, Charina started hanging out with a rough crowd. These new friends introduced her to drugs, and before long her own mother decided it was time for Charina to start earning some money. Charina was 13 years old when she was first sold for sex. Two years later, she became pregnant and endured a painful miscarriage.

When she was rescued, Charina was three months pregnant, struggling with drug addiction and very hesitant to receive support from IJM social workers. She saw the rules of the aftercare shelter as a threat to the independence she had been forced to learn at such a young age. She resisted the counselors and attempted to run away. Despite Charina's initial resistance, IJM staff remained determined to connect Charina with the resources and



**Figure 11.** Social workers honor Charina with a certificate recognizing her progress through IJM’s trauma-focused therapy program.

services she needed. “We knew we did not want to give up”, says IJM Director of Aftercare Mae Sampani.

IJM was able to place Charina in a detox center, where she received the help she needed to overcome drug addiction. During that time, the team faithfully visited her. They began to see Charina transform. Charina started to believe that someone actually cared for her.

Charina endured many challenges during this time. She had to move to several different aftercare homes. After a fire burned one of the shelters to the ground, Charina moved back to her home community. It was earlier than ideal, but her IJM social worker walked closely with her during the ordeal. After many months of consistent support, Charina started to trust. She overcame her substance abuse and started to rebuild relationships. Charina started to hope.

IJM seeks to provide holistic restoration for trafficking survivors. Social workers help the young women heal by offering practical resources and providing trauma-focused counseling. But there is not one treatment or timeline that works for everyone. The social workers make a long-term commitment to each survivor who participates in IJM’s aftercare program,

committing to walk the difficult road together. The men who tried to sell Charina in 2007 were charged under the Philippines' anti-trafficking law. The trial progressed slowly, illustrating the delays and obstacles that have been endemic to the system – but are slowly starting to change. IJM lawyers have supported the case, persevering through numerous postponed or cancelled hearings.

Charina courageously chose to testify in court against the suspects. She is eager to see justice in her case – because she knows she is worth it. The trial finally ended in June 2014 with convictions against the traffickers.

Today, Charina is a strong young mother, determined to give her son the opportunities she should have had herself. With help from her counselors, Charina is making plans to return to school or receive specific vocational training. Charina says she will give anything in her power to protect her son.

At a Reintegration Support Network meeting,<sup>13</sup> Charina stood before the group of other trafficking survivors and counselors. She described how much her life has changed since her rescue. “I am happy and thankful for the positive changes in my life”, she said confidently. “If I was not rescued, I would still be standing over there”, she said, pointing in the direction of the pier where she had once been routinely sold and exploited. Charina described how she has learned to respect others and respect herself. She looked around the room of fellow survivors and said, “Now we can help other girls”.

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<sup>13</sup> In 2012.

# DIFFICULTIES AND SUCCESSFUL PRACTICES IN FACILITATING A NEW LIFE FOR PERSONS TRAFFICKED TO GREAT BRITAIN

KATE GARBERS

Your Excellencies,  
Colleagues,  
Pontifical Academy of Social Sciences,

Thank you for extending an invite to me to join you for this Plenary on Human Trafficking, it has definitely been an amazing experience and I encouraged by what I have heard from colleagues from around the world, the Academy and the Pope in relation to this topic. It is an honour to be here, thank you.

I must admit to feeling a little bit of a fraud as I am not 100% academic or frontline practitioner – but a little bit of both. I am the Managing Director of the non-Governmental Organisation Unseen, based in the South West of England. I co-founded the organisation 8 years ago, initially to fill the void of there not being enough refuges and places of safety for trafficked persons. We certainly have grown and expanded from our original vision and having opened our first safe house project 5 years ago have worked with over 100 women, we have also developed a resettlement programme for those settling in the UK and an outreach programme for those requiring crisis assistance but not accommodation, these last 2 programmes work with both men and women – you can read more about the Resettlement service within my paper.

At Unseen we endeavour to combine a micro and macro approach so that we both support exploited people & tackle the systemic issues of slavery. The expertise and insight gained in each area help us perform effectively across all of our work.

We focus on three main areas as we work towards a world without slavery:

- **Supporting survivors and potential victims of slavery** by providing access to a range of specialist services, enabling them to safely recover and develop resilient independent lives.



- **Equipping stakeholders** by providing training, advice and resources to facilitate the identification and support of potential victims of slavery.
- **Influencing systemic changes** by using our experience and research to impact and inspire transformation across legislation, policy and society.

I also fundamentally believe and agree with a comment that was made on the first day, that NGOs have unfortunately made a habit of ‘feeding’ themselves and I do not wish to sound defensive or justify this behaviour which I have certainly seen, but do want to offer reassurance that Unseen’s main aim is to work towards a world without slavery and in order to be truly successful in this we have to be prepared to do ourselves out of business. Having heard Jeffrey Sachs speak early in this conference, he said that we have fifteen years under the Sustainable Development Goals to ‘get the job done’. I was planning on giving myself until retirement, so it appears my timeline has shrunk by at least 50%, so collaboration is now more important than ever.

I have been asked to present on the facilitation of a new life for victims of trafficking and modern slavery in the UK

I think I have to be careful as I present, as I do not want to only present the difficulties, however I think it is fair to say that there are indeed many difficulties and processes to negotiate and navigate as a victim of trafficking if you want to settle in the UK.

My plan is to draw upon my experiences of frontline work with Government, police and survivors to discuss this topic with you today and I would also, at the end, like to take this opportunity to take advantage of the influence and power in this room and make some suggestions and recommendations for us to think about, pull apart and discuss – as was said earlier in the Plenary Session, if we are to truly address and tackle the issue of human trafficking and modern slavery we must not just get it right in one nation as this increases the risk of displacing in to other areas, regions and nations – we must however start somewhere.

Unseen views resettlement and re-integration to mean the point at which a person is economically and socially capable and independent, no longer at threat or at risk of being re-trafficked and most importantly no longer requiring the support and services we offer. This is one of the fundamental tenets of the resettlement service we offer – it is in place to empower and promote independence, and resilience, not to create an over-reliance on our services and workers. Support focuses on both the practical and emotional needs survivors have in order to continue their recovery and become independent, resilient members of society.

Facilitation of a new, productive and fully integrated life for an identified victim of trafficking in the UK is unfortunately fraught with difficulties. Residing and staying in the UK is not something every victim of trafficking will be able to do and being identified as a victim of trafficking does not equate to long-term support in a UK context. Once a decision has been reached, formally identifying an individual as a victim, there is no automatic entitlement in terms of residency, temporary or otherwise. The ability to reside, remain and access services is based purely on immigration status.

The notion that victim protection and victim assistance should be unconditional, and not dependent on the capacity or willingness of the victim to cooperate with law enforcement authorities is not currently enacted in the UK.

Whilst rhetoric from official channels and government agencies in the UK is one of separation of the issues of immigration and trafficking status, time and time again we see the two issues are inextricably linked – we have seen an increasing trend of Home Office asylum interviews being conducted and being used to inform a trafficking decision. We have time and time again seen decisions regarding trafficking status being delayed until an asylum decision is ready. In the UK the trafficking decisions are made based upon the information contained in an initial referral form submission and usually supplemented with supporting information from professionals working with the assumed victim – there is no face to face interview with a decision maker. The asylum process does offer interview but comes from the general premise of guilty until proven otherwise and is far from victim centred. I am not here to discuss the asylum process other than to say for two separate systems that are meant to run in parallel we see them as inextricably linked in the UK and highly inappropriate for a PVoT.

There is no official, government led programme or long-term support mechanism in place for victims of trafficking in the UK. The system in place for initial care does not afford victims long-term support or assistance to resettle and reintegrate into UK society. Under the UK's provision of support for trafficked persons an individual is entitled to 50 days of reflection and recovery. The creation of a resilient, empowered and contributing member of society is not currently a government priority for this population group. The approach and stance favoured and presently taken by Government is one of repatriation and return.

Whilst we agree options to return home should be explored and need to remain a valid option for victims of trafficking, we also need to further

understand the issues related to repatriation to fully understand what it is we are returning an individual to. If the situation that initially led to an individual being trafficked has not altered, returning them increases the vulnerability of being re-trafficked if appropriate support is not in place. We are not in a position to dictate 'appropriate support' in other countries and jurisdictions, however we would express concerns that not all countries, to which individuals are returned, will have the same human rights record or approach to victims or the support mechanisms in place to provide the assistance they will require.

We want to work with partners; statutory, non-governmental and private sector to create and promote a system whereby people are able to be economically viable, self-sufficient and self-contained, but this will take time to achieve.

It is vital that wherever possible survivors understand the mechanisms they are part of and are given the information that allows them to make informed decisions whilst realising that in reality the decision to stay in the UK is not often one they can make themselves.

Any resettlement programme offered should not be run by one organisation in isolation and needs to support a survivor to integrate with services, support and friendship groups that will continue once the 'trafficking elements' of a survivor's case have been concluded. This cannot be about NGOs empire-building or creating a niche for themselves but about finding sustainable and appropriate solutions and responses for all survivors.

Caring and supporting identified victims should be the responsibility of government, civil society, individuals and organisations but the ad hoc nature of the systems we currently have is not sustainable or providing the best for some of the most vulnerable in our society.

I would like to spend some time looking at the issues we as an organisation have faced during our direct work with survivors.

Find myself between a rock and a hard place – brothels, car washes, nail bars (I am part of a multi-agency task force) – the options I am able to present are limited – this doesn't mean we shouldn't work proactively and in a multi-agency manner to address this situation and offer people a chance to understand their rights, entitlements and to fundamentally leave their exploitative situation, but over the last four years I have interacted with over 300 persons, all I would suggest are on the spectrum of exploitation, a third I would state showed indicators of trafficking – 2 have opted to leave their situations with us and 1 has come forward at a later date.

The question I am often left with post such operations is if someone does want to leave do we refer someone into the UK system knowing that 50 days later their options are potentially even more limited?

I have to be a pragmatist with this work and 50 days out of a situation of slavery is better than no days out of a situation of slavery but if the prospects that are offered post 50 days are worse than or comparable to the individuals original exploitative situation what is the incentive for them to leave?

If what we are offering is in effect:

- No promise of sustainable, long-term income (even if money was not all there is, in exploitative situation victims often are provided with accommodation, food, speak same language, with others – not to say this makes it right but it provides a barrier to exiting)
- No promise of their ability to enter job market
- No long-term accommodation

In addition to this the individual is:

- Now on the radar of officials
- Potential for questionable immigration status

There overall is currently a lack of assistance and incentives and this directly impacts the ability for those enslaved and trapped to come forwards in the first place.

This is not to say the system doesn't work at all, and I am very aware that compared to many countries represented the UK has systems in place to support and the Government is engaging with a range of partners and organisations to discuss how we assist those identified better.

Last week I was called to our local hospital to consult on a case, a nurse had concerns about a patient she was working with – he had been coming to the hospital regularly for the last few months and had over time revealed what had been happening to him. Indicators of trafficking present I was called in to assist. We had managed to have serious and frank discussions about what his options were, that he needed to find work post his 50 days, that if he didn't he wouldn't be eligible for benefits, he may have to consider returning home and how we would be able to assist with this process should he choose this. Because of his regular appointments at the hospital he decided to return to his exploitative situation whilst he thought about his options.

As I flew out to here on Thursday he was being transferred to a safe place elsewhere in the UK, aware of his options, knowing he had had

enough of being exploited and being in a place where he wanted better for himself.

This case was built on relationship and trust that had taken four months to build up with his health team, we cannot predict the outcome for him but he is at least aware of all the potential options.

Another overriding issue we face in the UK to the provision of effective resettlement is the benefits system itself. To claim benefits in the UK takes on average 77 days from entering your initial claim. This timeframe has some caveats, it assumes that your trafficker/exploiter has not claimed benefits already on your behalf as part of your exploitation, which is a trend we are seeing more and more often. So assuming we have no previous claims and the system works as it should you will be granted a national insurance number – a key if you would like to access the job market and any benefits to which you are entitled – as I mentioned earlier under the UK's provision of support for trafficked persons an individual is entitled to 50 days of reflection and recovery – as you will see here we have at least a 27-day shortfall between government provision and the beginning or processing of any benefits claim (if the individual is eligible for these benefits).

In the worse cases this leaves individuals who have been positively identified as victims of trafficking with no income and no accommodation for a minimum of 3 weeks. Even as an EEA national, choosing to exercise your treaty rights and reside in the UK, you cannot access housing benefit. This has resulted in street homelessness in some situations. Here as an NGO we need to strike the balance of showing that the systems don't work and directly challenging the legislation and policy that creates these loopholes so that Government are aware of the issue and have evidence they can use to make the necessary changes whilst not intentionally putting the victims at unnecessary risk. This has resulted in us accommodating people for longer than we should and longer than we are funded.

Recent benefits changes in the UK have also provided further challenges for Unseen and the people we work alongside – as an EEA national you are now only eligible to claim benefits for three months, after which you have to have secured a job. The other caveat, which is hugely problematic, is that you have to evidence that you have been self-sufficient and working in the UK prior to applying for benefits – evidencing work history has obvious implications for identified trafficked persons.

As a non-EEA national your legal team may advise the asylum route; this also whilst providing accommodation and reducing the potential issue of homelessness does not solve all the issues. An individual still faces

that some asylum accommodation is highly inappropriate – the lack of financial resource to support themselves, no direct face-to-face support, no ability to access the job market during this time – in a sense people are in limbo. People who came originally to seek better or alternative employment opportunities are left waiting for sometimes indeterminate amounts of time for their status to be determined.

Another challenge my team currently faces is with two West African women who for me defied all stereotypes. I rarely get to visit the safe house now but am always incredibly humbled and challenged when I do – it provides a welcome reminder as to why I do what I do and it is always good to remember the survivors at the heart of all that I do. During my last visit I met 2 women, one a trained accountant and one with a degree in maths. Both are awaiting a determination as to their trafficking status but as non-EEA nationals they have few, if any options to remain in the UK. Their trafficking determination, even if positive, will not result in leave to remain or the right to reside. Two intelligent women who want to work, pay tax, contribute, be self-sufficient and with their qualifications could easily do this and yet may not be offered this opportunity do to their nationality.

The above issues can be solved, it requires the agreement of various governmental departments to do so but it is doable...

As I discuss in my paper automatic discretionary leave upon a positive trafficking determination is a way to maintain support for victims and promote longer-term resilience. The development and creation of a 'Pathway to Passport' programme as Professor Archer put forward in her Recommendations to Pope Francis is an idea we would fundamentally support. It is our belief that once a positive conclusive grounds decision is given it should result in some form of status, leave with benefits, the access to appropriate support, the job market and accommodation. Leave should be automatically activated and should occur regardless of the individual's immigration status. We currently have a system that affords different victims different access to different support mechanisms and residents permits.

We need to be clear however that granting leave in isolation will not solve the issue – assistance and support (of varying levels) will be required and should be offered. As was mentioned by Mr Vera on the first day we have to be careful with the assumption and notion that a potentially traumatised person will immediately be self-sufficient. Some form of assistance and support will often be required and any programme must account for this.

I appreciate I have focused a lot on the difficulties, as I predicted that I would at the start of this presentation, but I think that they highlight the need to enter productive discourse with Government and the policy makers – to ensure and encourage joined up thinking across the different departments so that those identified as trafficked persons are not slipping through the gaps and are afforded the support they need.

Let me conclude this section with a success story, it is not all bad!

Trafficked into the UK at age 14 by a family member, forced into domestic servitude, we worked with this woman when she had turned 19. She speaks good English but had missed a lot of her secondary education due to her trafficking situation. After an initial stay with Unseen she applied for asylum and we continued to support her whilst she resided in asylum accommodation. Her decision was delayed for over nine months – in this time she was supported to access free education classes and to seek voluntary placements. When she was granted leave last year, it was a time of much celebration. She has subsequently been supported to move into an independent flat, she applied for funding to furnish it, has had budgeting lessons, is attending school, has completed a work placement and has started work. Three weeks ago Unseen said goodbye to this amazing young woman, sending on her way to restart the life she wants. The resilience and determination this woman has shown astounds me.

### **Considerations and Recommendations**

To fully understand the successes and difficulties in facilitating a new life in the UK further research needs to be conducted. The systems survivors have to interact with and navigate need to be fully understood. Both survivors and their support workers need to be consulted to understand direct experiences of accessing services and the barriers being faced. This would then provide a comprehensive basis from which to discuss the development and implementation of an appropriate longer-term support system in a UK context.

Any support package that is considered should pay due attention to the individual experience of the survivor, duration of trafficking experience, and duration and type of support an individual needs in order to ‘recover’ and ‘reintegrate’. We have to accept that there is no predictable timeframe of travel to recovery and that individuals will move forwards, take positive steps and then suffer setbacks. We need to ensure that when these setbacks occur they have the coping mechanisms, strategies, support and resilience to deal with them.

Unseen advocates for the creation and development of a specific resettlement programme. We believe that upon receipt of a positive conclusive ground decision individuals should automatically be afforded some form of residence permit. Ideally this permit should not be related to immigration status but to trafficking status. Building on the current system of discretionary leave would be a good starting point as long as the leave is granted to all identified as victims, regardless of nationality, and gives continued access to the support afforded under ECAT (2005), including at minimum access to: appropriate housing, identification documents, professional support, job market, vocational training, social inclusion activities, learning English, education, health care, legal advice, benefits systems and compensation.

Identifying how other agencies, faith communities and individuals can be involved is also an area that requires further thought and investment. Practically can the Catholic Church have a co-ordinated approach, not only in the UK, but further afield to provide job opportunities, internships, voluntary positions and other meaningful activity for trafficked persons via programmes that are already established and running, is it a case of expanding remits and identifying potential opportunities that already exist within the Church and expanding them to include trafficked persons?

Can programmes that offer more familial-based living, allowing integration to society through living within the normality of UK family be provided by the Church? As Kevin Hyland mentioned, via the Bakhita initiative they are investigating host families to provide longer-term accommodation options – could this be a programme that goes further than one church in one city, in one country and a way that the Church can practically support those who have found themselves trafficked and enslaved? This could provide both an effective resettlement and reintegration option – either in country they have been identified or if returned to country of their origin.

Adult fostering programmes via voluntary groups and faith communities is something that has worked for the elderly, young homeless people, refugees and those with learning difficulties. Would embarking on a similar programme for victims of trafficking offer the potential of improved long-term resilience? This could be developed effectively to promote integration once a residency permit has been issued and the other necessary support elements are in place.

There are numerous challenges we have seen the survivors we support face, even once they are granted leave and residency. These issues and chal-



lenges need to be fully understood so we can identify the resources and support needed to assist recovery. We need to address our civil, legal, societal and moral duty to vulnerable people and try to create an appropriate response and support mechanism for them that fits the UK's 'way' of doing things and that is realistic in what it is trying to achieve. By working with people, moving them towards resilience we will be assisting survivors to fulfil their desires of economic improvement which will usually have been a factor and driving force behind their reasons to come to the UK initially. We must continue to strive for safety, hope and choice for all survivors and take a thorough look at how we allow for and actively encourage and develop independence and resilience.

We are under no illusion that it is right and proper to support, care for and work with those who are currently within the systems, identified as victims and needing an agency to advocate of their behalf for the most basic of rights and assist them on their journeys towards independence but this is a sticking plaster – the damage has been done and we are coming to provide help too late. It is currently necessary and right to offer these services but we must get to a stage whereby entrapment and enslaving of our fellow humans is no longer an issue society faces – a massive aim – but we each have to do our part to work towards a work without slavery.

Big ambitions, big plans and dreams, but if we are to tackle slavery we have to think big, think outside of the box – the potential the power, the influence of researchers, practitioners, the Church, PASS and other determined individuals in the room can have, I believe, a significant impact in this area.

# DIFFICULTIES AND SUCCESSFUL PRACTICES IN FACILITATING A NEW LIFE FOR PERSONS TRAFFICKED TO ITALY

GIOVANNI PAOLO RAMONDA

## 1. Community of Pope John XXIII

Thank you very much for calling us to discuss this issue.

The *Comunità Papa Giovanni XXIII* Association was founded by Father Oreste Benzi, a Catholic Priest, in Italy in the early 70s. On March 25th 2004, the solemnity of the Annunciation of the Lord, the Pontifical Council for the Laity confirmed the recognition of the *Comunità Papa Giovanni XXIII* Association as a private international association of the faithful according to pontifical law, with juridical personality. Its specific mission is to *directly share* life with the least and to *remove the causes* that generate injustice. We are known for our *Family Home*, residential and educational community, organised like a natural family. It is characterized by the stable presence of two parental figures – mother and father – who chose to share their life in a continuous and self-giving way with people in need. The deep intuition is simple: the family is the most important relational system. All people have the right to belong to a family. Then we give a family to those without one.

In 2006 the Association *Comunità Papa Giovanni XXIII* was granted Special Consultative Status within the Economic and Social Council (ECOSOC) of the United Nations. Today the Association is present in 32 countries on five continents. In order to respond to the needs of the poorest of the poor, the Community of Pope John XXIII is continuously looking for new ways to directly share life. This is one of the reasons for the growth and spreading of the Community in the world.

Among the different activities of the Community, there is the constant work for the liberation of victims of trafficking and forced prostitution.

## 2. The commitment against trafficking in human beings

In 1989 Father Oreste Benzi met a prostitute at Rimini railway station: this meeting revealed to him the horror of prostitution and the state of oppression hidden behind it. During the night, the streets of the town were overcrowded with girls who prostituted themselves. The phenomenon was

growing dramatically, without any kind of intervention, as it was considered just another tourist attraction.

When Father Oreste Benzi went on the streets to meet the girls, he would ask them: *“Do you love Jesus? Yes! You are the temple of God!”* In few words he saw their profound dignity. Thanks to these meetings, among prayer and tears, our unceasing work for the liberation of the slaves started up. In 25 years we have freed more than 7,000 persons from sexual slavery. Central and local government co-finance only about 10% of the amount we spend every year.

Italy is considered both a country of destination and transit. It is estimated that in Italy there are about 120,000 victims of forced prostitution. The majority of the phenomenon is on the road (65%), but indoor prostitution is also relevant (apartments, nightclubs or massage clubs). It is also estimated that 37% of the victims are children. Victims of trafficking mainly come from Nigeria, Romania, East European countries, South America and China.

### **3. The model of intervention**

Our model of intervention operates in three steps:

1. Emergency (street outreach)
2. First welcoming
3. Rehabilitation

First of all we try to free women who prostitute themselves. We operate through street outreach teams. These are small teams (3-4 persons, with at least one woman) who go on the streets, at night, in order to meet as many women forced into prostitution as possible and to propose to them to exit from the oppression they are living. At the moment we have 21 teams, with about one hundred volunteers, going on the road, every week, throughout Italy, from South to North. Street teams usually operate once a week. The way we operate is very simple. We introduce ourselves and explain what we do in order to found a good relationship with the girls. We try to share their sufferings so that they can have their dignity back. Dignity comes from relationship. This is the reason why we stop to simply talk with them face to face, a person and a person. We stay with them on trafficked streets full of people watching them or on dark dangerous roads at the margin of the cities. Then we explain to them that they have the chance to change their situation of slavery. The aim is always to offer them our help for a path of liberation. We leave a phone number (free line) in order to remain in touch. Through street outreach teams we also monitor the overall situation of this social phenomenon. We try to keep a relation-

ship with the people previously contacted. The victims rarely decide to escape from slavery when first contacted. More frequently they decide to leave the road only after the establishment of a relationship of trust with our volunteers. I will say this again: our aim is to free the victims. It has nothing to do with harm reduction: condom delivery, medical check-up, abortion. Unfortunately we observe that many organizations in emergency work only try to alleviate the state of oppression of the victims. But they do not work to eliminate it.

Secondly, women who decide to exit from prostitution are welcomed in our family homes. We have about 300 family homes and 5 shelters, spread throughout Italy. Therefore it is simple to welcome victims of sexual slavery far from their place of prostitution for safety reasons. In fact, pimps strictly control their victims. During our street outreach work women's mobiles often ring. When a victim is welcomed in our protection program, her pimp starts to look for her. We try to meet their primary needs (medical, psychological, legal assistance, etc.). We also work in order to obtain a special humanitarian residence permit (through art. 18, Italian Law 286/1998).

We always ensure a family context. Family homes welcome children, disabled people, the elderly and other marginalized people. The family is the most important relational system. It responds to our natural need for relationship. Through this relationship we restore confidence. Through this confidence we restore self-esteem. Then, in a family context we give back dignity to victims of human trafficking. The dignity that was stolen.

We provide educational and training opportunities too, so that they can become independent and start a new life. When the person has achieved a good degree of economic empowerment, she is ready to start a new life. We do not abandon them at this point, but we keep in touch with them (follow-up). This is crucial: victims of trafficking are vulnerable. For this reason they need a support network even after they have started a new life. Our family homes network often represents this kind of help. A rehabilitation program lasts 12-18 months.

Finally, we must say that sometimes we meet women who have suffered so much abuse and trauma that re-starting a new life is not possible. This happens when psychological or physical traumas are permanent. In these cases we guarantee them a lifelong welcome in our families.

#### **4. Achievements**

In 2014 we had 21 outreach teams all over Italy with almost a hundred volunteers. We had around 10,000 contacts with 3,500 victims of human

trafficking. We offered each one the chance of instant freedom and the possibility to report their exploiters. We welcomed 200 survivors and 25 children with them. The majority of the victims are women, some were underage; men make up 25% of the total and we welcomed some transsexual persons too. During last year we completed 63 social reintegration programs and four repatriations. In 25 years the *Comunità Papa Giovanni XXIII* has assisted around 7,000 survivors of human trafficking.

## 5. Difficulties

Some years ago there were high risks because of reprisals of the pimps. Fr. Oreste received several death threats for his commitment. Today, thanks to police forces too, these risks have been reduced. However, freeing women from a state of slavery is still a hard task.

For example, with Nigerian women, we face considerable difficulties in obtaining their documents, which is the first step to build a new autonomous life in Italy. In fact, when Nigerian women arrive in Europe, they usually have fake documents, so the Nigerian Embassy rejects the request for a new passport. Without a passport you cannot obtain a residence permit. Without a residence permit you cannot have a future in Italy. Moreover, unfortunately, within this community there is a widespread belief in voodoo. The threat of voodoo practices is an effective deterrent for any woman who thinks of escaping prostitution.

Eastern European pimps have changed their attitude towards women. Their previously violent attitude has now become a slyer kind of exploitation. Pimps give a share of their earnings to the girls, so that they are induced to think that they take part in the game, that it is a good job. In this way identifying the victims is more challenging. But they are always victims. We have to remember that many Eastern European countries, such as Romania, come from communist regimes. Here we find widespread poverty and high rates of intra-familial violence. Poverty and violence make women vulnerable. A lot of women have children in their home country, and they are the only breadwinners of the family. Furthermore, they do not need residence permits because they are European citizens. They often decide to stop prostituting themselves only when they are exhausted after many years on the street. We observed an upturn in victims coming from Albania, who can easily move to Italy because of the candidate status granted by the European Union.

We estimate that indoor prostitution in Italy is around 35% of the total. In this case the women mainly come from South America and the Far

East. The women we have met in many cases have suffered child abuse. The Chinese racket is well organised: the girls do not have a direct contact with their clients, but there is a middle man (or a middle woman), and the Chinese women, who often work in shady wellness centres, do not speak any language except Chinese, so contacting them is quite hard work. Bringing indoor prostitution to the surface presents different problems: we need to examine sexual ads and pretend to be clients in order to contact the women. It involves a greater risk, especially for volunteers. However, if the clients can reach them, so can we.

These are the common elements that we have noticed in all the different kinds of forced prostitution mentioned above:

- The girls are younger and younger: average age is 18–20 and often they are underage. This fact meets a specific request of the clients who look for teenage girls, and then trespass into paedophilia. There is an increasing number of cases in the news about child prostitution, also involving high ranking personalities.
- The high turnover of people in prostitution. This has a double aim: it impedes the relationship of trust with volunteers/social workers mentioned above and so prevents the women from escaping. Often the girls just disappear after a few contacts with our volunteers. The second aim is to meet the clients' requests for new "stuff".
- An increase in the clients' sexual deviance. In addition to the request for teenage girls we have observed another one: the request for pregnant women. A client is ready to pay four times as much. In general terms the client has a relationship of supremacy.
- The traumas and sorrow suffered by the women. Many women make a decision to leave prostitution only when they can't go on anymore. These people have suffered enormous traumas that we try to face in our family homes, also with the help of specialised psychologists. However some of them are so hurt that they will never totally recover.
- Lost dignity. These women have been offended, beaten, raped. They are ashamed of what they have done. Sure, everybody knows that. But we have observed a particular side to it: they often feel worthless, so they give up thinking they can be free. It's a loss of hope. Their hope has been stolen.

## 6. Advocacy work

We are aware that our commitment is a drop in the bucket. That's why we strive to uproot the causes that produce this injustice. The world's old-

est injustice. Since the 90s Fr. Oreste knew that to stop the phenomenon we had to hit the exploiters and that there are two types of exploiters: the pimps and the clients. So the fight against criminals isn't enough, we must tackle the demand. In 2003 our Association filed at the Chamber of Deputies a draft law of popular initiative which aimed at suppressing the demand through the legal punishment of the customer. In a few months our Association collected 110,000 signatures. That bill was never discussed by the Chamber. In October 2014 we held a conference at the Chamber of Deputies to endorse a new bill proposing the prohibition of prostitution through the punishment of the customer, which is now called the Nordic-Swedish model. This proposal recognizes the responsibility of the client in the enslavement of trafficking victims. Basically, if there were no clients, there would be no people forced into prostitution. We are aware that this is one of the key points for combating human trafficking, as already indicated since 2000 by the Palermo Protocols: "*States Parties shall adopt (...) measures to discourage the demand that fosters all forms of exploitation of persons that leads to trafficking*" (art. 9, p. 5). Even Directive 2011/36/EU of the European Parliament recalls the above-mentioned sentence and states that "*Member States shall consider taking measures to establish as a criminal offense the use of services which are the objects of exploitation*".

In Italy, public debate addresses prostitution mainly as a question of public order. Unfortunately, in the Italian Parliament there are too many law proposals that envisage the legal regulation of prostitution. Some biased parliamentarians believe that first of all they must protect women's self-determination: women's "free choice" in prostituting themselves. In their idea, human trafficking is only a question of criminal prosecution of organized crime. Moreover, the idea of gaining in tax revenues from prostitution is enticing, especially in times of economic crisis. We see a mix of ignorance and hypocrisy. We are often called to bring our field-based experience. We always point out that legalized prostitution:

- a) Fosters demand
- b) Makes the identification of human trafficking victims more difficult
- c) Does not facilitate prosecution of the pimps
- d) Does not increase tax revenue
- e) Does not reduce violence against women
- f) Does not improve health safety
- g) Increases social costs.

This is why we are trying to promote a public opinion movement to urge our leaders to adopt legislation based on the Swedish model. We know that the loud, clear support of the Italian Church is crucial to achieve this.

*“The poor can’t wait”* as Fr. Oreste Benzi used to say. He fought strongly for these girls’ freedom. We are confident that he continues to support the cause of these women and that their cry for freedom will finally be heard.

Thank you.



# THE CHALLENGE OF RESETTLING THOSE WHO HAVE BEEN TRAFFICKED, WITH SPECIAL REFERENCE TO NIGERIA

SR. EUGENIA BONETTI, MC

## 1. Introduction

I wish to express my gratitude to the President of the Pontifical Academy of Social Sciences Professor Margaret S. Archer and Chancellor Bishop Marcelo Sánchez Sorondo for inviting me to take part in this comprehensive and important Plenary Session dedicated to examining *Human Trafficking: Issues Beyond Criminalization*. It is an honour and pleasure to have the opportunity to share with you some of my experiences in the field of rescuing and reintegrating victims into day-to-day life after periods of enslavement and exploitation.

I am a Consolata missionary sister and I spent 24 years of my missionary life in Kenya. In 1993 I was asked to return to Italy to work as a missionary in my own country. I began working with immigrant women, first in the northern city of Turin where I encountered the brutality of human trafficking for sexual exploitation and its devastating effects on the victims. Since January 2000 I have served in Rome as the Coordinator of the National Counter-Trafficking Office for the Italian Conference of Women Religious (USMI); and since December 2013, as the President of the association “Slaves No More”. The main aim of this association is to assist trafficking victims return to their home countries with dignity – assisting reintegration and resettlement into day-to-day life through the means of personalized financial projects and support.

My contribution to today’s session is drawn from my many years of personal commitment and experience working alongside with hundreds of women religious and other organizations in Italy and abroad to create a strong and effective network in response to the emergency of modern-day slavery. Traffickers are very well organised in identifying, trapping and transporting their victims – or “goods to be sold” as they see them – so we, soldiers in the battle against human trafficking, must be equally responsive, strategic and committed in order to rescue and save such victims. Even more, we must build on our efforts to prevent traffickers from making vic-

tims of the multitudes of poor and vulnerable woman and children around the globe in the first place.

We must collectively acknowledge that slavery still exists in the year 2015 – and this is a great shame for our modern society. Moreover, it is a challenge for our institutions and for all of us as citizens concerned for the welfare of each person created in God’s image – and not to be treated like a slave. We are also asked to offer our contribution to create a society free from all forms of slavery, violence and exploitation. Unfortunately, several million people, mainly women and children, are still treated like commodities that can be bought and sold in brothels, bars and the main and back streets of our towns and villages. No woman or child chooses to be a prostitute, but too often in today’s world they find themselves in that brutal and life-draining circumstance due to poverty and vulnerability.

It is important to note that modern-day slavery takes many forms – trafficking for illegal child adoption and begging, organ smuggling, child soldiers, unpaid/unfairly paid labour and domestic servitude, forced marriage and surrogate mothers, as well as many other forms. Given my specific experience and engagement with the topic over the last 22 years, my intervention today will focus on the phenomenon of forced prostitution of women and children, and the challenge of resettling those who have been trafficked, with a special reference to Nigeria.

## **2. My Entry into the “World of the Night”**

The call to this ministry for trafficked women (mainly from developing countries) came to me more than 20 years ago – in 1993 – when after being a missionary in Kenya for 24 years, I was asked to return to Italy for a new missionary challenge: to work with immigrant women in the northern city of Turin. There, a Nigerian woman enslaved by the “sex industry” came to the Caritas Drop-In Centre where I was serving. Sick, in Italy illegally with no right to medical care, she turned to our Caritas Centre for help. Upon hearing her cry for help, my missionary life changed radically.

Her name was Maria; she was 30 years old and the mother of three children she had left behind in Nigeria. She came to Italy hoping to get a job to support her children, and much of the rest of her family. Instead she was forced on the street – a victim of the slave trade that was just starting to emerge in Italy. At that time, I had no knowledge that thousands of young women were being exported, like commodities, from poor countries to meet the demands of an affluent western society where everything can be bought and sold – even the body of a young foreign girl.

I helped Maria with her basic needs, while in return she helped me to enter into the complexity of the “world of the night and of the streets”. Gradually I came to understand the mechanisms of trafficking and traffickers who take advantage of the poverty and lack of education of young girls in many countries of origin, entrapping and exploiting them for lucrative gain. Moreover, I heard the cry for help from these victims, like Maria, and I came to understand their deep suffering and humiliation in being forced to sell their bodies, as well as their youth and their dreams.

As a woman and as a missionary, I was offended and indignant to see the lives of so many young women – dreaming for a better future for themselves and their families – destroyed by others’ lust, greed and power. Very soon, I turned to other nuns who were also touched by the phenomenon and ready to open the “holy doors” of their convents to hide and protect trafficking victims running away from their torturers, pimps and madams.

Since then, the pages of my journals are filled with details of the thousands of victims I’ve encountered – so many different names, but all with similar horrific stories. Many I met on the street at night and took into safe houses. Others I met in Caritas Centres asking for help. Others still I met in a centre for identification and repatriation (Ponte Galeria) on the outskirts of Rome, awaiting deportation because their traffickers stole their legal documents, making them undocumented and illegal. Still others, in hospitals severely injured after beatings at the hands of pimps, jealous clients or random street violence.

***Some cases of (extra)ordinary violence include:***

Mercy, forced to work the streets of the Italian port city of Bari. At 28, the mother of two young children left behind in Nigeria, she was shot one night by a passer-by. The bullet pierced her spine and left her paralysed. Our network of women religious in Italy and Nigeria assisted her in returning home in a wheelchair so she could see her family again – especially her children. She died a few months later, on an Easter Sunday. She completed her Way of the Cross.

Jennifer, 21, is one of the most recent cases of repatriation our network of nuns has assisted in Italy. Just a few weeks ago, she courageously ran away from her traffickers who cheated her and forced her to prostitute herself on the street. She turned to the Nigerian Embassy, who contacted our network of nuns who hid her in one of our shelters while waiting for legal documents to be processed by the highly supportive and collaborative Nigerian Embassy staff in Rome. Costs related to her return to Nigeria (e.g.

airfare, reintegration project) were covered by the association “Slaves No More”. I was so struck by the courage of this young woman, who before leaving wrote a note to the sisters thanking them for “not letting [her] die on the streets”. But how many women are still dying on the streets?

Gloria, 22, was forced to work on the streets in Italy to pay a large debt bond (inflated costs charged to victims by traffickers for their forced travel, rent, food, clothes...). Before leaving Nigeria, she was forced before the local witch doctor who performed “voodoo rituals” (also known as *juju* or black magic) which continued to have a very powerful hold on her psyche. A beautiful young woman, she became the favourite of a 38-year-old divorced man. He fell in love with her and wanted to bring her to his home, but she refused. As revenge, he threw Gloria from a bridge and her lifeless young body was found the next day by a fisherman passing by. Unfortunately, today many young women are still murdered on the streets, often as a warning to other victims to submit to their traffickers and deliver on ‘promises’ they were forced to make through voodoo rituals. In most cases, the murderers are never found and punished for their unspeakable crimes. How many more deaths on the streets do we need to see before justice is delivered for the victims?

Nancy, 14, was sold to human traffickers in Nigeria by an uncle. She was brought to Italy and forced onto the streets, and soon after rescued by police and sent to a shelter for children. In the process, she lost all contact with her family, and it was only after six years, thanks to the work of a network of religious congregations in Nigeria, that she was reunited with her mother – sent home in time to celebrate Christmas after a seven-year absence.

Sonia, barely 18, was arrested during a police check on the outskirts of Rome. She had no legal documents (they were taken by her traffickers), so she was taken to the Centre for Identification and Expulsion in Rome. She shared with us that she was only 16 when she was brought to Italy by her three stepsisters who forced her to prostitute herself. In 15 months she had earned them 55,000 EUR. Due to her young age, she was much sought after by clients. Our network of religious sisters facilitated her release from the Centre, resettled her in a religious community shelter and registered her in a program of social reintegration for trafficked women. It is gut-wrenching and infuriating to realise that many times traffickers are members of a victim’s family, making it more difficult for a young and vulnerable girl to escape the network enslaving her or muster the courage and clarity to testify against her own family in ways that will result in legal action.

### 3. Trafficking: A Global Phenomenon

A few facts on the global phenomenon of trafficking in human beings, mainly for sexual exploitation, will help us to better understand the magnitude of the problem and the great need for an appropriate pastoral ministry of liberation for thousands of victims through projects of prevention, rehabilitation and reintegration into society.

The trade in human beings, particularly of women and minors, has reached the borders of almost every country, drawing each into the evil chain of trafficking which runs through countries of origin, transit and destination of victims. Given its illicit nature, it is nearly impossible to identify the global number of victims; however, multiple statistics put it as high as 27–30 million. According to the United Nations, trafficking in persons generates an annual income of roughly \$32 billion – behind only the trade of arms and drugs. Despite new efforts to protect and reintegrate victims, the danger of women’s exploitation is ever present, with the risk of victims falling into slavery and submission due to their vulnerability and lack of alternative opportunities. Criminal mafias constantly change their strategies to ensure and protect the enormous financial earnings they reap; therefore, we too – women religious and all people of faith and good will committed to ending slavery in our time – must be equally organized to counteract this criminality and assist its needy victims.

Trafficking of human beings for sexual exploitation has developed into a global market, involving countries of origin, transit and destination.

- **Countries of Origin** represent the “push” or “supply” side of the equation. That is to say, they provide the breeding ground of poverty which traffickers comb to find potential victims. The women are easy targets, vulnerable from utter poverty, lack of education and job opportunities, gender inequality, discrimination and war.
- **Countries of Transit** offer several routes through which trafficked persons are taken to reach their final destination. Traffickers have perfected ways to import and export their victims without the risk of being stopped and sent back to the country of origin.
- **Countries of Destination** represent the “pull” or “demand” factor, and even though the main culprit here is the “client”, other factors must also be considered in deciphering the global net of the sex industry – such as gender, desire for profit and power by the mafia, and other forms of international and trans-national organized crime. Nevertheless, the main protagonist of the perpetuation of trafficking for sexual

exploitation remains the “client”, or “consumer”, who plays a key role in this business. He regulates the demand factor, and the supply corresponds to his demand.

#### 4. Root Causes of Human Trafficking

Prostitution is not a new phenomenon, it has long been referred to as “the world’s oldest profession”. However, what is new is the globalization of the trade through networking forced sex workers (including minors) for the profit of others. Those caught in the trafficking network have become the 21st century slaves. Tricked, enslaved and forced onto the street or in night clubs to “prostitute” themselves; they are living examples of the unjust discrimination and abuse of women imposed by our consumer society. Why does it happen?

- **The status of women** around the world has long been under attack. Today, the face of poverty, marginalisation, discrimination and exploitation is female. Women represent 80% of those living in absolute poverty, and almost two-thirds of the 850 million illiterate adults in the world. More than half of those, mainly in developing countries, between the ages of 15 and 24, are infected with HIV/AIDS.
- **The objectification of women** is more dangerous, prevalent and relevant than ever. Modern media, in all its forms, continues to portray women as objects, and objects of pleasure and a source of gain for others. Media has created a ‘normalization’ about the abuse of women, their treatment as a commodity – and this attitude has helped fuel the multi-billion dollar business of global human trafficking.
- **The extreme poverty of many women** and their desire for emancipation from cultures and situations of submission and imposed inferiority. Too often, they risk everything – their life, dignity and identity – to enter a European country and lifestyle. Western world mass media creates and promulgates this “promised land” – and this is the dream that so many young women buy into, never to see it.
- **Minimum or total absence of education and/or work opportunities** often lead women down the road to sexual exploitation, especially African women, given access to resources is so limited. The attraction to/dream of “life in the west” is further fanned when African women (*mamans*, traffickers) return home with riches – made from exploiting other African women – and proudly display them.

- **Heavy family economic, physical and emotional burdens** – especially for many young African and Eastern European women, who so often leave family members and children home whom they expect to support with earnings from Italy, which makes them easy prey for traffickers and exploiters. Most victims are nearly illiterate, therefore further vulnerable and easily lured. The majority of such young women, working in dehumanised conditions on the streets of our cities and in the countryside, come from Nigeria and from Eastern European countries; few others from Latin America and they are mostly recruited as dancers in nightclubs.

## 5. The Global Slave Trade: How & Why It's Thriving

*The slavery chain is long:* To be a slave is to be chained. That chain robs its victims of freedom and subjects them to life under the will of another. Modern-day slavery is a chain with many interconnected links: *victims* with their poverty; *exploiters* with their huge profits; *consumers* with their sense of entitlement to easy pleasure and an escape from frustration, deep personal engagement and responsibility; *society* with its empty values and permissiveness; *governments* with their corrupt systems and complicity; the *Church* and every Christian, with our silence and indifference.

Pope Francis has often spoken of “the globalization of indifference”, which can be appropriately applied to this issue. Each of us must reflect and ask ourselves where we have not stood strongly against indifference – but also when we have tolerated ignorance, corruption, and exploitation that ultimately destroys the life, dreams and future of millions of women, children and men and boys desperately attempting to escape from material, moral or emotional poverty.

Vulnerable victims buy into false promises: A vision of the “promised land” – where jobs are available, money can be made, opportunities to help their families presented – compels victims to buy into traffickers’ schemes. They can travel for weeks or months over land, by air or sea. In the case of most Nigerians nowadays, they are forced to cross the Sahara Desert, wandering for months in dehumanized conditions before arriving either in Libya or Morocco (or a few other countries where traffickers’ networks facilitate illegal access to light boats) to cross the Mediterranean Sea. Thousands of victims (willing and forced) risk their lives to enter Italy (or other parts of Europe) with no legal document. Sadly, but not surprisingly, each year hundreds of them do not survive either the desert or sea crossing.

Trafficking networks are highly organized: Unscrupulous traffickers, men and women, lure victims in countries where poverty is extreme, families large, and there is little access to education and opportunities for a better life. Exploiting this socio-economic situation, and knowing they face huge profits and relatively low risk, today's slave traders mislead women and their families with promises of a remunerative and dignified work abroad. Women and children are brought to "developed" countries by illegal means, aided by the complicity of corrupt employees and officers in embassies, airports, customs and immigration offices, travel agents, landlords of apartments, hotel owners and taxi drivers. *Yes, it takes a village to traffic a victim.* On reaching their destination (most often one chosen for the victim; not where she wanted to go), traffickers confiscate all of the victim's legal travel documents – and in doing so, steal her name, identity and freedom. Victims gradually lose a sense of who they are.

Savvy recruitment strategies: Traffickers are constantly evolving their methods of recruitment and transfer of victims. They are poised to take advantage of young people arriving on our coasts in Italy, attempting to escape poverty, war and instability in their countries of origin. Immediately, they are approached by ill-intended traffickers who advise them to request legal documentation as an asylum seeker which provides legal protection and the status of refugee. This documentation allows its holder to remain in Italy under a special permit for several months (or even years) before a case will be heard by a special commission which will determine whether the holder is approved or denied the opportunity to remain in Italy. During this lengthy period, young women are introduced and tricked by traffickers and madams into the sex industry, mainly on the streets, without the risk for traffickers that the victim will be deported back to their home country.

Lack of awareness and prevention campaigns: There is a vital need to work on prevention efforts in countries of origin by informing people in schools, parishes, youth groups and the media about what is really happening to young people searching opportunities for a better future. There is equally a great need in countries of destination to make people aware that this kind of slavery is flourishing because there is an indefatigable demand for such a service.

## **6. Trafficked Victims: Challenges of Resettling**

Sexual abuse degrades a person on multiple levels – physical, mental, emotional, spiritual. The act can empty its victim of her deepest values, destroy her self-esteem, confuse her concepts of love, life, womanhood and



femininity, and undermine her dream – and real possibilities – of a bright future. After some time on the street, for survival, a victim usually assumes a posture of self-defence, expressed by vulgarity, violence and aggression. She lives a contradictory reality: in one moment she is courted by the “client”, and in the next she can be criticized, condemned and rejected by the very consumer society that uses and abuses her. She lives in isolation and carries within herself a strong sense of guilt and shame. Restoring her balance and harmony is not an easy or a quick task; it is complex, complicated and long-term.

In walking with a victim through the process of rescue to reintegration, women religious in Italy (and throughout our networks) are forced to negotiate the following critical aspects of this phenomenon:

- Victims have no legal documents. These are confiscated by their traffickers, therefore they are in Italy illegally;
- Being illegal, victims have no right to health care or insurance, whereas many suffer from STDs, HIV/AIDS or physical ailments due to maltreatment and/or beatings;
- Cultural barriers at times create tension and problems, especially in shelters where we have victims of different nationalities, languages and backgrounds;
- Traffickers rarely share profits with victims; therefore, victims are without money to cover housing, food or any basic needs;
- The majority of victims in Italy, mainly Nigerians, arrive with little education, and as a result have few job opportunities and face discrimination due to their African background;
- Trafficking victims carry deep psychological wounds – depression, suicidal tendencies, loss of psycho-physical identity, self-objectification, trust issues, and sense of guilt;
- Victims suffer emotional wounds – shame, guilt, fear, lack of self-esteem, at times they respond with a defensive/aggressive manner;
- Labelled as “prostitutes”, trafficking victims carry a heavy stigma – treated as social outcasts and marginalised;
- Many victims become pregnant while working the street (or by client “boyfriends”) and then must provide for their children, which can further complicate their issues of recovery and reintegration;
- Victims may need/desire to return to their country of origin for family reconciliation, complicated by the shame they face returning home

with no money to support their families' basic needs (most often a key reason why they travelled abroad) and by what has happened to them;

- Victims may need/desire to remain in Italy because they have no opportunities, no family (or family that might re-traffic them), and no support in their country of origin;
- Many victims need proper protection from traffickers and madams; therefore our shelters need to be protected, kept secret, and accessible to limited visitors only;
- Limited funds for USMI Counter-Trafficking Office and network of 100 nun-run convents-turned-shelters (see additional points below).

## 7. The Nigerian Context

Each year the U.S. State Department's Office to Monitor and Combat Trafficking in Persons issues the Trafficking in Persons (TIP) Report that ranks governments based on their perceived efforts to acknowledge and combat human trafficking. It serves as the world's most comprehensive resource of governmental anti-human trafficking efforts and its ultimate goals are freeing victims, preventing trafficking and bringing traffickers to justice.

Following is an excerpt from the 2014 TIP Report's findings on Nigeria: "[It] is a source, transit and destination country for women and children subjected to forced labor and sex trafficking. ... Victims are recruited from rural, and to a lesser extent, urban areas ... women and girls for domestic servitude and sex trafficking; boys for forced labor, domestic servitude, stone quarrying, agriculture. Nigerian traffickers rely on threats of voodoo curses to control Nigerian victims and force them into situations of prostitution or labor. Nigerian women and children are taken from Nigeria to other West and Central African countries as well as South Africa. Nigerian women and girls – primarily from Benin City in Edo State – are subjected to forced prostitution in Italy, while Nigerian women and girls from other states are subjected to forced prostitution in other Western and Eastern European countries.

Nigerian gangs subject large numbers of Nigerian women into forced prostitution in the Czech Republic and Italy ... and the European Police Organization (EUROPOL) has identified Nigerian organized crime related to trafficking in persons as one of the largest law enforcement challenges to European governments.

The Government of Nigeria does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant

efforts to do so ... increasing the number of trafficking investigations and convictions and by providing extensive specialized anti-trafficking training to official from various government ministries and agencies. The National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP) increased protection efforts ... Despite the growing number of Nigerian trafficking victims identified abroad, the government has yet to implement formal procedures for the return and reintegration of Nigerian victims”.

But there is hope. Each year the U.S. Department of State honors individuals around the world for their exceptional and tireless efforts to eradicate human trafficking – even in the face of resistance, opposition and threats to their lives – and this year, a Nigerian – Mrs. Jedy-Agba – is among the 10 TIP Heroes featured in the 2014 TIP Report.

## **8. The Italian Context**

At the beginning of the 1980s, following ongoing economic difficulties in developing countries, thousands of women came to Europe in search of work and a better quality of life. Illegal, poor and vulnerable, many became the prey of international and trans-national criminal organisations linked to the sex industry. Italy was not exempt from this phenomenon; and given its geography, it lends itself to easy entry by slave traders looking to “sell women” to satisfy the demand of millions of consumers.

Very soon in this phenomenon, young women tried to run away from their traffickers and started asking for protection and assistance. Religious Congregations, together with other volunteer groups, were among the first to read this new “*sign of the times*”, and offered victims alternative solutions to a life on the streets. Almost immediately, nuns opened the doors of their convents to hide victims running away from their exploiters.

At the outset, they faced many difficulties in assisting the victims – language barriers, cultural differences, moral conflicts, public opinion and, mainly, addressing the illegal status of the victims. Very soon, by listening to their dramatic stories, the nuns came to understand that their “work” as prostitutes was not a choice they had made, but that they were dealing with a *new form of slavery*.

This situation challenged our values, attitudes, traditions and our security, while at the same time demanding immediate answers. Some female congregations responded positively with a prophetic intuition by providing shelters, language courses, training skills and job opportunities for the victims they encountered. In this new environment, victims were also able

to heal their deep psychological and spiritual wounds caused by this humiliating experience. They were helped to regain their sense of self-worth, trust and hope. A major obstacle however remained: having no personal documents, these victims could not claim any legal rights in Italy. In recent years, a powerful partnership has been forged with the Nigerian Embassy in Rome and more than 6,000 passports have been issued to Nigerian trafficking victims – opening the possibility for legal assistance in Italy and/or safe travel back to Nigeria.

*The protection and rehabilitation* of victims of human trafficking has been implemented legally in Italy since *July 25, 1998*, through the application of a special residence permit granted for social protection and reintegration under *Legislative Immigration Decree No. 286*. The main motive behind this Italian law was the will and need to stop trafficking in human beings by ensuring traffickers were brought to justice, as well as supporting and assisting victims in breaking their chains of exploitation and enslavement (see Section 10 for more on Legislative Immigration Decree No. 286).

## **9. The Nigerian-Italian Connection**

In 1993 I began working with the phenomenon of women imported from developing countries to satisfy the burgeoning demand for commercial sex present in industrialised Italian cities. In the northern city of Turin (Torino) alone, 3,000 women were living and travelling mainly at night throughout five different regions: Piedmont, Lombardy, Liguria, Emilia-Romagna and Valle d'Aosta. At this time, Turin came to be known as the Capital of Nigeria in Italy.

Another area where hundreds of Nigerians nowadays live and work is the Domitiana Highway that leads from Naples up the coast of Italy. Built in 95 AD, in recent years the highway has been used to prostitute hundreds of Nigerian girls at a time. Some of them are young, some with children, most have husbands and families they left behind in Nigeria, all of them are vulnerable victims, trapped in the brutal supply and demand of the commercial sex industry.

Today in Italy alone, between 70,000 and 100,000 young women – mainly from Nigeria, Eastern Europe and Latin America – are displayed for sale on our streets. Many are minors, as young as 14 years old. As they are brought to Italy illegally, it is impossible to know exactly how many they are, who they are and where they are or where they come from. Nevertheless, we know that Nigerian women still make up the majority of trafficking victims in Italy: close to 50%.

At the beginning of the Nigerian trafficking trade, victims used to cross several countries before reaching their final destination in Europe/Italy. They might have gone through Greece, Russia, Bulgaria, Holland, Germany, Spain and France, travelling for weeks or months over land, by air, or sea. In recent years, trafficking routes and methods have changed, and we see that traffickers run victims across the Sahara Desert to avoid having to apply for legal documents for them.

Once in Italy, victims' passports or documents are confiscated, never to be returned, leaving them as persons with no identity, no name, no nationality and no legal status. They gradually lose the sense of who they are. This applies especially to the Nigerian women and girls who are also subjected by criminal organizations to *voodoo rituals* (also referred to as *juju* or black magic). Among African women, cases of mental illness or breakdown are frequent since *voodoo* has a very powerful hold on their psyche and they fear reprisal against their families back home.

Nigerian victims are entrusted to a *maman*, a Nigerian women who oversees the "business" of each victim, and who very often is a former victim of sexual slavery herself. A *maman* is responsible for new recruits, teaching them how to work the streets, parcelling out the stretch of street where they are to work, collecting (or confiscating) their earnings, punishing them in cases of resistance, and above all, controlling them psychologically with the ill effects of the *voodoo rites*.

On the competitive sex market, African women are considered "second class" and therefore get a lower price for their services. For a routine transaction in a car, they agree to 10–15 EUR whereas Eastern European trafficking victims can ask for 25 EUR. Under that scenario, for a Nigerian trafficking victim to earn enough money to pay off a debt bond (contracted with the traffickers who recruited them and brought them to Italy), which averages 60,000–80,000 EUR, she must engage in a minimum of 4,000 sexual transactions (usually intercourse). In addition to the initial debt bond, traffickers also require her to cover monthly expenses which include and can average 100 EUR for food, 250 EUR for lodging, 250 EUR for the "joint" (work site), in addition to clothing, transport and random personal needs. To repay their debt, they have to "work" every day or every night (often both), seven days a week for not less than two or three years.

Every trafficking victim is vulnerable to the dangers of the street: maltreatment, abuse, road accidents and even death; and each year several girls are killed on the streets of Italy, either by jealous or deranged clients, street

violence, or at the hands of their traffickers in front of other victims as a deliberately cruel and effective tactic for preventing others from running away. They run the high risk of contracting HIV/AIDS, as Italian clients tend not to use condoms. Ten to 15% of women on the street in Italy are registered HIV+. Many women become pregnant, especially during the “breaking-in period” (repeated gang rape) performed during their period of forced transit, even resulting in some children being born in the desert – though often traffickers deal with unwanted pregnancy by forced abortion. For African women, who hold maternity as the highest value, abortion represents not only the killing of a new life, but also of a culture.

### 10. From Victims to Citizens: Women Religious Helping Women

The Italian Union of Major Superiors (USMI), a conference of women religious, coordinates the critical ministry of all women religious. In 2000, in response to a “sign of the times”, USMI established a Counter-Trafficking Office responsible for growing, training and supporting the network of religious congregations working on the issue. The following are some ways in which women religious are present and bear prophetic witness in dealing with restoring human rights and dignity to trafficking victims include:

- **Convents-Turned-Shelters/Safe Houses:** Over the last 15 years, women religious in the counter-trafficking network I manage responded to the phenomenon by opening the “holy doors” of their convents to convert them into safe houses for more than 6,000 girls and young women rescued from the grips of human trafficking. Today, 250 sisters – belonging to 80 congregations – work in more than 100 safe houses (projects) throughout Italy, often in collaboration with Caritas, other public or private bodies, volunteers and associations, while maintaining their identity motivated by the Gospel imperative. These small family houses offer hospitality to 6-8 victims at a time, for a period of 6-12 months (or longer for programs of social, legal, financial and spiritual re-integration). The victims come from different countries, some pregnant, some already mothers with children left behind in their countries of origin who anxiously await their return (which may or may not happen). These trafficking victims have been loved, cared for, invested in and reintegrated into mainstream society so that they can either make a new life in Italy or return to their home countries under a specially financed project launched in 2013 for personal, social and working rehabilitation. Our shelters see young and old nuns living together with res-

cued victims sharing meals, prayer, daily running of the house, language learning, and other useful skills and education – a radical divergence from life on the streets that provides deep healing. The family atmosphere – infused with Christ’s example of unconditional love – offers victims the safe space necessary to face their trauma, heal their wounds, and be understood in their moments of rebellion and frustration. I visit such shelters to meet and support the sisters in their delicate daily task of guiding the rebuilding of victims’ lives, assist in bridging cultural and language barriers, assist in obtaining legal documents for victims and counsel victims on the great importance of the time spent in a religious shelter to prepare them for a better future. In these shelters, I am referred to as “the old mama”, and consistently am called to assist victims in dealing with their internal and external tensions and difficulties;

- **Restoring legal status** through assisting victims in the acquisition of legal documents. Since 2000, when the new USMI Counter-Trafficking Office was opened, more than 4,000 passports have been issued by the Nigerian Embassy in Rome to victims of exploitation in compliance with the issuance of residence permits under Italian human trafficking legislation. They were issued upon the identification of victims by the approved associations in our network, since none of the victims could produce a birth certificate or other legal document. Today process has become more complicated due to traffickers’ methods of using victims’ fingerprints with false names, dates and documents. All costs of restoring legal documentation for victims is covered by the shelters;
- **Collaboration with relevant embassies** to obtain necessary identification documents;
- **Outreach units** as a first contact with the victims on the streets;
- **Drop-in Centres** to identify the problems of women in search of assistance;
- **Programmes** of social reintegration;
- **Professional/vocational preparation** through language, skills and job training;
- **Psychological and spiritual support** to assist survivors in rediscovering their cultural roots and faith, to regain their self-respect and heal the deep wounds of their experience;
- **Weekly Visits to the Centre for Identification and Expulsion:** Starting in 2003, 60 nuns from 27 congregations and 28 countries

(mainly from those countries with the most trafficking victims in Italy), entered behind the prison walls of the Centre for Identification and Expulsion (Ponte Galeria) on the outskirts of Rome, often “home” to more than 150 trafficking victims at a time. The sisters offer prayer, listening, comfort and counsel, most often in the trafficking victim’s mother tongue. This is a place of great suffering, but that is alleviated to some extent by sharing our concern and compassion with these women who often wait months on end before being forcefully deported – most because they were found to be in Italy with no legal documents (traffickers confiscate all legal documents in order to control victims’ movement);

- **Working as a global network** is the greatest strength and key to success in this ministry. Traffickers are professional networkers – so women religious working on this issue must be, too, in countries of origin, transit and destination. Together we work toward more informed consultation and greater cooperation with government, law enforcement, NGOs, Caritas, religious and faith-based organisations in order to be more effective in eradicating this 21st century slavery, with the goal to eliminate corruption, illicit profits and the great demand from millions of “consumers” of paid sex. Unfortunately, even today, the issue of ‘demand’ from consumers is very seldom addressed or highlighted in existing networks.

## 11. The Italian Response: Government and Legislation

To understand the aim and importance of the reintegration of victims of human trafficking by facilitating their resettlement either in host countries or in countries of origin it is important to outline some key steps already achieved in the Italian context.

The protection and rehabilitation of victims of human trafficking has been implemented legally in Italy since July 25, 1998, through the application of a special residence permit granted for social protection and reintegration under Legislative Immigration Decree No. 286. With this legislation, Italy is a pioneer among European countries, providing a systemic framework for issuing a residence permit in recognition and support of victims of exploitation, as well as cracking down on trafficking and traffickers. A person can receive assistance and protection with this resident permit when s/he is:

- A victim of violence or exploitation and forced into prostitution;
- Ready to leave prostitution and requests assistance, either from police or from some NGO;



- Willing to go through a social rehabilitation programme, in a protected house or shelter;
- Willing to testify against the traffickers;
- In danger of further violence, due to the testimony given about her/his traffickers.

Legislative Immigration Decree No. 286 provides victims with:

- **A resident permit** for six months, that can be renewed for another six months while the victim applies for a legal passport;
- **Possibility to renew the resident permit** or extend it for a period equivalent to the term of a work contract, if the person concerned is already employed, or if s/he is attending a course;
- **Eligibility for a study program** when proper institutional requirements are met.

For the implementation of this legislation the government has allocated a budget for approved NGOs holding special programmes for counter-trafficking activities and rehabilitation of victims. Unfortunately, today financial help is no longer available as it was and as it should be, therefore most victim shelters in Italy are now run by women's congregations or charitable organisations with no governmental financial support.

In February 2012 the European Union approved a new legislation on counter-trafficking, similar to Italy's Immigration Decree No. 286, giving special attention to protection and reintegration of victims, and binding all European Member States to implement the new legislation within the period of 2013-2015.

## **12. The Nigerian Response: Women Religious Repatriation & Reintegration**

In the last 15 years, since we started coordinating with Nigerian communities on counter-trafficking initiatives, two shelters have been opened; one in Benin City in 2007, and one in Lagos in 2009. Both have offered accommodation to more than 100 victims who returned home on a voluntary basis, while several thousand have been repatriated by the Italian government due to lack of documents.

The shelter in Benin City is an 18-bed resource centre, the tangible result of cooperation between Italy and Nigeria. This is the first such shelter to be built in Nigeria and run by women religious. It was fully funded by

the Italian Bishops' Conference (CEI) and is facilitated by the Nigerian Conference of Women Religious.

The shelter in Lagos was opened in May 2009, and serves as a new office and shelter. This is a strategic centre dealing mainly with the local government, religious authority and associations, as well as facilitating re-integration of returning victims at the airport.

In recent months, a program of assisted repatriation for women, mainly mothers with children, who request assistance in returning to Nigeria (a vast majority do so from Italy), with dignity and financial means to rebuild their lives has been rolled out. In 2013 the Italian association "Slaves No More ONLUS" was created to provide oversight for this much-needed program. Under it, victims who wish to repatriate are provided with airfare and a budget for a personal reintegration working project planned and implemented in cooperation with the Nigerian sisters operating in shelters in Benin City and Lagos.

Under the program of Resettlement with Voluntary Repatriation and Financed Social Reintegration Project, trafficking victims who choose to resettle in their own country are assisted in a multitude of ways. To date, "Slaves No More" has fully assisted and repatriated 12 women and 8 children born in Italy under different circumstances.

The Resettlement with Voluntary Repatriation and Financed Social Reintegration Project utilizes the networks of women religious to:

- Counsel victims in Italy about opportunities available to them upon return to Nigeria (e.g. location, vocational/education programs);
- Resettle mothers and children into private apartments, on their own, with their monthly rent paid by the association "Slaves No More" for two years;
- Register children in school while assisting mothers in launching their own small businesses;
- Covers costs for continuing education for young women who wish to go to school;
- Meet a newly repatriated woman (and her children) at the airport with a warm welcome, transfer to the shelter and later accompany them into their new situation and settlement;
- Make advance arrangements to assist a returnee in taking on a specific project on return. A returnee can remain in the shelter in Lagos, with religious sisters to assist her with readjustment to a new life and situation in Nigeria;

Most of the women who returned to Nigeria under the auspices of this project have chosen and been supported in starting their own business – general stores, grocery store, provision store, mini-mart, tailoring, hair salon. One repatriated trafficking victim was accepted to university and is currently attending.

### 13. Counter-Trafficking: The Church Teaching and Leading

Given the global and vicious nature of human trafficking, we are extremely blessed to have the unparalleled care, concern and leadership of Pope Francis on this issue. From the early days of his Pontificate, we have heard him saying: “human trafficking is modern-day slavery” and this practice is a “crime against humanity”. As Professor Margaret Archer, President of the Pontifical Academy of Social Sciences, noted in her letter to participants of this Plenary Session: “...each statement has been crucial in shaping the leadership that the Catholic Church has assumed and the agenda she has adopted in spearheading a social movement opposing this morally horrendous treatment of human persons...”, therefore we should feel compelled to join together and move forward with courage and determination.

In support of this new vision of the Church at the service of marginalized people the world over who are entangled in the dehumanizing net of human trafficking, I’d like to note two important initiatives which have recently taken place:

- **“The Universal Declaration of Religious Leaders Against Slavery”** signed in the Vatican on December 2, 2014. Pope Francis, in collaboration with several other church leaders, convened this historic initiative to inspire action by all global faiths and people of good will to eradicate slavery across the globe by 2020. In all, 12 different religions or Christian churches were represented.<sup>1</sup> The event garnered significant global media attention.

<sup>1</sup> Pope Francis; Her Holiness Mata Amritanandamayi (Amma); Venerable Bhikkhuni Thich Nu Chan Khong (representing Zen Master Thích Nhất Hạnh); The Most Ven. Datuk K Sri Dhammaratana, Chief High Priest of Malaysia; Rabbi Dr. Abraham Skorka; Rabbi Dr. David Rosen; Dr. Abbas Abdalla Abbas Soliman, Undersecretary of State of Al Azhar Alsharif (representing Mohamed Ahmed El-Tayeb, Grand Imam of Al-Azhar); Grand Ayatollah Mohammad Taqi al-Modarresi; Sheikh Naziyah Razzaq Jaafar, Special advisor of Grand Ayatollah (representing Grand Ayatollah Sheikh Basheer Hussain al Najafi; Sheikh Omar Abboud; Most Revd and Right Hon Justin Welby, Archbishop of Canterbury; His Eminence Metropolitan Emmanuel of France (representing His All-Holiness Ecumenical Patriarch Bartholomew).

- **The First International Day of Prayer and Awareness Against Human Trafficking** organized and launched on February 8, 2015, by the international network of women religious Talitha Kum and the USMI Counter-Trafficking Office, in collaboration with several Pontifical Councils and with the full support of Pope Francis. The event took place on the liturgical feast of St. Josephine Bakhita, a Sudanese slave who became a saint. This special day aimed to more actively involve Bishops' Conferences, Christian communities, media and organizations worldwide to combat this global scourge. "No more slaves, but brothers and sisters" was the central theme used for prayer, reflection and awareness. Many countries, dioceses and media the world over gave great attention to this event. In Rome, the day was celebrated with a special Prayer Vigil, organised in collaboration with the Pope John XXIII Association, attended by hundreds of people from all walks of life – Cardinals to institutional leaders, religious and Christian communities, rescued victims and associations. A Eucharistic Celebration was also organized on Sunday, February 8, concelebrated by Cardinals, Bishops, religious and lay people. The celebration was followed by Pope Francis' Angelus in St. Peter's Square, recalling victims of trafficking and slavery. An online initiative included "lighting a candle" to enlighten the world against human trafficking; Pope Francis joined others the world over in this initiative (<http://a-light-against-human-trafficking.info>).

#### 14. Conclusion: A Call For Action

In responding to the demands of a world in constant change and need, we are each called to offer our contribution to free the slaves of today's global human trade. Each one of us has a role to play so that, as Pope Francis implores, there might be "no more slaves, but only brothers and sisters".

According to each specific role and function, we call upon:

- **The Global Economy** to develop strong and fair economic systems to offer opportunities to women for a better life, without being forced to sell their bodies to survive;
- **The State** to draft and apply legislation to suppress and punish trafficking in persons and protect, legalize and reintegrate victims;
- **The Global Family** to demand effective legal measures to prosecute those involved in sexual exploitation, and to safeguard the family values of fidelity, love and unity;

- **The Church** to advance its Christian vision of sexuality and man-woman relationships, to safeguard and promote the dignity of every woman created in God's image;
- **The Schools** to impart to our children, the next generation, values based on mutual respect for gender;
- **The Global Media** to project a complete, balanced and accurate image of women that restores them to their full human value, presenting them as powerful subjects and not objects.

Only by working together will we find success in our efforts to break the invisible chain of modern-day slavery – a crime against humanity that binds tens of millions of victims the world over. So we, as members and friends of mainly faith-based organizations with common Christian values, having different roles and responsibilities, but belonging to the same Human Family, are called to action. Let us commit ourselves to combating traffickers and freeing their victims with three Rs: rescue, rehabilitation and reintegration.

I will end with the words of our distinguished host, Margaret Archer, President of the Pontifical Academy of Social Sciences: “This Plenary Meeting of the Pontifical Academy of Social Sciences (PASS) has the responsibility not simply of adding our voices in unison but of carrying the movement forward by giving ‘moral outrage’ new elements of a concrete Agenda for eliminating this Crime against Humanity – in both its causes and its consequences”.

So may we all go forward, with that responsibility, as well as with the sense of rediscovery of our own prophetic roles and contributions to bringing an end to modern-day slavery in our time, and uplifted in knowing that none of us is working alone – but in collaboration, not competition or isolation. As we are called in Isaiah 1:17, “seek justice, rescue the oppressed, defend the orphan and plead for the widow”. These are the most vulnerable of God's people, and among them are victims of human trafficking. Let us not forsake them, as God has not forsaken us.

Thank you for your attention.

## Resources

### Books/Proceedings

- Schiave (Slaves)*, published in Italian and Polish, by Sr. Eugenia Bonetti & Anna Pozzi. Ed. San Paolo, 2015.
- Spezzare le Catene (Breaking the Chains)*, published in Italian and Portuguese, by Sr. Eugenia Bonetti & Anna Pozzi. Ed. Rizzoli, December 2011.
- Stop Trafficking in Human Beings: Together It's Possible*, Proceedings of the international conference "21st Century Slavery: The Human Rights Dimension of Trafficking in Human Beings". Rome, May 2002.
- Building a Network: A Prophetic Role of Women Religious in the Fight Against Trafficking in Persons*, Proceeding of an International Seminar in Rome for Women Religious: Rome, October 2007.
- Slaves No More, Casa Rut, the Courage of a Community*, published in Italian and English, by Sr. Rita Giaretta. Edizioni Marlin, 2009.
- Behind Bars (Dietro le Sbarre): Ten Years of the Ministry of Women Religious at the Centre of Identification and Expulsion of Ponte Galeria in Rome: 2003-2013*. Published in Italian and English, USMI and Slaves No More ONLUS, 2013.
- Trafficking in Women and Children: It is a Crime Against Humanity*, A handbook for schools in Nigeria, by Sr. Patricia Ebegebulem, published by COSUDOW & ANAHT, Nigeria.

### Papers

- Dieci Anni di Lavoro in Rete (10 Years of Networking)*, published by USMI Counter-Trafficking Office, October 2010.
- "No More Slaves, but Brothers and Sisters", Message by Pope Francis for the 48th World Day of Peace, 1 January 2015.
- Slaves No More: The Strength of Networking in Counter-Trafficking: Awareness Paper*. USMI & Slaves No More ONLUS, April 2015.
- Reintegration: Facilitating Resettlement in Host Countries or Countries of Origin*, Conference on Combating Human Trafficking Through Leveraging Catholic Networks and NGOs, Palazzo San Calisto, Vatican City, 12 May 2012.
- Women Helping Women: The Italian Experience of Women Religious in Combating Human Trafficking and Modern-Day Slavery*, delivered at the UN/Geneva, September 2014.
- Fighting Against Trafficking in Human Beings: A Joint Effort*, from an evening debate at Women Helping Women in Counter-Trafficking in Persons, Brussels, Belgium, 26 November 2014.
- Trafficking in Human Beings: Addressing Root Causes of Modern Forms of Slavery*, Brussels, Belgium, 27 November 2014.
- Seminar on Trafficking with a special focus on children: "International Networks to Prevent Trafficking and to Rescue and Re-integrate the Victims", Casina Pio IV, Vatican City 27 April 2015.

## **SLAVES NO MORE<sup>2</sup>**

### *Project for Social-Labour Reintegration of Immigrant Women Victims of Trafficking*

#### **Introduction**

The voluntary assisted Project for Social-Labour Reintegration consists of furnishing assistance to immigrant trafficking victims who desire a voluntary and immediate return to their country of origin. The project – which covers the cost of travel, vocational/educational training, logistical and financial assistance – ensures that the process of return is carried out with respect to the dignity of the person and the security concerns of the migrant.

Additional elements of the program include:

- Designation and assessment of the case;
- Accompanying the person with financial, logistical, emotional assistance;
- Design of an individual project of social-labour reintegration in the country of origin (which takes account of the capacity and expectations of the migrant);
- Guidance and support for the achievement of the individual project;
- Research of contact with the family and reconstruction of family ties.

These programs of assisted return are conducted on an individual basis and are always in response to a voluntary request from the immigrant trafficking victim.

The project is managed and supported by the association Slaves No More ONLUS, presided by Consolata Missionary Sr. Eugenia Bonetti, in collaboration with Caritas Italiana. It is financed by the Italian Bishops Conference (CEI), with the subsidies of the Italian “8x1000” law. Organizers are currently investigating other funding sources, such as private donors. Sr. Monika Chikwe, of the Hospital Sisters of Mercy, is the director of this project. Both Sr. Eugenia and Sr. Monika live and work in Rome.

<sup>2</sup> Association: Slaves No More ONLUS, Headquarters: Casa di accoglienza Maria Maddalena, Via Falzarego, 20 - 00048 Nettuno (Roma), Tel. & Fax: +39 069807871, Email: slavesnomore@libero.it, Contacts: Sister Monica: ahuruchiok@gmail.com / (+39) 339.765.7207, Sister Eugenia: ebonettimc@pcn.net / (+39) 339.193.4538, Bank details: Codice Fiscale/Partita Iva: 97734010586, Banca Popolare Etica - Filiale di Roma, Coord. IBAN IT55 0050 1803 2000 0000 0156877.

## Specific Objectives

1. Encourage and support the social-labour reintegration in Nigeria of women victims of trafficking hosted in Italy in shelters who voluntarily desire to return to their homeland.
2. Encourage and support the social-labour reintegration in Nigeria of women victims of trafficking expelled from the Italian territory and repatriated through the Centres of Identification and Expulsion (CIE). This group of trafficking victims must accept to comply with the Project before forced repatriation in Nigeria.
3. Conduct awareness and sensitization campaigns in Nigerian and Italy with the aim of preventing the phenomenon of trafficking for the purposes of labour and sexual exploitation and to create a significant understanding of the phenomenon, including in civil and religious institutions for the purposes of combatting it more effectively.

## Beneficiaries

### *Direct:*

- Nigerian women trafficking victims who freely express the desire to be assisted in their return to their homeland (voluntary or forced), identified through a process of pre-selection and training managed by the association Slaves No More ONLUS;
- Nigerian women who are particularly vulnerable and potential victims of trafficking.

### *Indirect:*

- Members of the Italian and Nigerian ecclesial communities who will be informed and sensitized to the phenomenon of human trafficking for the purposes of sexual and labour exploitation.

Projects will not be standardized, but assigned only in collaboration with the beneficiary, in accordance with her profile, her necessities, requirements, dreams and needs. Every micro-project will have a specific budget for a maximum amount agreed to by the relevant parties.

An effective process of pre-selection and accompaniment in Italy is fundamental, technically based in objective criteria (nationality, legal status...), but above all subjective (determination of desire to return to their homeland, personal history, training...).



This project is achieved in collaboration with religious sisters and associations which operate on the ground in Nigeria, particularly the *Committee for the Support of the Dignity of Women (COSUDOW)*, and the Nigerian Conference of Women Religious, operating in Lagos and Benin City. Utilizing its extensive network of collaborations and knowledge of the local context, these associations manage all the processes of the social-labour reintegration.

In the first phase, this will be a pilot project for a minimum number of beneficiaries, for evaluating and then possibly extending it to larger numbers with this modality, building good practices to eventually replicate in other contexts.

\* Editorial contributions made by Amy Roth Sandrolini, former Public Affairs Coordinator at the U.S. Embassy to the Holy See.

# **INTEGRATION AND SETTLEMENT FOR SURVIVORS OF HUMAN TRAFFICKING IN SOUTHEAST ASIA AND AUSTRALASIA**

SALLIE YEA

## **Introduction**

As several scholars have noted recently, issues of integration and settlement have received relatively little attention in human trafficking research (Schloenhardt and Loong 2011, Lyneham 2014, Surtees 2013). Most of the few studies that exist focus on the United States, which has had a formal resettlement and integration program for trafficked persons (under the TVPA, or Trafficked Victims Protection Act) for over a decade (for example, Brennan 2010, 2012, Shigekane 2007, Haynes 2004). Yet the post-exit trajectories of trafficking survivors are crucial to the extent that they can either reduce or heighten vulnerabilities of trafficked persons, including where this may lead to their re-trafficking. Successful integration and/or settlement can be key to the process of nurturing survivor resilience through reducing the factors that led to their trafficking initially. This paper examines settlement and integration of trafficked persons in Australasia (principally Australia and New Zealand) and Southeast Asia (principally Vietnam, Cambodia, Singapore and the Philippines). Comparative reference is made in the paper to other countries which have a framework for survivor settlement and/or integration, particularly the United States.

While more fully examining settlement and integration in human trafficking is an urgent task, it is one also beset by the complexities of the phenomena. Settlement and integration can occur across international borders (in cross-border trafficking) or within a country (in internal trafficking). Although the challenges facing survivors are often similar, there are significant differences which in large part emerge from immigration and visa issues where trafficking is cross-border. Further, settlement and integration may not occur together; many trafficked persons are deported to their home countries after their period of cooperation with authorities in the trafficking destination has ended, for example. Upon returning home they may or may not be formally (re)integrated. In addition, there are complicated geographies in integration and settlement patterns, largely stemming from whether a person returns to their home community (where they

lived prior to trafficking) or elsewhere. Finally, a person may resettle after trafficking outside the parameters of formal government interventions under an anti-trafficking framework. These ‘clandestine’ trajectories have hardly been examined at all. These issues will be examined in the following sections of the paper. But first I will define the key terms of the paper; integration and settlement.

### **Defining Integration and Settlement in Human Trafficking**

Settlement issues for trafficked persons normally involve their formal, legal recognition as residents in the trafficking destination country. They are, therefore, predominantly issues of immigration status. Settlement is highly variegated and depends on how the principle is applied in national legislation. One may best conceive of settlement in terms of degrees along a continuum, which largely relate to how long a trafficked person may remain and with what rights and responsibilities. In many countries which have a visa program for trafficked persons there are categories of stay, ranging from permanent to just a few months. Permanent settlement is, across contexts, remarkably hard for survivors to secure. Indeed, one may argue that (uncertainty around) their eligibility for the settlement process, and indeed the immigration requirements for more permanent settlement, may prove a source of ongoing anxiety for many survivors. It is also worth noting that countries that offer settlement to trafficked persons are nearly always developed, northern states. In Southeast Asia, for example, no country (including so-called developed countries, such as Singapore) has a settlement program for trafficked persons. It is also important to bear in mind that settlement (relating to legal/immigration status) does not automatically guarantee successful integration.

Whilst we generally consider settlement in relation to cross-border trafficking, (re)integration can be either a phenomenon associated with cross-border or internal trafficking. Derks (1998) defines (re)integration as more than simply a geographic movement of a victim of trafficking back home or to a new place. As she states, “To integrate means to unify, or to put or to incorporate (parts) together in a whole; reintegration assumes that this unification or incorporation has been achieved” (p. 7). Thus, (re) integration requires that a trafficking survivor achieves acceptance and a sense of belonging in either their home community upon return or within a new community if they are unable or unwilling to return home. Importantly, the vast majority of (re)integration occurs outside of the parameters of official supports. Assisted (re)integration, in other words, remains pro-

portionally a much smaller phenomenon that that which is independent of the involvement of any organization. This may either be by choice, or by default. (Re)integration processes contain many, often inter-related aspects, such as economic supports, health interventions (both physical and psychological), and awareness-raising in communities for building understanding and social acceptance of victims. As Surtees and de Kerchove (2013) point out, the complexities of (re)integration often make it unattractive to donors and governments: "...resources have not been forthcoming for various reasons, including a failure to distinguish between short-term assistance and long-term re/integration; the complex, messy and unpredictable nature of re/integration work; the risk of failed re/integration; the high cost of re/integration services and case management; lack of budget allocation for national and local governments; and a lack of interest in re/integration from international donors and foundations". These barriers are often palpable for trafficked persons and organizations interested in supporting their welfare beyond the short term.

### **International Norms and Rights of Victims**

The UN Trafficking Protocol (2000) contains a number of provisions relating to return (repatriation) of trafficked persons (Article 8), and appropriate measures for victims to remain in the trafficking destination country (Article 7). The IOM also emphasizes that return and reintegration should always be voluntary (by the choice of the trafficked person) and assisted where appropriate to ensure that the process is safe. Unfortunately there is significant evidence from different contexts globally that trafficked persons are not always returned voluntarily and may indeed be subject to more coercive forms of removal from the territory of the destination country, as in deportation (see Seagrave 2009).

There are at least two reasons why deportation as a means of offshoring trafficked persons persists despite the provisions laid out in the Trafficking Protocol and other documents (such as IOM's Direct Assistance to Victims Manual) for a right-based and protection-centred approach to trafficking. First, many states do not have adequate victim identification procedures. Raids on worksites, including brothels and bars, continue to be one of the key means of identifying trafficking victims, even though raid as a means of victim identification has been subject to extensive critique (see especially Agustin 2009). One study in the United States of law enforcement views of the effectiveness of raids found that they were almost universally ineffective as an anti-trafficking tool because they undermined trafficked

persons trust in authorities and reinforced pre-existing fears amongst trafficked persons (Ditmore 2009, see also Ditmore and Thukral 2012). Due to fear and other factors women are often reluctant to disclose details of their situations to authorities, especially in dramatic and violent events such as raids (Brennan 2005). The second reason for lack of victim identification is because there still appears to be a more extensive focus in many countries on the sex industry than other sectors, such as farms and construction sites and private households, where trafficked persons may be located. Despite many countries widening the scope of their trafficking legislation to include labour trafficking, including Australia, Vietnam, Cambodia and Singapore, the perception that trafficking is primarily a phenomenon associated with the sex industry still prevails. In 2012 in Singapore, for example, of the victims detected by authorities that year, 80% were female minors in the sex industry.

Beyond problems relating to victim identification, the key premise of informed choice is often not upheld in the provision of repatriation and (re)integration supports (see, for example, Lyneham 2014 on reintegration of trafficked persons from Australia to Indonesia). In Singapore, my research with women in the sex and nightlife entertainment sector (see Yea 2014) and with trafficked fishermen (see Yea 2013) found that victims were “repatriated” in the absence of the following norms: informed choice about being received in their home country by police or other government authorities; the option to remain in Singapore to attempt to reclaim lost wages and other costs; the option of being put in touch with counterpart support organisations (including local NGOs) in home countries. As I noted in relation to women in the sex industry, consulates and embassies of the women’s home countries often attempt to arrange for women to be met off the plane upon arrival in their home countries by police and then escorted back to their family homes. Many women related that they did not ask for this service, but were told by their respective embassies that it is ‘procedure’, and that police may wish to make a trafficking investigation in due course. As one of my Filipina participants who was subject to this process related, “I do not want to be met by the police at the airport. If they take me home my husband will know what happened to me. He will be angry for me losing the money [paid to finance her migration] and for selling myself in Singapore. It is making a lot of stress for me, coz I managed to keep these problems from him [husband] while I was in Singapore”. This participant experienced incredible anxiety at the prospect of being ‘exposed’ to her family and her community through the very visible escort

back home. Importantly, for discussion in this paper, she was not given a choice about this process (Yea 2015).

With other women in sex industry and men in sectors such as offshore fishing trafficked to/through Singapore, what happens after they are detected as victims presents other problems. These include lack of access to legal and economic justice in Singapore and swift deportation with only their airfares paid on their behalf. For example, fishermen from the Philippines, Indonesia and Cambodia who present at a dedicated drop-in centre at Jurong Fisheries Port in Singapore are assisted with their repatriation by provision of an air ticket only. Men are not provided with information about how they may access avenues to seek economic justice, either in Singapore or in their home countries, and are not provided with contact information for support organisations once they return home. This is a crucial gap in repatriation because it effectively thwarts any possibility of victims being able to avail short-term support or longer-term reintegration services once they are repatriated. If victims return home without the choice/option of support and in the absence of financial stability that could be sought if economic justice were applied (for example, though compensation or restitution) victims remain vulnerable. It is in this type of situation that the risk of re-trafficking or other high-risk choices are often made by victims. Initial results of a study I am currently undertaking with returned trafficked fishermen in Cambodia indicates that around 80 to 90% of victims re-migrate for similar work because they do not receive the necessary supports for successful reintegration once they return to Cambodia. Lack of choice, lack of access to justice (especially in the trafficking destination), and lack of appropriate information in victims' own language weaken the already tenuous possibilities for building resilience amongst victims once they return home, and is inconsistent with a victim-centred and rights-based approach to human trafficking.

### **Settlement: Proving One's Victimhood & Getting On With Living**

There are two key issues worth examining in relation to the settlement of trafficking survivors in a new country. First is the process of achieving recognition as a victim, which is tied to proof of victimhood and the degree of assistance/cooperation a victim provides to authorities. Australia is the only country of the eight that are considered in this paper to have a resettlement program for trafficking victims. This program however, has been subject to some critique (see, for example, Anti-Slavery Project no date), which primarily relates to the difficulty victims have in gaining

access to a permanent settlement visa for Australia. Australia's Permanent Witness Protection (T) Visa is tailored to victims and their immediate families. Yet the number of victims provided with T Visas has remained consistently low since the introduction of the program in the mid-2000s. In 2012, for example, only 12 T Visas were granted. One of the key problems with issuance of this visa is number of approval hurdles a victim must jump through; the visa is only granted if the Attorney General certified the person has made a contribution to, and cooperated closely with police or prosecutors in a suspected case of trafficking or exploitation *and*; the Minister for Immigration considers the person would be in danger of they returned home. Apart from these ambiguous approvals, victims must first prove their victimhood in order to remain in Australia on a short-term trafficking visa. This can lead to re-traumatisation as victims recount intimate and difficult aspects of their trafficking experience for the purposes of validating their story.

New Zealand, by contrast, does not have a settlement program for trafficked persons, who will be granted a maximum stay of up to 12 months 'temporary residency' before being repatriated to their home country. Singapore, the only other 'developed' country considered in this paper, does not have any kind of settlement program; victims may remain in Singapore on a legal visa (called a Special Pass) for the duration of their involvement in a trafficking or related investigation or legal proceedings. They are deported at the conclusion of these proceedings. Importantly, unlike in the Australian and New Zealand cases where victims may be eligible to social security and may be able to avail employment, in Singapore victims are not supported beyond their internment in shelters where they are provided accommodation, food and some basic health services. Again, this type of situation does not assist in efforts of victims to build resilience, since they will eventually be deported in circumstances similar to those that compelled them abroad to work in the first place.

The second issue facing trafficking survivors who are resettled in a new country concerns their longer-term status, opportunities and socio-economic situations. Very little research has documented these processes (for an exception see Brennan 2010 and 2014). As Denise Brennan (2010: 158-43) found in researching trafficking survivors in the United States, "Their interest in finding jobs soon after they escape or rescue is particularly striking. Formerly trafficked persons seek to work right away, and strive to build new networks of friends and colleagues, behaviours that challenge the simplistic media portrayals of "trafficking victims" as passive dupes...

Work is the reason they came to the United States in the first place and finding new jobs after forced labour allows them to carry out plans their exploiters interrupted”. Resettlement that enables survivors to work towards realizing these unfulfilled economic goals is therefore vital to ensure their economic resilience (and that of their families back home, see below), and can also significantly reduce their stress. Further, enabling survivors to form networks and forge a sense of community within a new and often quite foreign environment, is an important social indicator of resilience.

Busch–Armendariz *et al.* (2011) have identified a dimension of resettlement that is almost completely neglected in the literature on human trafficking; namely the resettlement of children and other family members with resettled trafficking survivors. They argue that both children and the trafficking survivor (normally a woman) face significant issues in resettlement of family members, and that, “participants were very concerned about their lack of understanding of the legal immigration process, if and when their children would eventually join them in the U.S., and how they would care emotionally and physically for them once they arrived” (p. 5), which they labelled “social and familial equilibrium”. Many of the Thai female participants of my research with survivors of trafficking in Australia (see Yea and Burn 2010) were also confused about the legal immigration process and what services they were able to avail, with many women not availing services because they did not know of their eligibility. Some of these women had “illegitimate” children out of wedlock and this also made the possibility of securing a visa for family reunification even more tenuous a prospect. Unfortunately, as with many women who are trafficked, they are often the sole breadwinners for their children and therefore not only face the mental strain of uncertainty about their status and welfare ‘back home’, but also the immediate and often pressing financial responsibilities that can only be achieved through their remittances.

### **(Re)integration: Stigma, Shame, Space & Support**

As with this above discussion of settlement, this part of the paper addresses two key issues with (re)integration: first, the relationship trafficked persons can have with their home communities, and; second, the types of supports trafficked persons may need and/or avail. I also briefly touch on question of why trafficked persons may decline reintegration assistance. Discussion of victims’ relations with home communities is treated in the context of the other two issues, since it overlaps with and informs these other concerns significantly.



Trafficked persons can require a range of physical and psychological health interventions and these have been discussed in detail on other studies (most recently Kiss *et al.* 2015). Though it is difficult to generalize, research tends to suggest that shorter-term health needs relate to physical health (injuries, malnutrition, poor immunity due to substandard living and working condition, and minor disease problems, such as skin problems). Longer term health interventions in the context of (re)integration include for permanent disability and terminal diseases such as HIV/AIDS, and for psychological rehabilitation from the trauma of the trafficking experience. Yet, what I wish to emphasize here is that we should not assume all trafficked persons are ‘damaged’, particularly in their mental health (Yea 2015). Careful assessment of individuals, rather than presumptions of damage should be the main concern of those who provide health supports in the context of reintegration. Further, in some cases reintegrated persons can appear distressed and in need of some form of therapy or counselling, but these signs may relate to other circumstances besides trafficking, thus begging researchers and practitioners to consider the causes of these problems and, indeed, whether dedicated responses under post-trafficking interventions can or should address these other concerns. For example, in a joint study with the Hanoi-based NGOs SHARE and CSAGA, I found that some women reintegrated after being trafficked to China were highly distressed when we conducted interviews about their experiences of reintegration, only to find that women’s relationships with their husbands and/or mother-in-laws were the key cause of their emotional states, rather than anything directly related to their trafficking experiences. Indeed, it is such familial relations (in Vietnam, at least) that compel many women to seek opportunities to re-migrate. Community integration outside the home community/family may have been a more suitable and sustainable option for many of these reintegrated women and draws out exactly how reintegration, as opposed to integration elsewhere, may bring about vastly different experiences of acceptance, belonging, and moving on.

If there are sometimes some unhelpful and broad-based assumptions about health needs/problems of trafficked persons, there are often also assumptions about how best to support them socially and financially. Previous research has noted, for example, that many livelihood projects for (re)integrated trafficked persons are inappropriate (they may not generate adequate income for survivors because the product/service is not needed in their home community), the skills/projects are not of interest to the

recipients (they may be based on gender stereotypes, such as that it is 'appropriate' for women to learn sewing or hairdressing, or men to train as a mechanic, or children to be put back into school) (see, for example, Derks 1998, Yea 2015c). In a study with children trafficked for forced labour from central Vietnam to Ho Chi Minh City to the south, children's reintegration into home communities with the assistance of a local NGO demonstrated some innovative and appropriate options for the children. Rather than presuming the children should all return to school, for example, specific livelihood and training options were provided to children in consultation with them. Many children stated that they did not feel academically inclined and that, because some time had passed since their previous enrolment in school, they would feel out of place in a classroom with children who were possibly much younger than themselves. The NGO supported these different aspirations as best they could, but practical considerations, particularly financial constraints on supporting training and livelihoods were nonetheless a major concern in delivering these economic supports. What this example does nonetheless indicate is the importance of listening to trafficking victims in ways that reflect participatory and inclusive approaches to designing appropriate intervention with trafficked persons.<sup>1</sup>

My research with Filipina and Russian women trafficked to South Korea as entertainers and trafficked fishermen in Cambodia and the Philippines reveals that many victims of trafficking deliberately avoid reintegration supports. Yet, some of these women and men are unable on their own to overcome the vulnerabilities that lead to their trafficking in the first place, sometimes leading to a new round of out-migration for precarious and poorly understood job opportunities. This raises important issues about why trafficked persons reject supports in the context of (re)integration and, sometimes, immediately post-trafficking in shelters and other institution. Brunovskis and Surtees (2007) have addressed this issue, suggesting that there can be a variety of reasons for trafficked persons to decline assistance. Many of my participants emphasized the same concerns, including the

<sup>1</sup> A brief search of the use of participatory approaches to design appropriate interventions with trafficked persons yielded only one reference, oriented to prevention (rather than protection): V. Samarasinghe and B. Burton 2007. 'Strategising prevention: a critical review of local initiatives to prevent sex trafficking', *Development in Practice* 17 (1): 51-64. There is arguably much more scope to expand the use of these tools to achieve more effective reintegration services, amongst other interventions.

lack of ability of (re)integration supports to meet their financial and livelihood needs (often in the context of lack of compensation for their initial trafficked experiences), the relations and social networks they form in trafficking destinations, which can yield information about opportunities for work and provide some degree of social support, and the wish not to have their experiences disclosed within their home communities (see also Brunovskis and Surtees 2012, Lisborg and Plambesh 2009). Some of my participants also disclosed that their traffickers lived in the same communities as themselves (and were sometimes distant relatives or peers/friends) and in these cases accepting trafficking supports would bring tension in their relations within their communities.

In a study with women and girls trafficked and prostituted in Cebu, the Philippines, I found an additional concern, namely the inability to find an appropriate place to integrate post-rehabilitation/shelter. In that study I conducted in-depth interviews with over thirty women and girls trafficked into Cebu's multifarious sex and nightlife entertainment sector. Over 70% of these participants were vulnerable to trafficking initially because of family crisis and domestic problems. When the period of rehabilitation in the shelter (up to two years) concluded, reintegration into home communities was simply not possible for many of these survivors. Women and girls recounted experiences of being raped by a family member (usually a brother or the stepfather), witnessing a domestic violence, including the violent death of a family member, or being forced into child labour by a family member. For these participants there was simply no supportive place they could integrate into, raising questions not only about how (re) integration should occur, but also where it should and could actually take place (Yea 2010b).

In sum, the problems with (re)integration can be divided into two areas: first, those associated with belonging and community, and; second, those related to the delivery/absence of a range of different (but often inter-related) supports over the longer term. At present, supports for reintegration in both Australasia and Southeast Asia are delivered in a piecemeal way, which is generally a reflection of lack of capacity and (funding) interest in reintegration in counter-trafficking programs. There are also important questions about how long support should be delivered for, and how progress towards successful integration is measured (a monitoring and evaluation question). In particular, the delivery of ongoing supports can work to create a sense of dependency amongst trafficked persons, and can act to dilute, rather than build, their resilience.

## Conclusion

This paper has explored the challenges of (re)integration and (re)settlement for trafficked persons and the organisations that purportedly serve them. I have drawn on several studies I have conducted over the past ten years, including in Singapore, Cambodia, Vietnam, the Philippines and Australia to inform discussion. I have suggested that there are two major concerns with (re)settlement, namely proving status as a bone fide trafficking victim, and moving on with life (particularly economically and socially) in the place of resettlement. With regard to (re)integration I have argued that two particular challenges are: recognizing the importance of family/community context in evaluating where and how a victim of trafficking is integrated, and critically reviewing socio-economic and health interventions based on broad assumptions and stereotypes of victim types. In depth research with trafficked persons reveals a complexity to experiences both in different countries and between sectors where trafficking has taken place, as well as nuances in victims individual experiences and broader lives. There is much that remains to be done in the field of research and interventions in the longer term after trafficked persons exit their situations of exploitation. This paper has aimed to raise some of these issues and, in the last, I reiterate my calls for more attention to this hitherto neglected side of anti-trafficking.

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## ▶ TRAFFICKING IN HUMAN ORGANS



# SCARS: EMBODIED MEMORIES OF ORGAN TRANSPLANT AND ORGANS TRAFFICKING

NANCY SCHEPER-HUGHES<sup>1</sup>

## Prologue – Sacrificial Violence

A persistent theme that has defined my lifework as a barefoot anthropologist is derived from a tradition of critical theory, a concern with the invisible violences of everyday life. In my long-term study of mother love and child death in Northeast Brazil during and after the military dictatorship years (1964–1990) I used “everyday violence” to refer to the normalization of violence through institutions, bureaucracies and professionals – the agents of the social consensus – including politicians, teachers, agronomic engineers, urban planners, sugar plantation managers, civil servants, physicians and surgeons, municipal coffin makers. When the populist mayor, Jacques, produced hundreds of plywood coffins for free distribution to the hungry and afflicted families of the shantytown of Alto do Cruzeiro, the structural violence of the post-slave sugarcane plantation economy was amplified by its symbolic violence. “Here they are, take them away, the gift of coffins for your children are ready and waiting”. And when doctors in the municipal clinic prescribed tranquilizers for hungry and wasted babies, we enter the moral and ethical grey zone, the collusions between socially abandoned mothers desirous of the drugs that silenced their mewling infants and the doctors who were more than happy to supply them.

The structures of violence that produced premature death, slow starvation, infectious disease, and the despair and humiliation of making one’s little accommodations to it destroyed their spirits as well. Dom Helder Camara, the “little red archbishop” of Recife, railed against military police attacks on the few dissenting landless peasants by reminding those in power of the violence of hunger and the bombs of sickness and destitution. It was almost fifty years ago that I first walked up, slowly and fearfully, to the top of the Alto do Cruzeiro, in Timbauba, Pernambuco with a hammock and a plastic suitcase. It was the beginning of an anthropologist’s life’s work, somewhere between an obsession, a trauma, and a romance with the shan-

<sup>1</sup> Chancellor’s Professor and Chair, Medical Anthropology. Director, Organs Watch, University of California, USA 94720.



tytown, home to 5,000 dispossessed sugarcane cutters expelled from their homes in one of several plantations and *usinas*, industrialized sugar mills, where they had lived and worked, and turned into migratory seasonal contract workers, earning roughly a dollar a day to cut and sack cane. Impoverished, hungry, disoriented, they threw together homes made of straw, of mud and sticks, and found scrap material. They threw together families in the same bowdlerized fashion, taking whatever was available and making do, like the *bricaleurs* described by Claude Levi-Strauss. They circulated husbands and children among neighbors who would take them in, they were forced by scarcity and need to let their older children “go the streets”, where many loose street children were murdered by local death squads. “Well, after all,” my next shack over neighbor on the Alto do Cruzeiro, a classic favela, Biu commented after the police mowed her 17-year-old last-born child, her *caçula*, down, “Gilvan was no angel”.

Structural violence determines the timing of death and the depth of one’s grave. Structural violence begins with body counts and is often preceded by soul murders, the forms of symbolic violence that make victims complicit with their perpetrators, turning them into their own executioners. James Gilligan defines structural violence as “the increased rates of death, disease, and disability suffered by those who occupy the bottom rungs of society”. Structural violence is invisible and can only be recognized through its consequences. What is buried with these anonymous deaths is the enormous weight of useless suffering and premature death that might have been captured in the “dash” on the tombstone: “Here Lies Xoxinha, 1964– [dash] 1966”. Rest in peace little angel. Except, there were no tombstones, and no incriminating dash to memorialize the death. There was only the borrowed coffin and the pauper’s grave, the *deposito de osos*, the bone depository. No wonder the people of the Alto loved the *prefeito imperfeito*, Seu Jacques, for giving them free coffins. The act of “Christian” kindness solidified the perverse and pernicious patron-client relations that kept the people of the Alto in line. For dependency is like a drug.

Good enough ethnography requires a good enough method, one that I called, drawing on the language of Brazilian liberation theology, *antropologia-pé-no-chão* – anthropology “with its feet on the ground”, a barefoot anthropology, a grounded ethnography, grounded in the everyday realities, everyday violence and the little spaces of resistance to it. My research on love and death in the Alto do Cruzeiro was inspired by the Brazilian geographer Josué de Castro, by Paulo Freyre’s *Pedagogy for the Oppressed*, by Gustavo Gutiérrez’s “preferential option for the poor”, and by Ivan Illich’s

“tools for conviviality” and by the writings of the Czech philosopher, Jan Patočka, whose work has been anthologized in *Heretical Essays*, in which he called for a solidarity of the shaken, as a basic starting point for all those involved in moral, cultural, political conflicts. In anthropological research this means balancing our conflicting roles, and allowing ourselves the freedom to take stands and to take sides in our particular corners of the global ethnographic world. The barefoot anthropologist “accompanies”, is side by side in the *luta*, as a dedicated friend and a follower.

In the decade of the 1980s life on the Alto do Cruzeiro resembled a refugee camp or the emergency room of an inner city hospital. The recently late Eduardo Galeano (1998) described Northeast Brazil as a concentration camp for more than 40 million people. Decades of nutritional studies of sugar cane cutters and their families in Pernambuco, showed evidence of slow starvation and inter-generational stunting. These Brazilian *nanicos*, nutritional dwarfs, were surviving on a daily caloric intake – camp rations – similar to the inmates of Buchenwald death camp. The camp analogy was a subtext in my account of mother love and child death on the Alto do Cruzeiro. Life on the Alto resembled prison camp culture with a moral ethic-based triage and an ethics of survival. Scarcity made mother love a fragile emotion, postponed until the newborn displayed a will to live, a taste (*gusto*) and a knack (*jeito*) or a talent for life. Infants died, mothers said, because they had no desire to live, they were elusive creatures, more like birds – here today, gone tomorrow, it was all the same to them, I was told. It was best to help them “go” quickly. The angel-babies of the Alto were “transitional objects” neither of this earth nor yet fully spirits. In appearance they were ghost-like: pale, wispy haired, their arms and legs stripped of flesh, their bellies grossly extended, their eyes blank and staring, their faces wizened, a cross between startled primate and wise old sorcerer. These supernumerary babies were kept at arm’s length by their mothers.

Primo Levi (1988) might have called those babies miniature “Musselman”, a reference to the cadaverous “living dead” in Auschwitz known in camp argot as “Muslems”. These were victims whose state of exhaustion was so great, whose despair was so palpable, whose collapse so complete, that they looked and behaved like walking mummies. Sometimes unable to stand of two feet these “given up” inmates were said to resemble Muslims at prayer. Their lethal passivity and indifference seemed to announce an “availability for death/execution”. Thus, they were isolated and reviled by those in the camps who still clung, however absurdly, to hope, and to life itself. The given up babies were described as “ready” for death. “Dead or

alive”, an Alto mother said, “it’s all the same to them”. When Alto mothers cried they cried for themselves, for those left behind to continue the *luta*, the struggle that was life. They cried hardest of all for their children who almost died, but who surprised everyone by surviving against the odds. Mothers would speak with deep feeling of the child who, once given up for dead – “the candle already burning round his little hammock” – suddenly beat back death by displaying a fierce desire, a *desejo* and a *gusto* – a real taste, for life. Ah, these tough and stubborn children – you couldn’t kill them if you tried – were loved above all others. And they were raised to be fierce and wild, *brabo*, to know when they had to “eat shit” in the favela (be self-effacing and obedient) and when they could lash out and spit in the eye of the oppressor, whoever that person was defined.

The “gray zone” is populated by a thousand little betrayals in the desperate, covert, and continuous struggle to survive. The poor residents of the Alto do Cruzeiro knew that the “good” die young and the survivors are not always the best exemplars – survival tactics are rarely morally edifying. If there is a lesson here for physicians, it is surely one about knowing the material and moral grounds that define sickness and death. Life – survival at all costs – is not always better than death. A “liberation medicine” is a modest medicine, with scaled back expectations, and based on an understanding that life, by its very nature is scarce, and triage is inevitable, whether it is the triage of the battlefield, saving the salvageable, or the triage of the emergency room, or saving the sickest.

### **Sacrificial Violence and Kidney Selling**

My organs watch project began, once again, in the hillside slum, the favela, of the Alto do Cruzeiro, within the context of rumors and allegations of foreigners in yellow vans kidnapping street children for their organs amidst scarcity, unmet needs and a multitude of moral and ethical gray zones. Those early rumors circulating in the mid 1980s were untrue, but the disappearances of street kids was true, and the illegal removal of organs from the bodies of paupers and unidentified persons in the Medical-Legal institutes of Brazil was not uncommon, and what else could mothers think when they came to claim their dead children? But another and more insidious form of kidney theft began to appear in the medical files of a large, private hospital in Recife, where living, unrelated kidney transplants accounted for a third of the transplants. I found that the traditional force of patron-client relations, similar in its intensity to master-slave relations, had created certain new labor agreements between plantation owners and

their sugar cane workers, and between the wealthy *Donas da casa* and their domestic workers: to provide their patron or their *patroa* a “spare” kidney as needed. For generations sugar plantation owners had extracted cute babies from their fertile rural workers, saying “you have enough already, give your little blond daughter to me”. Demanding an extra kidney was only the next logical step. Kids and kidneys are linked in more ways than one.

In the meantime global demands and markets in kidneys were being introduced to transplant candidates stuck on waiting lists as a viable option through national and international organized crime syndicates. Purchased fresh kidneys were so much more appealing than brain dead kidneys on ice. The idea that I could improve my life, attain a higher quality of life, meant time off the dialysis machine which one kidney patient described to me as his “time on the cross”. Eventually, by 2001 the international kidney hunters and transplant traffickers came to Northeast Brazil, to Recife, drawn there by the Berkeley Organs Watch website (since taken down), that had listed the hot spots where human trafficking for kidneys was prevalent.

On a field research trip to Tel Aviv in 2001 an active international transplant coordinator (i.e., a kidney broker), told me that she had moved her base of operations from Israel, Russia, and Turkey to South Africa and Brazil having noted that the website explained that foreigners were trickling into private and even academic hospitals in South Africa after the fall of apartheid and the realignment of public health to primary health care. South African transplant surgeons needed new customers who could pay them. Brazil, described on my web page, had an internal kidney trade and poor people who advertised in local newspapers their willingness to sell “any organ of which I have two, and the removal of which will not cause my immediate death”. And so, one location of the Netcare Corporation Kidney Scandal derived from the medical human rights activist. As Brazilians like to say, “No one is innocent”, but I would add, “but some are very naive”.

Just as debt peonage drove the global illicit international adoption networks in Brazil (and Eastern Europe where both kid and kidney theft are just as entangled), debt peonage drives the kidney selling cartels that enforce a new tax on the bodies of the poor, a kidney tax. When Alberty Alfonso da Silva from a slum close to the international airport in Recife could not pay the debt on a used car and was physically threatened, he sold his kidney to cancel the debt. When Viorel was hunted by his debt brokers in Chisinau, Moldova, the tough guys put a gun on the bar table. “Pay up or your body will be floating somewhere”. They gave Viorel a way out – a bus trip to Istanbul to sell his kidney to an international tourist.

We ought to think twice about the words we use in describing human organ and tissue harvesting replete with financial and banking metaphors: organs stocks, tissue, organ and sperm banks, organ scarcities, kidney shortfalls, supply and demand are dominant. These terms are accompanied by the commodification of organs in the language of spare parts. A kidney (that is sold) is always described by the brokers and even the surgeons (who know better) as a “spare” kidney, a “spare part, a commodity, detachable from the body, the owners” reliable “kidney” bank. No wonder the frightened people of the Alto do Cruzeiro told me that “the rich look at us and they see only one thing: a sack of spare parts”.

### **Moral Blindness**

At a lecture some years ago for Catholic-identified Berkeley law faculty at Newman Hall, Holy Spirit Chapel, on the intriguing title, “The Unknown Sin”, emeritus professor John T. Noonan broke the suspense by immediately identifying the referent as human slavery which the world at large, and Christianity in particular, was slow to recognize as morally, ethically, and spiritually repugnant. It took a rather secular branch of Christianity, the Quakers in the 1830s, to develop a sin-based perspective on slavery and to lead an abolitionist movement to eradicate it. The Quakers were moved by the publication of slave narratives and the eloquence of men like Frederick Douglas whose words began to chip away at the thoughtless reification of slaves as property, mere things to be bartered, sold and disposed of at the owner’s will.

Until the mid-19th century slavery was simply accepted as a sad, lamentable, even tragic but nonetheless inescapable fact of Western civilization, as taken for granted as the air they breathed. It is true that Bartolomé de las Casas protested the enslavement of Indians in the New World but only because as indigenous residents of colonial New Spain they fell under Spanish laws and protections. Las Casas did not protest the enslavement of Africans or condemn the institution of slavery itself. The gospels do not quote Jesus speaking to or about slaves, although his spiritual mission was to lead an oppressed people out of one kind of slavery into a spiritual form of human liberation.

In his *History of the English Church and People*, written in 731 AD, the Venerable Bede explained Pope Gregory’s deep desire for the conversion of the British Isles: “We are told that some merchants recently arrived in Rome displayed their many wares in the market place. Among the crowd who thronged to buy was Gregory, who saw among other merchandise

some boys exposed for sale. These had fair complexions, fine-cut features, and beautiful [flaxen] hair... Gregory inquired from what country and what part of the world they came. "They are from the island of Britain", he was told, "where all the people have this appearance". [Bede] then asked whether the islands were Christians or still heathen. "They are pagans", he was told. "Alas!" replied Gregory with a heart-felt sigh: "How sad that such bright-faced folk are still in the grasp of the Author of Darkness and that such graceful features conceal minds void of God's grace!" (pp. 99-100). The chains of ignorance, not the chains of human bondage inspired compassion in the man who would later become known as Gregory the Great. When told that the young slaves were from a race known as "Angles" the future Pope found the name most fitting. For indeed, "the boys had such angelic faces".

I introduce this historical anecdote to address the late modern moral blindness with respect to the traffic in humans for their organs and tissues. I refer to the failure to see in the frank buying, selling, and trafficking in bodies in the zealous pursuit of organs for transplant, slavery in a new and distressing form. What is different about these transactions that might differentiate them from other forms of human trafficking – in sex, in smuggled workers, in third-world babies for international adoption – is that the traffic in humans, dead, brain dead or alive, for usable organs and tissues requires the skills and consent of society's designated healers and guardians of the body: physicians, surgeons, and forensic pathologists among them.

Like slavery before abolition, the contemporary traffic in bodies is still generally not seen as morally repugnant, not seriously reckoned with as a medical human rights abuse, nor seen as a crisis in medical ethics, nor even as a pressing social problem about which "something must be done". To the contrary, the brokering of organs from weak and fragile populations – the homeless, the unemployed, debtors, prisoners, political and economic refugees, street kids, the mentally ill and the mentally deficient – most of whom are pressured into selling – is still defended today by some of the world's leading transplant surgeons, bio-ethicists and economists, and even by a few well-known medical anthropologists as a rational, sensible, and even as an ethical solution to the needs of transplant patients and their surgeons, and as a final solution to the global "scarcity of deceased donor and living related donor organs". The global traffic in organs has clearly clouded the moral vision of some of the world's most gifted transplant surgeons who are willing to prolong or improve the quality of their patient's lives at almost any human cost. When confronted with moral quandaries they

often respond that it is too complex, they are, after all just “technicians” or to “let the philosophers figure that one out”.

### **The Terror of the Gift – The Body Torn Asunder**

*“I know quite well that back there is only darkness crammed with organs”*  
Merleau-Ponty, 1973, *The Prose of the World*

In an attempt to lift the curtain on that “darkness crammed with organs” as Merleau-Ponty described the secret interior of the human body, I present a normative case of living donor transplant in a private hospital in Recife in July 2006. The following vignette is taken directly from my field notes at the Royal Portuguese Hospital (*Real Hospital Português*). The transplant candidate is not rich, but very poor. Adriano Rodrigo, from a working-class neighborhood of Recife, a venerable but decaying port city on the coast of Northeast Brazil, was twenty-eight years old and mortally ill with end-stage kidney disease. He is lying bare-chested and stretched out on a rusty metal gurney, next to his sheet-draped mother, Adriana, her son’s namesake and his lifeline to a new existence, unfettered to the dialysis machine on which he was fading fast. Only death, the joker, was in his cards. The young man’s “dirty blond” hair was tied back with a piece of leather string into a mass of tight springy curls, his thin arms and shoulders were alive with a tattooed garden of creeping vines, turtles, serpents and dragons.

At Portuguese Hospital 70% of kidney transplants there rely on living donors, some loving relatives, others from strangers or from one’s agricultural or household workers, following the rules of patron-client relations. But buying and selling kidneys had become so normalized, so normalized at the Portuguese Hospital that the transplant manager gave me a computer printout of all the transplants that had ever taken place there including the names of the patients and their living donors and their relationship – mother, brother, daughter, husband, cousin (questionable), or simply *unrelated* (meaning in this hospital a solicited and paid donor).

This pattern of kidney selling in the *zona da mata*, the traditional sugar plantation region, derives from the deadly trio of *paternalismo*, *latifundismo*, and *clientelismo* (patron-client relations) (see Scheper-Hughes 1993) made it easy for international transplant brokers to infiltrate a poor barrio on the outskirts of Recife, euphemistically named Jardim Sao Paulo, evoking the bright lights of Brazil’s largest city where these men hoped sometime in the lives to migrate.

Between 2001–2003 an international trafficking scheme led by two retired military men, one a Brazilian, Captain Ivan, the other, an international organs trafficking broker from Israel, Captain Gaddy Tauber, put out feelers into the bars, back alleys, and open air markets and curbside car repair to recruit young mostly Afro-Brazilian young men to travel to Durban, South Africa to provide a spare kidney to one of the 101 Israeli transplant tourists who arrived in groups, week after week, filling the hospital beds at the private NETCARE Corp clinic at the old and prestigious St. Augustine’s hospital.

On arrival from their countries, the elderly and sick Israeli patients, some in wheelchairs, were housed in large and comfortable suites with windows facing the ocean at the Holiday Inn on the luxurious Durban Parade. On arrival, the *meninos do Brazil* – The Boys from Brazil – were housed in a dark and dreary flat with bunk beds (a “safe house”) shared with kidney sellers trafficked in from rural Moldova and Romania. The Brazilian guys were incensed to learn that a handful of Israeli sellers were housed at the Holiday Inn with the Israeli transplant tourists and were paid \$20,000 while the Brazilians were kept in a “kidney hostel” and were paid only \$10,000 and some, like Alberty da Silva, got only \$6,000, the same amount paid to the Romanians. Soon fights broke out among the kidney sellers.

One of the *meninos* complained to the police after he returned to Recife saying that he had been cheated by the brokers who made promises that were broken. They were mistreated and sent home before they had recuperated, their bandages seeping with blood and pus, as they were dropped off at the airport and told to shut their mouths because what they had done was a crime for which they could be arrested and sent to prison for many years. Gervasio asked the Brazilian police two questions: “Aren’t I the owner of my own body?” “Isn’t my body, my organs worth the same as the others?” It wasn’t long before Brazilian and South African police waged police stings – “operation scalpel” in Brazil, and “operation life” in Durban, resulting in arrests and prosecutions that are continuing to this day. Dr. Williams, Adriano’s surgeon, had informally contracted with the Israeli broker, Gaddy Tauber, about whom I published a three-part series in the *Anthropology Newsletter*. The scheme was to deliver Israeli patients to the Hospital Real who would be provided (through Gaddy Tauber) with young men from neighboring slums who were “clamoring”, or so it was said, to provide kidneys. But just before the first group of Israeli transplant tourists came to the Hospital Real, the police cracked down on the transplant scheme and prosecuted their case using the Palermo convention against international human trafficking.



## The Bisturi – the Knife

Torn between the adjacent donor-recipient operating rooms, I entered the donor's OR first. Adriana, unconscious, was rolled over to her left side with her right arm lifted high over her head in an awkward position and taped to a metal swing, fully exposing her right flank where the incision would take place. The old woman's body was a marvel, even her breasts, following eight births, were still firm and her skin (except for her face) unwrinkled. "Hard workers, like these, keep their shape", the nephrologist-surgeon commented approvingly, giving the donor's rump a friendly thwack. Thank heavens she wasn't a fatty (*gordinha*) *he said*, which makes rubber gloves and scalpel slippery.

The surgical instruments were arranged in a precise order by the scrub nurse so that the surgeon, even without looking up from the operating table could instantly take what he needed. The *bisturi*, the scalpel, occupies place of honor. Handle and blade, fitted together, the scalpel is just six inches from tip to tip. The handle has a notched prong into which the sharp blade is snapped into place. Now the knife springs to life, almost like a switchblade. "To hold the scalpel above the belly", writes Richard Selzer (1974) "is to know the knife's force – as though, were you to give it the slightest free reign, it would pursue an intent of its own, driving into the flesh with wild energy". The surgeon's power over life and death, writes Selzer, separates him from the murderer by only a thin line. "Now the scalpel sings along the flesh... a barracuda spurt, a rip of embedded talon... the whine – nasal, high, delivered through the gleaming metallic snout. The flesh splits open with its own kind of moan. It is like the penetration of rape" (p. 104).

The first sharp slice into the kidney donor's side sends shivers down my spine. The layers of flesh are sliced and drawn back like heavy curtains, and secured with hard metal clamps. The electric cauterizing knife is brought out and the surgeon sets to work severing the old woman's ribs. Like Eve, Adriano's Mum will be permanently missing a rib or two. The smell of smoke and burnt flesh, and the squeal of bone, fills the room. Now the surgeon reaches down deeply into Adriana's soft, warm, dark, pulsating inner sanctum followed by the tinkling sound of ice and ice water poured into her abdominal cavity and then suctioned out with a loud slurp.

I steel myself to go next door into the transplant theatre where Adriano, the son, is being prepped to receive his mother's kidney. Dr. Williams and his team are hard at work. I navigate the edges of the table, trying to find a space where I can see and not be in the way until the female anesthesiologist pulls over a high stool and positions it at the head of the operating

table telling me to hop up on it. From my parrot's perch, with Adriano's head just slightly butting into my stomach, I can, indeed, see everything.

Using what look like giant metal shoehorns, the surgeons pull back Adriano's flesh back and secure it with metal clasps. A large round metal brace, that looks like it was lifted from a curbside auto repair shop, encircles and holds open the patient's cavernous abdomen. The crater I am staring down into is a huge, red, gaping hole, large enough, as the surgical joke goes, to drop an alley cat (or two) into. At one point there are three pairs of surgical gloves and several pieces of "heavy metal" inside or at the rim of Adriano's abdominal well. From time to time I pat the young man's head softly and wish him courage, *couragem*.

The nephrologists-surgeon sends word to the transplant theatre that that he is ready to remove the old woman's kidney. For now, it is sitting in its owner's "pocket" detached from everything except its blood supply. Dr. Williams is surprised. "That was quick!" he says and sends word back that his team is not yet ready to receive the organ and he and his team redouble their efforts so that in another twenty minutes they are ready. I follow the transplant team into the donor's operating room and we hover around the operating table as the surgeon and his assistants begin the final severing and removal of the kidney, taking care that the arteries are properly tied off so that the donor doesn't bleed to death. There is some coaxing: "*Tira, Tira!*" "*E Isso! E Isso!*" "Grab it! Take it!" "That's it! That's it!" And a cautionary "Hold it – not just yet, not now".

The "delivery" of the kidney from Adriana's kidney resembles a child-birth, and old lady's kidney is "caught" in the surgeon's hands and delivered to her son's expectant body. She is giving birth to her son for a second time! The "newborn" kidney is gently lifted and placed into its kidney shaped pan and sprinkled with ice water, a baptism of sorts, before more ice water is poured on it. Dr. Williams is the first to have a long look at the little fellow which he lifts it out of the pan to examine it in his gloved hands. Something is not right and he shakes his leonine head. The visiting surgeons from rural Paraiba also have a look, pulling on its connective veins and arteries. They inject the kidney with a chemical solution, cover it with ice and sterile pads. The surgical team makes a solemn procession carrying the kidney into the adjacent operating room where Adriano waits, his body inert, his abdomen flayed and exposed like the caudex of a cow hanging from a meat hook.

Now five people, the surgeon and his assistants, are examining the little pink fellow, anxiously, as if a listless neonate had come into the world. It is

“*muito pekeno*”, they cluck, awfully little. But I am not sure if they are referring to the kidney or to an artery. Williams criticizes the handiwork of his colleague in the next room, who is busy suturing up Adriana’s abdomen with her lone kidney, behind her second-class kidney, the one that atrophied and “wasn’t worth anything”. “Take the best one”, she had insisted before being put down to sleep.

The most delicate part of the operation begins, as the kidney is introduced into Adriano’s organ well and the laborious task of attaching it begins. There is a great deal of snipping and sewing. The OR is turned into a tailor’s shop and the seamstress–surgeons adopt a fussy, maternal air. The delicate, fine stitching requires sharp eyes and nimble fingers. “Williams”, a man in his sixties, is sweating profusely and struggling with the needlepoint; his large hands shake perceptibly. When a younger colleague tries to direct his fingers, Williams brushes his hand away. Another calms the senior surgeon down: “OK, go easy, go easy now”. Finally, the stitching is completed and the coaxing and prodding of the pale little fellow begins:

“Come on, come on, wake up, wake up!”

“It’s lazy and soft”.

“It’s not working”.

“Look, (says Williams) he works OK when he’s sitting up”

“But he has to lie down!”

Silence.

Williams pulls the kidney up, rubs it, pats it, encourages it:

“Come on, now. Wake up!”

“Is it any better?”

“ I think he’s improving!”

“But he’s still not making chi-chi (pee-pee)”.

(Adriano’s head, still at my fingertips: “Hang on, hang on”, I whisper).

“Look, it’s beginning to pink-up!”

“Yes, it looks a bit better!”

(But hanging in the air is the question: Is it good enough, is it going to do the trick?)

Throughout the afternoon the mood in the OR has shifted back and forth from loud and playful, *alegre* and boisterous, to quiet, tense, sharp, tired, frustrated, *abusado*, critical, almost angry, until now when things seem to be going downhill, it is silent. Williams is exhausted, and another surgeon takes over for a bit and he tells Williams to take a break. A nurse comes over to help him remove his gloves and blood-splattered apron

covering his surgical pants. As the surgeon walks out of the room, his head bowed, I see a large wet stain between his legs. A very depressed looking Williams walks dejectedly out of his operating room.

While Williams washes and rests up, the visiting surgeons continue to struggle inside Adriano's abdomen for another endless forty-five minutes. When Williams returns there is a heavy air hanging thickly over the room. The newborn kidney is still not up and kicking. When probed, it is soft. Williams wants to leave the kidney "sitting up" for a while longer. The others disagree saying that the time has come to let him go. "Tuck it in", they say. The time has also come to close Adriano up. "It's over. Let's go", says Dr. Williams, in English, again taking command, as he claps his hand on Dr. Marcelo's shoulder. "*Vamos ver*", "We'll see what happens". Then he apologizes to me saying that the transplant that was not "*bem-bonita*", not real pretty. "There were problems... I'll stay up all night thinking about it". And so will I, reflecting for many days on the failed transplant and the inherent terror of the gift.

### **Body Love**

My paper is the beginning of an anthropological/ethnographic/ethno-theological reflection on the body as a "perfectly made" corporeal assemblage that is dismantled, at great cost. While there are organs that are universally perceived as indispensable to the sense of self/personhood (heart, face, hands, legs, trunk, brain, lungs, stomach) other body parts and organs (pancreas, liver, heart valves) invisible, mute, and "absent" to the self (Leder 1990) are disguised and concealed from the individual's anatomical schemata or body image. While injured limbs and diseased organs are removed through amputation or other life-saving surgeries they are not easily forgotten.

Fears of the fragmentation and disintegration of bodies are expressed in religious traditions from Egyptian mummification to medieval Christianity to contemporary burial practices across the world's great religions. This under-examined and under theorized topic in the anthropology of bodies – what I am calling *body-love* – refers to an intuitive, existentially given, appreciation of the body's design and the inalienability of its parts, both manifest and obvious head, trunk, limbs, and skin, and the silent and "absent" organs and tissues that make their presence known through disease, wounding, and excision.

Body love has a long history in early Christianity, in Kant's philosophy of the inalienability of body parts (Morelli 2002) as well as in modern

phenomenology. During the Catholic sacrament for the dying, a medieval rite originally called Extreme Unction (or final blessing) the priest tenderly anoints with holy oil each of the sensory organs of the dying person, the eyes, ears, nostrils, lips, hands and feet, and, (for men only) the loins. Pausing at each body-site the priest recites the benediction: “Through this holy anointing... may the Lord pardon whatever sins or faults thou hast committed by sight” [or by hearing, smell, taste, touch, walking, or sexual excess or dereliction]. Sin, pleasure, and carnal love are conjoined in a fond farewell to the flesh, organ by organ. In the medieval Christian world, the wounded body was an image of the godhead. To be vulnerable meant to be open, to embrace and to venerate the sacred wounds, a reflection on Christ’s passion – the nails to hands and feet, the crown of thorns to the head, the spear (like a scalpel) to the side.

### Intact Bodies

“*They have numbered all my bones*” Psalm 22

At birth the newborn’s fingers, toes and other appendages are identified, numbered, and inspected by the midwife or the *doula*. “It’s all there” she announces to the relief of the parents. The dead, too, want to be buried intact, no missing limbs, brain, heart, liver, eyes. How else will they be able to navigate the river Styx, see the ancestors, or stand on their two feet before their Maker?

While studying infant mortality in Brazil in the 1980s I spent a good deal of time in the *município* of Timbauba/*Bom Jesus da Mata* graveyard. Dead infants arrived steadily, most carried in their little blue and silver lightweight coffins by a procession of children, although some neonates arrived in cardboard shoeboxes balanced on the head of the midwife or friend of the family, Timbauba being a center of small-scale shoe factories. Sometimes baby coffins arrived tucked casually, like a Christmas gift, under the arm of its grieving father. So, I was not totally surprised to pass a small circle of sugar mill (*usina*) workers in their workaday attire, rubber boots, sackcloth pants held up with belts of rope. They must have come directly from the mill to bury a *companheiro*’s infant. The tiny coffin was just being gently put down into its shallow grave. I joined the group for a few “Hail Marys” and a “Glory Be” and then asked, as delicately as possible, whose child it was. “*Criança, nada*” – “What child?” one of the men replied. “It’s our *companheiro* Severino’s foot!” The foot had been mangled in the jaws of the sugar mill and amputated at the local hospital. Severino’s coworkers

were charged with making sure the foot was given a proper burial, so that it would be waiting for the rest of his body when his time came.

In his autobiography, *The Spirit of St. Louis*, Charles Lindbergh (1953) tells the story of his grandfather who stumbled against a spinning saw at the sawmill. The saw's teeth cut into his arm near the shoulder and ripped open his back. The gash was so deep that his coworkers could see their friend's heart beating. They bound up his wounds, laid him on top of straw in an oxcart and carried him home to the family. The nearest doctor in St. Cloud took three days to arrive. By then there was nothing for it but to amputate the arm and stitch together the hole in his grandfather's back. Lying on his bed in great pain, Lindbergh's grandfather asked to see his severed arm before it was buried in the garden. It was brought to him in a small, rough-hewn coffin. The man took its fingers into the palm of his good, right hand and said in halting, broken English: "You have been good and faithful friend to me for fifty years. But you can't be with me any longer. So good-bye, good-bye my friend" (p. 221-222).

Similar sentiments are expressed by the families of the victims of 9/11 that all body parts and fragments unearthed by construction workers at Ground Zero be carefully recovered and identified, as described by Chip Colwell-Chanthaphonh. Family members have staged protests while cranes and bulldozers turned up debris that might contain fragments of their loved ones. Fearing that human remains mixed in with the debris would be used to fill New York City potholes, family members of the victims called for an interruption of construction work at the "sacred site" until military forensic specialists were called in to comb the area for any human remains.<sup>2</sup>

One thinks also of the Israeli orthodox religious organization, Zaka, comprised of observant Jews who train as forensic volunteers and who are called upon to gather at the scenes of traffic accidents, terrorist attacks, and suicide bombs (Stadler, 2005). Dressed in distinctive bright yellow life-jackets and plastic gloves Zaka team members hover at the scenes of mass violence until ambulances and police leave and they are left to scour the streets and scrape the walls of buildings, trees, busses, and sidewalks retrieving the tiniest bits of flesh and blood which they put in plastic containers so that they can be buried in accordance with orthodox tradition along with the rest of the dead body. But before burial, all the fragments assem-

<sup>2</sup> "9/11 families want search for remains", *The Australian*, November 03, 2011.

bled, classified, and matched by the volunteers are required by law to be dispatched to the secular professionals at the National Forensic Institute at Abu Kabir, a neighborhood in Tel Aviv. Ironically, the Institute was involved in a very different obsession: the illicit harvesting and stockpiling of the organs and tissues of Israeli citizens, Palestinians, tourists, political activists and even the victims of terrorist attacks inside Israel (Scheper-Hughes 2010, Scheper-Hughes and Bostrom 2013).

### **The 4th Body**

Some years ago I wrote an essay on the “three bodies” – existential, social/representational, and the political body (Scheper-Hughes and Lock 1987). But is there another body, a 4th body, a body that goes without saying? A body unmediated by language or representation? If so it resonates with Wittgensteinian perception that all knowledge and all certainty begin with the “unquestionability” of the body. “If you know that here is one hand”, Wittgenstein began his last book, “we’ll grant you all the rest”. This generative perception on the “givenness” of the body as a natural tool or a natural symbol with which to “think” the world, came to Wittgenstein while he was working as a volunteer with patients hospitalized during the War. Wittgenstein’s essay is a reflection on the circumstances or the situations which might take away one’s unconscious certainty of the body and all that this implies. (“If here you know there is *no* hand... no leg... or eye... no kidney”?) The result is a profound sense of malaise, of loss, of grief, of existential insecurity in one’s body and in the world.

The history and distribution of body modification, scarification, tattooing, genital, plastic, and sexual reassignment surgeries might be seen as a deviation from what I am describing. But rather they are the most cogent expression of individual and/or cultural (and therefore diverse) internalized “anatomical schema” (de Preester and Knockaert, eds. 2005) conforming to the given body-image. There are pathological conditions – anorexias, “wannabe amputees” (Elliott 2003), self-cuttings, etc. based on distortions of body image and design. And to be sure traumatic injury can upset the body scheme to the extent that one can temporarily dis-identify with the damaged body part. Although Oliver Sacks (1998) miraculously saved himself by inching his way down a mountainside after severely damaging his leg in an encounter with a bull on a solitary stretch of Norway, in hospital he suddenly refused to accept the injured leg as belonging to him. The experience was transitory and his normal body-sense was restored, including the alienated limb.

Merleau-Ponty's (1962) description of the "phantom limb" stands as the most cogent description of the attachment of individuals to an existentially given and complete anatomical schemata in those who have suddenly experienced an amputation. The ghost limb – the limb that is gone – returns to haunt the body with its ethereal but deeply felt and intact presence. The phantom limb – arm, foot, leg or finger – retains the position of the original body part at the moment of the injury or trauma. The pain can be unbearable but even "anesthesia with cocaine does not do away with [it]" (p. 66). The clinical and psychological literature contains many cases of phantom limbs without amputation, resulting from a brain injury, and people who suffer the absence of limbs who were born without them. Phantom limbs appear in paraplegics and in those who have suffered a complete break in the spinal cord and who nonetheless insist that they experience feeling in their legs and lower body.

For Merleau-Ponty the body is not a mechanical object but a lived embodied subjectivity: "To have a phantom arm is to remain open to all the action of which the arm alone is capable; it is to retain the practical field which one enjoyed before mutilation... The body is one's vehicle in the world and having a body is, for a living creature, to be involved in a definitive environment, to identify oneself with certain projects, and to be continually committed to them" (p. 71). Thus, even when a limb is suddenly gone forever the person retains the memory and possibilities for its use even though they can never again be taken up as a project in the world. The phantom limb is a symbol of corporeal intactness and of the person's "total awareness of their posture in the inter-sensory world" (p. 86) akin to Bourdieu's "habitus".

Against this view, however, are equally gripping narratives of naturalized (born) or traumatized amputees who, like 28-year-old Diane deVries, initially described by Geyla Frank as "a woman born with all the physical equipment she would need to live comfortably in our society – except arms and legs (*Venus on Wheels*) and Albie Sachs (*Soft Vengeance of a Freedom Fighter*) who express an equally intuitive and passionate attachment to their truncated bodies, the missing limbs seen (in the first instance) not only as natural to the self but as a sign of freedom, beauty and agility (despite all) or (in the second instance) as a manifest symbol of one's political love and embodied commitment to the anti-apartheid struggle and the beloved community. In the case of Diane, Frank noted the frequent verbal references to her presumptive legs (made present even by mention of their absence) – as in friends teasing, "If you don't have a drink, I'll sit on your



legs”, and Diane’s own dream experiences and faith-based experience of the “restoration” of her legs, thus conforming to the notion of a given anatomical schema. According to Frank, Diane claimed that she taught her sister to dance because there was a Diane within her own body who was born, although legless and armless, already knowing how to dance.

### Phantom Kidneys

Buried in the thicket of annotated and translated field notes and interviews with kidney sellers in/from Brazil, Moldova, Israel, Syria, Egypt, Turkey, the Philippines and the United States I discovered a variation of the phantom limb, the *phantom kidney*. What distinguishes the phantom kidney is the sudden apparition and presence of what was, prior to the nephrectomy (kidney removal) an invisible, absent, even covert organ. I have argued (without success) that the “Phantom Kidney Syndrome” deserves a special notation in the latest revision of the DSM-IV. It belongs under the broader category of “Somatoform Disorders”, physical symptoms that are disabling and even occasionally life-threatening but that cannot be explained by organic/medical conditions. Thus, they are categorized as pathological mind-body-social (I would add, political and economic) relations.<sup>3</sup>

Prior to surgical removal, kidney sellers often dismiss the kidney of last resort as a thing of little value of worth, as a supernumerary, “stupid”, “dirty”, “little thing”<sup>4</sup> until the “redundant” kidney is excised and the “empty nest” or “empty pocket” suddenly becomes the locus and explanation for everything that has gone wrong in the lives of the vendor. The “phantom kidney” acts up. Some young men in rural Moldova described an absent kidney that wiggles or hops, itches or stings, contracts or expands. The phantom kidney is described as bloated and needing to urinate. The missing kidney inflicts pain, turns one’s eyes or skin yellow, and is attributed by some villagers as a cause of premature death. (“He sold the organ

<sup>3</sup> “Somatoform Disorders” are described in the Diagnostic and Statistic Manual, 4th edition (DSM-IV) as a group of physical symptoms that cannot be fully explained by a neurological or standardized medical (“organic”) condition. Schepers-Hughes and Lock (1987) have tried to destabilize the medical and psychosomatic interpretation of somatoform states of bodies that are mindful, and minds that are embodied in particular cultural and historical ways.

<sup>4</sup> This is a reference to the film, *Dirty Pretty Things*, which captures the spirit, sense, and sensibilities that surround kidney selling by undocumented workers in the immigrant underworlds of London – hotel kitchen and cleaning staff, doormen, taxi drivers, morgue workers.

that makes the urine flow”). The lonely remaining kidney also suffers. It is described by some kidney sellers as “old before its time”, “used up” or simply as “tired” as consequence of being forced to do the work of two, to work overtime.

Among agricultural workers in Moldova the allusion to overwork and overtime and to doing the work of others is a critique of a diseased individual within an ailing collective and collectivist body in villages where the *kholkhoz*, or model collectivist farm system, is still the local mode of production and highly valued. “I never knew how much the little thing (*coisinha*) meant to me, until he was gone”, a kidney seller, Paulo, from Recife, Brazil told me. “That damn kidney keeps me up at night. I can feel it drumming inside the empty pocket”. Niculae Bardan of Mingir, Moldova expressed his fear of imminent death, wiping a tear from his eye with dirt-encrusted fingers. “What if I die for the loss of my kidney?”, a fear complicated by the village agricultural cooperative’s critique that if so, he would have died “for naught”, for “nothing”, for a mere payment of \$2,700. A “stupid peasant” he took his “kidney” to the market and had it exchanged for a “basket of rotten apples”. “Stupid donkey” Dom Vasile upbraided his sick-to-death son, Validimir, who did, in fact, die of an infection following his illicit kidney removal surgery in Istanbul. “You came home weak and yellow like a wax candle. You have lost your strength. How will you work in our vineyards? Who will want to marry a half man such as you are?” “The kidney belongs to God”, chastised the local Eastern Orthodox prelate in Mingir, hinting at Divine retribution.

Monir Moniruzzaman described something similar among the 33 kidney sellers he interviewed in Bangladesh, an extreme form of what I have called “kidney seller’s regret”, focusing on the ruination of one’s body. Prior to the nephrectomy surgery Bangladeshi sellers surrendered their bodies to repeated clinical pre-screening of their blood, tissue and urine. On the day of the operation they were washed down like animals, shaved of their body hair, and trussed and bound to their surgical gurneys “like cows strapped down for the slaughter”. Dildar, a 32-year-old kidney seller, told Monir: “*When a fox catches a chicken, the little one cries. I was the chicken, and the buyer was the fox. In the dawn of the operation my tears were dropping so frenziedly that the shower could not even wash away those eye drops. I felt like a kurbanir goru, sacrificed cow purchased for slaughtering on the day of Eid, the biggest celebration in Bangladesh*” (*The Seller’s Odyssey*). The Bangladeshi sellers asked themselves the question that I heard from kidney sellers in several languages, Spanish, Portuguese, Romanian, Hebrew and English: “*What have I done to myself?*”

## The Kid and the Kidney – Strange Symmetries

*Kidleys, kiddies or kittys* – as kidneys are variously described by organ sellers who are not primarily English speakers but who use the English word or some variant of it to describe a global commodity that is sold for American dollars, for “greenbacks”, “paid in green”. Sellers who suddenly became aware of its existence describe their kidney as a kid-ly, looking something like an embryo or an aborted fetus. I think this analogy also occurs to those who support the right of an individual to “abort” and sell a spare kidney?

The symbolic association between kidneys and kids was foremost in the conversations I had with a woman I’ll call Ariel Dove, a Good Samaritan kidney donor from northern California, who freely gave her kidney to a stranger she met through a plea on the Internet, “I am begging you for the gift of life”. The recipient was described by two of the supplicant’s “friends”, who contacted Ariel, as a young man in his 30s, the father of two little children, healthy and hard-working, but suffering from irreversible kidney failure. “I imagined myself as an angel of mercy, rescuing an entire family”, Ariel said. Divorced, unemployed, a woman who took care of stray cats, Ariel said she had “failed” at everything – marriage, career, fertility, and fertility treatments (including IVF). The kidney donation represented a path to personal fulfillment. She imagined her kidney donation as a kind of virgin birth until she met the elderly man at the University of South Carolina transplant unit who would be receiving her gift of life. She had been duped, fallen into the hands of Internet organs brokers. The recipient was not the man she hoped would take home her kid/kidney. Trapped by the transplant team celebrating her as a heroine, Ariel went through with the procedure but a year later she had become a reclusive invalid, living at home in the country, nursing her cats and her missing kidney, certain that the pain and itching she felt at the site of her wound could only be healed by a return of the missing organ, which I assured her was quite impossible.

In the Organs Watch archives are many narratives of kidney harvesting and sharing as reproductive work, as men giving birth, which, in a way, it is, even when the kidney sharing was coerced or based on fraud and deception. I have never met a kidney seller who wished ill to the anonymous buyer, or the recognized and known buyer. They might wish ill to the “butcher of a surgeon” or to the “bastard” of a broker, but for the other person who now holds their kidney inside the strangers’ body there is concern for the buyer and for the kidney which still “belongs” to the seller.

“He has my kidney inside him. I hope to God that he lives well with it, takes care of it, eats well, and avoids alcohol. My kidney deserves all this and more. The little guy is a hero kidney and I want him to survive”.

### **Kidney Kin**

In the watery slum of Banong Lupa, Manila, a site of active kidney selling, I stumbled on a troubling phenomenon – family obligations and normal household pressures that gradually turned every adult body in the household into a living kidney bank. At first the obligation to sell a kidney to supplement low wages and to provide for the basic necessities for one’s family fell initially on male heads of households. Over time, kidney selling became routine and was generally perceived as a meritorious act of self-sacrifice, demonstrating the lengths to which a good husband and father would go to protect his family. On a second, follow-up fieldtrip to Manila in 2003 as part of a documentary film team, I observed many more scarred bodies among young men and boys, even underage teenagers, who had lied about their age to be accepted as paid kidney donors in both public and private hospitals in Manila.

Sixteen-year-old Faustino was recruited by his maternal uncle, Ray Arcela, a former kidney seller. “It’s your turn”, Ray told the boy reminding him that Faustino’s father and his two older brothers had already sold a kidney. The \$2000 earned per kidney never got these large families out of trouble. Similarly, Andreas was 17 when his mother begged him to sell a kidney so she could purchase the cases of beer, cokes and hard liquor she sold out of her shack. A good son, Andreas could not refuse his mother’s request. Kidney selling had become a rite of passage among adolescents, and the pronounced kidney scar across the torso of a teen in Banong Lupa was as common as a decorative tattoo. Just as tattoos signified membership in a youth subculture, the long saber-like scar across the young men’s torso symbolized machismo, courage and family loyalty, indicating the boy’s attempt to support his parents. Leonardo de Castro, a bio-ethicist at Manila’s Jesuit University, originally defended kidney selling in Manila’s slums as providing an opportunity for penance. He referred to Roman Catholic practices of self-flagellation during Holy Week, common among the poor in the Philippines:

Self-flagellation [is] a culturally prescribed way of making up for past mistakes by [showing that] one is willing to go to the extreme to manifest one’s sincerity. Organ donation (even with selling) fits this penitential mode of Catholicism. We should reserve the individual’s

freedom to make decisions regarding his body or parts, while recognizing that even radical acts of self-mortification are safely anchored in religious and cultural traditions.

In the kidney-villes in South Asia (as described by Lawrence Cohen) and in the Middle East (the Gulf States and Israel) that I have documented, the possibility of purchasing a kidney relieves family members of the obligation to give. The kidney patient no longer needs to ask a relative for an organ, but can arrange to pay a third party to locate a seller. It is also a great relief to the transplant patients who state, often quite bluntly, a preference for a paid donor so as to be a guilt-free recipient. Or Milech, an Israeli woman who traveled to Durban where she was transplanted with the kidney purchased from a Romanian peasant told me: "To ask someone from inside your own family, it's too difficult. It's like you owe him your life, so it's always a big problem, always hanging like a weight on you. If I would have to see my donor everyday, I would have to be thanking him all the time and that would be awful. I didn't want to see the face of the kidney seller, so that I would never have to think about him again. I paid for it. He accepted it. It's done, over. His kidney inside me belongs to me now, the same as if it were a cadaver kidney".

Another transplant tourist put it more bluntly: "It is better to buy from a stranger than to harm a family member". This is not always the case, however. Because "sharing organs" among the living is such an intimate exchange even when the organs are shared among strangers from far-flung places and for money, kidney buyers and sellers do make claims on each other. Kidney buyers (consumers) fear they may "reject" a kidney that was purchased from an angry or resentful seller who could, in turn, wish them ill after the transplant. They often seek to meet with the sellers, even briefly and in the hospital, after the transplant, to thank them for their precious gift. This, however, sets up the most common expectation for a return gift, even in the context of a frank sale.

### **What's a Kidney?**

"What is a kidney?" I asked Dov Rosen, a seller of wholesale electronic parts as he tinkered away in his cluttered little shop in a working-class mall in downtown Jerusalem in October (2003). Dov had recently returned from Romania (rural Transylvania, in fact) where, with the help of a local broker, he purchased a kidney from a "miserable wretch", of a peasant, a man from a family so low-down, so destroyed, Dov said, that the seller's wife had sold one of her kidneys and his brother had sold two of his six

children, two little girls, to an international adoption ring. “People like these will stop at nothing”, Rosen said sadly, shaking his head. Forced by circumstances – too old for a deceased donor organ and too poor to go through established organ broker firms in Israel – Dov had to be his own advocate, his own “international transplant co-coordinator”. *“I had a do-it yourself transplant. I was stranded on a waiting list for 5 years. This is absurd. Here we are living in a country where almost every day a bomb explodes, cars crash, people drop dead on the street, but nobody wants to give up an organ. People care more about the dead than the living”*.

Dov arranged a trip to rural Romania, the country he had left behind as a 17-year-old, and where he still had family connections. There he found a kidney seller, a 36-year-old ethnic minority and a transplant in a rural clinic in Oradia, a hospital so “primitive”, he said, that he feared he was playing a game of Russian roulette: *“The same nurse who assisted at my surgery was cleaning up my hospital room!”*

The following dialogue, part playful, part dead serious, ensued:

So, *What’s a kidney?*

*What kind of question is that?*

*Well some people say that you can’t put a price tag on a living person’s organ. Some people feel that the body is special, sacred. A rabbi told me about prayers that are recited for every part of the body, every organ and every orifice. There is even a prayer, he said, to give thanks for peeing. It’s one he recites first thing every morning.*

*Well, I am not a religious person. What’s a kidney? What’s a chicken? Why can people kill and eat a chicken? Isn’t a chicken also a life? Nobody cares. They just kill it, make it kosher, and we eat it. Taking a kidney from somebody doesn’t finish that person’s life. It may even make his life better, for all we know.*

*Your donor could be dead by now and how would you know?*

*Why are you asking me if you aren’t judging me? I can live pretty well with just one kidney, so why can’t he, also, the one who sold it to me? We’re even. Half and half. It was his choice, his consideration. I’m a shopkeeper, not a philosopher. When I was younger, I sold cars, Fiats. Good cars, some new, some used. I made a lot of money in those days. It was like this: I want to sell, he wants to buy. We talk it over.*

*We make a deal. Now I want to buy. And he wants to sell. We talk it over, he says more, I say less and in the end we agree. So, what's the big deal?*

*So, a kidney is like anything you can buy and sell off a shelf or a used car lot. You can just buy some guy's kidney right from under him?"*

Look, Nancy, the strong are always going to eat the weak. It's the way of things. Besides, the people we are talking about [the sellers] are from the lowest rungs of society. They are the under class, primitive people: drifters, wife-beaters, thieves, drunks, debtors, Gypsies, baby-sellers. I'm not going to worry about their dignity. I only hope my seller stays away from the bars and the drinking he's used to because alcohol can wash away his second kidney. He now has to act responsibly.

So, the kidney is nothing?

I never said that. For me, a kidney is life. And a man – if he's worthy of the name – will do anything to save his own life. The kidney that I bought, it's given me wings. Today I can come and go as I please. I want to come to my shop at 10 am and leave at 4 pm, I can do it. I want to take a drive to the beach in Tel Aviv with my wife, I can do it. I want to go to Jerusalem and see my grandchild, I can do it. My new kidney is like a bird, it's like freedom itself.

For buyers the purchase of a kidney removes the recipient from the demands of the gift economy – it is a choice, as Dov's puts it, for a kind of total uninhibited freedom. For the kidney sellers, however, the kidney remains a gift and a debt. "How can you sell what doesn't belong to you? The body belongs to God", a Moldovan kidney seller told me. Kidney sellers tend to feel that they are related to the recipient after the fact and as "kidney kin" they have the right to ask help, often phrased as "a life for a life", a "*rim por rim*" – "a kidney for a kidney" as Alberty da Silva, a 38-year-old night watchman from Recife, Brazil, put it. Alberty asked my help in locating Luanne Higgs, the middle-aged woman from Brooklyn, New York who had purchased Alberty's kidney in a transplant transfer that brought both of them across the Atlantic to Durban, South Africa where the kidney removal and transplant took place at a private, formerly Catholic hospital: St. Augustine's.

When I met Alberty in the mud hut he shared with several other unemployed relatives and children, he defended his honor saying that al-

though he was given a little something (\$3,000 for his kidney), it was still a priceless “gift”. “Isn’t a human life worth much more than a few thousand dollars?” he asked. Luanne, in turn, sent Alberty a Christmas card explaining that she was herself a poor sick woman and unable to repay him for his precious gift of life:

*Dear Alberty: How are you feeling? I hope and pray that all is well with you and your family. My husband and myself are doing well and putting our faith in God to keep us well. I hope you haven’t forgotten me, because I’ll never forget you for giving me my life back. I was close to death and you gave me your kidney. I wish I could send you a little gift for Christmas but I am not sure this is even your correct address... God Bless you, Luanne...*

Luanne wrote the card in English which I translated for Alberty, then living in a mud hut behind his aunt’s house in Recife. Alberty dictated the following response which I hand delivered to Luanne and her husband in Brooklyn, New York:

*Dear Luanne, I hope that you are happy and safe among your family. I am here rooting for your happiness. I am well and my life is normal despite the disruptions caused by this donation of my kidney. I am trying to get out of my present difficulties as best as I can. My greatest happiness is to know that you are well. I hope that one day we will see each other again now that we are one. I miss you and when I see you again we will share a meal together. I will never forget the short time we spent together. If I had it to do all over again I would do it. I believe that by the grace of God I will be reunited with you. We will blow out the torch of the Statue of Liberty together. We will walk hand in hand through the forest of Central Park like two children without a care in the world. May God be with you and may you have health and peace for you and your husband.*

Please write back to me at this address:

Alberty Jose da Silva  
Rua da Cacamba, 42  
Areias, Recife  
Pernambuco, Brazil  
CEP 50781-370

Although he never did hear back from Luanne, Alberty was philosophical. “That woman was very sick”, he confided. Kidney providers never, in



my experience, never wish ill to the recipient, even a recipient they do not know, when the transaction was of the cloak and dagger sort. Instead, as in the case of Alberty (above) they shrug it off and wish them health and happiness. I puzzled over this for a while until it was confirmed by another trafficked kidney seller, Niculae from a devastated village in Moldova. I asked him why, given all his disappointment and suffering following the sale of his kidney he still spoke well of the recipient of his body part. Niculae replied: "My kidney saved his life. Now I want both him AND my kidney to have a long life!"

The death of one's dearly disposed kidney is, in a sense, a death of ones self.

## Scars

Almost twenty years into the organs watch project there are no easy answers to the basic questions: How do kidney sellers, trafficked or self-trafficked, view their position in illicit transplants? As victims? As survivors? As heroes? In the economically demolished villages, slums, and shantytowns of the "third world" that provide the more affluent world with surplus kidneys, the meanings of buying and selling an organ are, of course, always context specific. A kidney is never just a kidney. And, the large, disfiguring saber-like scar running across the torsos of kidney sellers worldwide – some who line up for a photo ops or for those who refuse to display it – can be a sign of weakness or strength, of shiftlessness or hard work, greed or generosity. It can signify a prodigal son or a good daughter, a bad woman or the dutiful wife, or a foolish, dumb, exploited, worthless, or adventuresome and enterprising person. The sellers of Mingir, Moldova still suffer the consequences of their bio-availability: they are stigmatized and shamed, excluded from marriage, and prone to a psychological and medical disorders.

The Brazilian *meninos* who were recruited by the international organs trafficking syndicate defended themselves before Judge Amanda in the federal court of Recife in 2004, saying that if they had been trafficked, they had "chosen" to "traffic themselves". The "boys from Brazil" were macho, and did not want to be treated as if they were trafficked sex workers who were mostly women. They wanted to be seen as strong, competent, and adventuresome, which they were. As for whether he had been "fooled", deceived, or exploited, Joao Cavalcanti, like his circle of his kidney selling neighbors in the slum known as *Jardim Sao Paulo* defended himself as a free agent and as a *dono de seu corpo*, the owner of his body before the courts and before the Brazilian CPI (Congressional Hearings) that investigated

the trafficking scheme. They admitted that they were recruited, that they had been deceived about the legality of what they were doing, that they had been misinformed about the medical demands and possible risks of the surgery they would undergo, transported with visas and plane tickets purchased by brokers, told to keep silent and to sign any papers they were given at the hospital, and that they had been held virtual prisoners in a safe house in Durban, their passports confiscated by the local brokers. All that was true they said, but they refused the label. The judge tried to sway them saying that if they were trafficked by brokers and deceived, they would not be *culpable*, they would not have to go to prison. But the men persisted in their self-evaluation.

“Yes, your honor”, I answered a question put to me by Dr. Raimundo Pimentel, the state *deputado* (senator) of Parliamentary Commission. “Yes, the men from Jardim de Sao Paulo were classic victims of human trafficking”. Pedro begged to disagree: “No way! No matter what that woman, *Dona Nanci*, has to say, it was me, my choice. I, Pedro Gervasio, I trafficked myself! To me trafficking means that somebody with a mask kidnaps you, puts a hood over your head, and stuffs you in the back of a car, and takes you to a secret place where you are cut up and have your kidney or liver taken without your consent. Nobody put a knife to my throat, nobody forced me to get on that plane. I did it freely and I would do it again even if I had to spend the rest of my life in jail, because now I can rest easy knowing that with my kidney I was able to buy this little house so that my wife and children can have some security. I will die satisfied, no matter what happens to me now. I had an opportunity offered to me and I took it”.

A few years later I returned to Recife to check in on the *meninos*: Gernemias, Pedro, Paulo, Alberty, Joao, Gerson, Hernani and a dozen other of the kidney sellers who had gotten caught up in the same trans-Atlantic human trafficking scheme and who were now trying to sort out some of the consequences. They blamed their financial troubles on the police sting, Operation Scalpel (*Bisturi*). They talked about organizing an NGO, a non-governmental organization, an Association of Disillusioned (or Disenchanted) Organ Donors – *Associação de Doadores Disilusionados* (or *Disencantados*). The name was in debate. At their first meeting, the disenchanted sellers aired their complaints: loss of work, loss of income, loss of strength, and worst of all, a loss of honor, of social standing. They reported chronic pain, weakness, anxiety, depression, family discord, and personal rejection, as well as medical problems, attributed (by them) to their missing kidney.

They returned from their “kidney safari” weaker, but wiser. They had

learned a few things about the world. They found South Africa Black people to be different than Afro- Brazilians like most of themselves. The Blacks in South Africa were bigger and stronger because they were closer to their roots. “They had never been slaves”, said Alberty Alfonso, which opened up a conversation on how they had been manipulated almost like slaves, debt slaves. “None of us were told how hard it would go for us”, Cicero said. Paulo agreed: “The pain was so bad that for three days in the hospital I was praying to be the next one to die”. Geremias said that they were treated OK until the doctors got what they wanted and then they were thrown out like *lixo*, garbage and put back on a plane, with their cash stuffed under their bandages, and warned by Roddy the Durban broker not to show they were in pain because the customs/immigration people might be suspicious.

The displaced agricultural workers of Moldova who were trafficked to Turkey and Russia to sell a kidney understand their bodies differently than the “boys” from Brazil. Some had come of age under the old Soviet state and they put their agricultural cooperatives and their coworkers above their own individual desires and saw their body as belonging to the village collective. The body was not theirs to mutilate or to weaken, for it would harm the whole body of the village. Older villagers used that argument to punish them when they returned after selling a kidney, a social-economic system that many of them still mourn to this day. The young men avoided public places, they visited with each other in their home or in their small, dark wine cellars. They felt that they could not go to Church. They hid their story from the confessional just as they hid it from their friends for as long as they could. In fact, they knew that everyone in the village knew who had sold a kidney, and it was seen as disgraceful, a moral failing, and a mortal sin. During a Sunday Mass in Mingir the local Russian orthodox priest, Andreas, gave a homily about the sacredness of the body and the importance of keeping one’s body clean inside and out. He scolded his parishioners (mostly old women, grandmothers likely).

*Health is the goodness that God has given us. Certain of our brothers have sold their body and committed a very serious sin. By selling their body, they are also selling their soul, because by this action they are ignoring God’s existence and they have turned toward evil. Many of our young men in this village have sold a kidney. Do they ever think about the future and the suffering they will have to face? They hoped to get rich, but now they are poorer because they have lost their good health. By losing their health they*

*have also lost their redemption because they think they can no longer pray. I do not judge or condemn them because they were trying to provide for their families and for their children. But what will their children think when they will have to take care of a sick parent who is still young? The people who buy kidneys are motivated to hurt Christianity and Christians [a reference to the surgeons who were Turkish Moslems]. I pray for those who have committed this sin in ignorance and error. May God protect you! May God protect us all and give us force to fight against this evil. May God protect our children so that no others will fall into the same trap? In the name of the Father, the Son, and the Holy Ghost. Amen”.*

After the Mass I spoke with Father Antoine [not his real name]. He told me that he understood that the men wanted to find work abroad and that some did not even know what work they would be doing. When I asked who owned the body, Father Antoine replied that the body belonged to God, to God alone. He wishes that the men would come to Church and be forgiven, but they did not come. They hid themselves. He feared that some might commit suicide, because they are unused to the isolation in which they were now forced to live.

The trafficked Brazilian men were raised as Roman Catholic, some of whom converted to Protestant Evangelicalism. But whether identified as Catholic or Evangelical Christians, religious teaching stopped at the body. As they saw it their body was theirs to do with and to dispose of as they saw fit. Pedro and Paulo and Joao used a familiar Brazilian idiom in stating their subject/object relationship to their body as: “I am the owner, the master of my body!” Nonetheless, Paulo chided himself long after the nephrectomy for selling his kidney. He did not know how attached he was to the “little thing” (*coisinha*) until it was gone and began to announce its absence as a constant itching at the site of his wound, even three years later. “I’ve learned one thing”, he said. “Even though I have two of them, I will never sell one of my hands”.

Alberty lost his job in the open-air market of Jardim SP and he took an inferior job as a night watchman. The job in the market required too much heavy lifting, and he could not do that any longer. The night watchman job gave him lots of time to think and to worry. “My health has declined”, he told me. “What if those doctors in Durban took more than just my kidney?” This was a common fear among kidney sellers in all the sites I visited. Alberty badgered me so much that we went together to a local public hospital and waited on lines all day so that Alberty could have an X-ray

to determine if the “rest of him” inside was in tact. The X-Ray technician told him that everything looked OK to him but he had to come back the following week to get the doctor’s diagnosis. Alberty was relieved for a few days until we returned to the clinic for the results and found after several hours of waiting that his medical file had gone missing. On the way back to his shack in Jardim de Sao Paulo Alberty raised a new concern: whether his orphaned kidney, now that it had to do the work of two kidneys, could affect his sexual potency or his fertility. I reminded Alberty that he had two “wives” and several children who needed all of his support. “And isn’t that why I sold my kidney?” “Alberty, you told me that you sold the kidney to pay off a car debt”. “Well, that’s also true, but the mothers of my children got to me first, and I had nothing left except enough to buy a used bicycle”.

The question of what kidney sellers hoped to get out selling a kidney and what they ended up with is a topic I have engaged with kidney sellers from the Philippines, Brazil, Turkey, Israel, Palestine, Egypt, Moldova, and the United States. Kidney sellers hope to (in order of frequency) clear a debt, buy or fix up a house, move to a safer community, to be able to marry, to have food and clothing and toys for the children, etc. What did they end up with: a car, a karaoke machine, a cell phone, running shoes, a pig feast, an electric fan, a fridge, gold-looking chains of jewelry, clothing, a casket for a dead child, among the photos in my file marked: *Kidney Loot*. A few of the lucky ones did manage to get out of their slum, did manage to get medical care for a sick child, did manage to convince a young woman to marry them.

Elsewhere, I have described in greater depth the particular and often peculiar symptoms that kidney sellers attribute to their missing kidney: weakness, depression, sense of emptiness, evacuation, of regret, desire for revenge, self-hatred, sense of emasculation, of stigma, of stupidity, of disloyalty, loss of honor. These symptoms could be dismissed as “merely” psychosomatic events, the result of a real trauma that the body remembers but that the person cannot share with his family or neighbors. Other post-traumatic kidney removal consequences are tragic and mortal, including the many unexplained and undiagnosed premature deaths of kidney sellers. There were 5 deaths among the 40 kidney sellers from several villages and the capital city of Moldova: 1 suicide, 1 death from kidney failure, 1 homicide by local vigilantes for having shamed the community, and 2 who died without any diagnosis. All were young and were rural workers. These are not deaths that would ever be reported in medical journals or statistical studies, but I can assure you that in the narratives told by the dying person

himself, or by his relatives or doctors or by a village prelate, the deaths were the result of kidney selling. Among the others who are still alive are many who fear death, who have been diagnosed with hypertension or other diseases that can affect their one kidney. Some are alcoholics, some have lost their families, but few have ended up as criminals, except for one Moldovan kidney seller who was beaten up for being a chicken thief.

In going over the police charts of the Brazilian men who were identified by the South African police not one of the kidney sellers had a background police record in Brazil, amazing given the drug-ridden and violent slums they came from. Captain Louis Helberg said, “I’ve been a police detective all my working life, and I was never involved in a case like this in which the men who were trafficked by the two brokers, Captain Ivan and Captain Gaddy Tauber, were just ordinary poor people. A few of the sellers were rejected by the Netcare clinic because they tested positive for HIV or had traces of drugs in their blood. But none were criminals. Five of the 38 were minors under 18 years old. The indictment sheet noted 5 counts of trafficking in children. One of the 38 sellers had only one functioning kidney and it was removed and transplanted into the body of a paying transplant tourist. The Durban police charge sheet included one culpable homicide by the South African surgeon who removed the seller’s kidney of last resort”.

Kidney trafficking casts light on the dark underbelly of neo-liberal globalization, on the rapacious demands it creates and the predatory claims it makes on the bodies of the “bio-disposable”,<sup>5</sup> but also the dreams it engenders about a better life and a mobile existence, mobility being the root metaphor of organized kidney selling through transplant tourism. For patients it signifies a release from the corporal entombment of dialysis machines. For kidney sellers it signifies a release of the red balloons<sup>6</sup> from the slum, the favela, the shantytown and a chance to see the world, or at least, a chance to visit the shopping mall with a wad of dough in one’s pocket.

I finally got out to the distant rural suburb of Janga in July 2006 to visit Geremias’ new home and to meet his family. While the house was not

<sup>5</sup> I wondered whether the term “bio-disposal” had any salience outside medical anthropological circles. A Google search came up with these top three references: “Bio-disposable bag-type liner for bedpans and the like”; “bio-disposable Chinese tableware”; and “bio-disposable plastic cups”.

<sup>6</sup> This is a reference to the 34-minute short fantasy film, *The Red Balloon (Le Ballon rouge)* (1956) directed by French filmmaker Albert Lamorisse.

nearly so fine as the mansion imagined by the fellows he had left behind in the slums near Boa Viagem airport and was just a concrete slab with four barn like rooms with unfinished cement floors and a muddy backyard, Geremias was still proud of it and he smiled broadly as he ushered me inside the gate and quieted the skinny puppy yapping at my heels. Geremias pulled himself up to his full 5'4" height as he motioned for me to sit down on a hard kitchen chair: "*Bem-vinda!*" he said. "*Welcome inside my kidney*".

What about your scar, Geremias, I dared to ask, as the young man had fussed so about the wound saying that his wife found his body less attractive because of it. "I have the solution", he said. "I'm going to have a tattoo artist weave a beautiful Amazonian snake all around it so that this, [pointing to one end] will be the head, and this [pointing to the other end] will be the tail. It will be an expensive tattoo, in multi-color, but it will be worth it, *nao eh?* After all, *Eu sou meu corpo!*

### **Modes of Bodily Commitment**

People "commit" their bodies in a myriad of ways – in wage labor, in sex (including prostitution and rape), in childbirth, in military conscription, and in extreme sports, body-building exercise and in religious discipleship. We submit our bodies to clinical exams – (blood and urine tests) – we circumcise our male infants, and we surrender our bodies to all kinds of surgeries that sometimes require the removal of tissues, organs, and other body parts.

In death our bodies are "committed" to autopsy, dissection, tissue and organ removal, burial and (even) exhumation. So, living donor transplant needs to be seen as part of a larger spectrum of what Lawrence Cohen calls bodily "modes of commitment". However, the kidney trade pushes the envelope of medical ethics, social justice, fairness, and human decency toward vulnerable people – buyers and sellers – who are desperate and will do whatever is necessary – even break the law – to solve their problems in living under extreme duress.

For most bioethicists the "slippery slope" in transplant began with the emergence of unregulated black market in organs and tissue sales. For critical medical anthropologists like ourselves the slide down the proverbial "slippery slope" begins the first time one ailing person gazes longingly at another, realizing that inside that other body is organic medical material capable of prolonging their own life. In the post-human era, ancient prescriptions for grace in the face of suffering and equanimity in the art of dying can only appear absurd. But the transformation of a person into

a “life” that must be prolonged, enhanced, or saved at any cost – even by borrowing time and strength from the bodies of the destitute, the indebted, or from the bodies of one’s own children and grandchildren – renders “life itself” into a fetishized commodity.

An absolute value placed on a single human life saved, perfected, or prolonged at any cost, erases any possibility of a social ethic, and brings us into that impossible ethical and moral gray zone that Primo Levi described.

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# TRAFFICKING OF HUMAN ORGANS IN INDIA

FR. MATHEW ABRAHAM, C.Ss.R.

## Introduction

India is a land of diversity and richness; but also a land of contradictions. India has some of the richest people and the poorest. In India we have scientific, software, engineering brains and on the other hand illiteracy abounds. Today, India is a steadily growing hub of medical tourism and yet a vast majority of Indians have limited access to essential healthcare. In spite of all the financial and technological advances, even today children die of diarrhea and pneumonia in some parts of my country; young adults die of malaria and tuberculosis; and young mothers face childbirth in fear of death. My country, India, is a land of diversity, richness and contradictions.

The Indian tradition has several pathways to salvation, the *Njanamarga* (way of knowledge), the *Karmamarga* (way of action) and the *Bhakthimarga* (way of devotion). I do not belong much to the *Njanamarga*, since I am neither an academician nor a trained researcher. I am more of an activist priest, more into *karmamarga*, with a little bit of *Bhakthi*, devotion, which keeps me connected with God. I am not an expert in human trafficking or organ trafficking. My area of interest is to promote 'Humanized, Affordable, Rational Care' (what I call as 'HARC'), especially through the Catholic Healthcare Network in some parts of my country. Therefore, in preparing this paper, I have depended heavily on others who have worked in this field, especially the Berkeley experts. I stand here with much gratitude to Prof. Nancy Scheper-Hughes, who provided me with a lot of the materials for this paper.

## Organ Trafficking in India

### *Organ Traffickers in India*

Dr Lawrence Cohen has done extensive studies<sup>1</sup> in India regarding organ trafficking. He has interviewed kidney donors, transplantation doctors, and government officials from different parts of India. His study was mostly centered on the four major cities of India – Chennai, Bangalore, Delhi and Mumbai – where transplantation surgeries were happening. According to

<sup>1</sup> Where It Hurts: Indian Material for an Ethics of Organ Transplantation, Lawrence Cohen, *Daedalus*, Vol. 128, No. 4, *Bioethics and Beyond* (Fall, 1999), pp. 149-151.

Dr Cohen, there appears to be a nexus between Medicine, Politics, Industry and the Kidney scandals. However, most of this cannot be substantiated. Some of the leading transplant surgeons whom Dr Cohen met consider organ selling as a win-win situation in the particular context of India. Even though there are indications that some of the Doctors and the members of the Authorization Committees could very well be aware of organ selling, it is very difficult to generate evidence regarding their involvement. Dr Cohen's interviews also brought out indications that the political allies of patients and physicians pressurize Committees to grant approvals. Doctors also accused each other, suggesting that some of them could be involved in procuring organs.

### *The Victims of Organ Trafficking in India*

According to Dr Cohen, there is not much data regarding the long-term effects on the kidney sellers and their families. Many of the surgeons of the abovementioned cities confirmed that it was difficult to get such data since it was almost impossible to trace the kidney sellers after the procedure is over. However, the reality is that fact-finding teams and journalists have succeeded in locating kidney sellers. Kidney sellers in India come from urban slums as well as from drought-prone farming districts near the cities where transplant surgeries take place.<sup>2</sup> Dr Cohen's interviews with social workers, journalists and 30 kidney sellers in Ayanavaram, one of the slums in Chennai, led him to the following observations:

- In the urban slums, kidney sellers are largely women.
- People sell their kidneys in order to get out of debt, but eventually fall back into the debt cycle.
- Most of the money they receive by selling kidneys goes into paying off their debts.
- The rest of the money is used for marriage, medical costs, legal fees and education of their children.
- In many cases, the husbands finish off the money by drinking.
- Almost all of them had no bank accounts and approached local money-lenders when they were in need.

“Kidney zones emerge through interactions between surgical entrepreneurs, persons facing extraordinary debt, and medical brokers. As a region

<sup>2</sup> Ibid, pp. 149-151.

becomes known to brokers as a kidney zone, their search for new sellers intensifies”. Thus the decision to sell a kidney is not just because of a natural state of poverty, but also linked to a debt crisis as well as the availability of a kidney market.<sup>3</sup>

### *The Beneficiaries of Organ Trafficking in India*

According to Dr Cohen,<sup>4</sup> in the 1980s information was available to international networks of nephrologists that viable kidney transplantation was available in India, using kidneys from unrelated local sellers. The kidney buyers came from Europe, the Middle East, Japan, North America, South-east Asia, and Australasia in order to benefit from the ‘kidney bazaar’ (market) in India. Interviews with Nephrologists and Surgeons from Chennai and Bangalore revealed 4 trans-national circuits of business collaboration and patient referral, linking India to the UK, North America, Russia and the Indian Ocean circuit (Middle East Asia, South East Asia and North Africa), in the early 1990s. According to a UAE surgeon, ‘Bombay kidneys’ were cheaper and less safe than ‘Madras kidneys’. After 1994, the strict implementation of the Transplantation of Human Organs Act (THOA), made it difficult for foreign recipients. This resulted in another phenomenon where Non Resident Indians (NRIs) would become kidney buyers from the Indian Kidney market – called appropriately the “biologization of diasporic return”. These new buyers are NRIs and their aging parents, who had migrated to the western countries in the 1960s-80s. Many of them are facing higher rates of organ failure than the general population, due to lifestyle diseases. The involvement of a five-star hospital chain in India has been highlighted in this ‘transplant tourism’. This chain of hospitals emerged from the market liberalization of the 1980s in India, and has branches or franchises in several Indian cities and abroad.

Interactions of experts with kidney recipients from India revealed that not only the sellers but also the buyers are at risk. Having spent a large amount of money on buying a kidney and the transplant procedure, many of them are not able to sustain the long-term immunosuppressant therapy which is necessary to prevent rejection of the transplant by the recipients’ body. Often they underestimate the long-term costs and their monthly in-

<sup>3</sup> Ibid, pp. 151-153.

<sup>4</sup> Migrant Supplimentarity: Remaking Biological Relatedness in Chinese Military and Indian Five-Star Hospitals, Lawrence Cohen, *Body & Society*, Vol. 17 No. 2&3, 2011, pp. 42-49.

come cannot sustain these unanticipated expenses, which results in kidney failure. In addition to this, there is also the problem of the younger generation of Nephrologists going ahead with transplantation surgeries without doing sufficient tissue factor matches. This again results in the need to take immunosuppressant therapy for longer periods. It is also observed that in the long run, more than the kidney buyer (in addition to the brokers, the doctors and the transplant centers), the drug companies benefit substantially from the whole process.<sup>5</sup>

### *Financial Aspect of Organ Trafficking*

A study<sup>6</sup> was conducted on 305 kidney sellers from Chennai in 2002, of which 71% were females and the average age was 35 years. In the case of 47 participants, both spouses had sold their kidneys. Middlemen were involved in the selling of kidneys in 70% of the cases. 96% of them sold their kidney to pay off debts that came from food, household expenses, rent, medical expenses and marriage expenses. The amount promised for selling a kidney averaged 1,410 USD (range: 450–6,280 USD), while the amount actually received averaged 1,070 USD (range: 450–2,660 USD). Of the 292 participants who sold a kidney to pay off debts, 216 (74%) still had debts at the time of the survey. “We found widespread evidence of the sale of kidneys by poor people in India despite a legal ban on such sales. In a 1-month period, we were easily able to identify and interview more than 300 individuals who had sold a kidney. Selling a kidney did not lead to a long-term economic benefit for the seller and was associated with a decline in health status”.

Farhat Moazam and others did a study<sup>7</sup> in Pakistan on 32 kidney sellers (vendors). Thirty of them sold their kidney to pay off debts to their *Zamin-dars* (landowners). Results were:

- Average debt of the vendor before selling the kidney was Rs 130,000 (2,364 USD).
  - Range: Rs 45,000 (818 USD) to Rs 200,000 (3,636 USD).

<sup>5</sup>Ibid, pp. 155–156.

<sup>6</sup> Economic and Health Consequences of Selling a Kidney in India, Madhav Goyal, Ravindra L. Mehta, Lawrence J. Schneiderman, Ashwini R. Sehgal, (Reprinted) *JAMA*, October 2, 2002 – Vol 288, No. 13, pp. 1590–92.

<sup>7</sup> Conversations with Kidney Vendors in Pakistan: An Ethnographic Study, Farhat Moazam, Riffat Moazam Zaman, and Aamir M. Jafarey, *Hastings Center Report*, May–June 2009, p. 33.

- Average money promised for the kidney was Rs 160,000 (2,909 USD).
  - Range: Rs 80,000 (1,455 USD) to 175,000 (3,182 USD).
- Average money received after selling kidney was Rs 103,000 (1,873 USD).
  - Range: Rs 70,000 (1,273 USD) to 155,000 (2,818 USD).
- Average money paid to middlemen ranged from Rs 8,000 (145 USD) to 20,000 (364 USD).

### *What Happens to the Victims?*

According to Moazam, all the 32 kidney vendors studied complained of pain, spasms and pricking related to their well-healed surgical scar. Many of them complained of tiredness, weakness, dizziness, inability to work and so on. They also complained of something called ‘half man syndrome’, a feeling of incompleteness, emptiness in abdomen and lack of sexual potency, with fear and anxiety about the remaining kidney. Fifty percent of them showed a high level of anxiety, hopelessness, insomnia, crying spells, loss of appetite and loss of peace. Some of them had feelings of regret, shame and resentment towards the hospital, doctors and the kidney recipient. Of the 32 only 3 of them returned to the hospital for follow up.<sup>8</sup> Interviews with the wives of the male vendors also confirmed the abovementioned vague symptoms of their husbands. The team also observed a phenomenon called ‘vicarious kidney anxiety’ among the healthy *zamindars*. The psychosomatic symptoms of the vendors seemed to have seeped into their employers. The community at large, who were not vendors, also seemed to be upset and angry about this whole phenomenon of organ trade.<sup>9</sup>

### *The Impact of the Transplantation of Human Organs Act (THOA) in India*

According to Cohen,<sup>10</sup> scandals of trickery and unfair payment to kidney sellers tarnished the reputation of many of the five-star hospitals in India and resulted in the passing of the Transplantation of Human Organs Act (THOA) in 1994. The enforcement structure of THOA was through the ‘Authorization Committees’ that determined whether the potential

<sup>8</sup> Ibid, pp. 32-35.

<sup>9</sup> Ibid, pp. 39-41.

<sup>10</sup> Migrant Supplimentarity: Remaking Biological Relatedness in Chinese Military and Indian Five-Star Hospitals, Lawrence Cohen, *Body & Society*, Vol. 17 No. 2&3, 2011, pp. 42-49.

donor was a parent, child, sibling, spouse, or had proven ties of love to the recipient. “Most committee members were senior physicians and health bureaucrats, many of whom privately expressed to me the conviction that poor sellers should be allowed to supplement the bodies of persons with life-threatening renal failure as it was a win-win situation. Committees went through cycles of laxity and strictness: each new scandal leading to months of careful refusals of likely sellers faking the bureaucratic equivalent of love, followed by relaxation of the ban until the next scandal”. Moreover, family members, clinicians and brokers found ways of getting kidney sellers who could convince the committee their love for the recipients.

THOA (1994) has drastically reduced organ trade in India. However, the Coalition for Organ-Failure Solutions India (COFS) has identified 1,500 victims of organ trafficking in Chennai and Erode in Tamil Nadu and considers this number as just the tip of an iceberg considering the thriving kidney market in Chennai, Kolkata and Bangalore. None of the victims had information about the risks associated with the procedure, did not receive the full amount that was promised and did not want to lose their kidney. Among the buyers, some of them were foreigners.<sup>11</sup>

### *Renal Failure and Accessibility to Treatment in India*

DrVijay Kher, a senior Nephrologist from India, in his paper<sup>12</sup> discusses the problem of accessibility to treatment for the vast majority of the poor people suffering from End-Stage Renal Disease (ESRD) in the country. While the rich focus on long-term survival and quality of life, the poor are worried about short-term survival and access to treatment. While accurate data is unavailable, the estimated incidence of ESRD in India is 100 per million people. With over 1,000 million people in the country, approximately 1 million people develop ESRD every year, of which only 10% reach a nephrologist. After being on dialysis for about 2-3 months, only 17-23% of them undergo transplantation. The rest of the patients undergo hemodialysis, most of them accepting charity, selling property, jewelry

<sup>11</sup> Briefing before the Tom Lantos Human Rights Commission, United States Congress, Human trafficking for an organ removal (HTOR): A call for prevention, protection, investigations and accountability, Debra Budiani-Saberi, *Coalition for Organ-Failure Solutions*, January 23, 2012, p. 9.

<sup>12</sup> End-stage renal disease in developing countries, Nephrology Forum, Vijay Kher, *Kidney International*, Vol. 62 (2002), pp. 350-362.

or by taking loans. The majority of the people in India live in rural areas where there are no nephrologists, dialysis units or transplant centers.

India has about 100 renal transplant centers, of which 75% are with the private sector which has prohibitive costs. Every year about 2,500–3,000 renal transplants are done in India, of which only 100 are of cadaveric origin. About 50–60% of the kidneys for transplant come from unrelated living donors. The cost of the procedure varies from 1,500 USD in Government Hospitals to 7,000 USD in Private Hospitals and the cost for immunosuppressants is about 3,000 USD per year, usually required for 2 years. According to Dr Kher:

- Diabetes and hypertension are the major risk factors of renal failure. Early detection and treatment of both can reduce the incidence of renal failure and is more cost effective.
- Currently in India, deceased organ donation is only 10%.
  - Healthcare workers as well as the general public need to be educated on this.
  - Media, religious leaders and educational institutions need to be involved.
  - The Indian Society of Nephrology can be a significant partner in this process.
- Regarding legalizing organ sales in India, Dr Kher highlights the following problems:
  - The law-implementing institutions are not yet strong enough.
  - Laws are in a state of flux.
  - The number of patients grossly outnumber the number of transplants.
  - Distribution of wealth is skewed with massive wealth and massive poverty.
  - Petty and major corruption exists at all levels.

### *Ethical Dilemmas and Challenges*

According to Dr Cohen,<sup>13</sup> given the complex scenario in India, the so-called ‘ethical’ organ trade may help the organ brokers and debt brokers, rather than helping the poor sellers.

<sup>13</sup> *Where It Hurts: Indian Material for an Ethics of Organ Transplantation*, Lawrence Cohen, pp. 158–160.



According to Moazam,<sup>14</sup> most of the organ vendors are poor and helpless and do not follow the principle of autonomy over their bodies in selling their kidneys. They sell kidneys due to other pressures, particularly financial pressures. Poor people who live in the kidney-selling zones often consider their kidneys as a commodity, sometimes as the only valuable possession they have in order to redeem them from their debts. In such situations often doctors are considered as agents of kidney trafficking. During their study, the doctors in the team had several experience of poor people approaching them and asking whether they could help them in selling their kidneys.

According to Dr Kher, some of the ethical issues Nephrologists in India face are:

- Is it appropriate to initiate treatment when the patient does not have sufficient resources and would probably discontinue treatment and die after depleting the available minimum resources of the family leaving the dear ones in debt?
- In the context of massive poverty and economic inequalities, how can they differentiate between 'emotionally related kidney donors' and 'paid unrelated kidney sellers' and exploitation by middlemen?

## **Insights towards developing a way forward in India**

### *The Pakistan Experience*

According to Moazam,<sup>15</sup> Pakistan's struggle against organ trafficking is not yet over. Success so far can be attributed to a concerted effort by Healthcare Professionals, Medical Associations, the Judiciary, the media, Civil Society, international transplant societies, the WHO and the Istanbul Declaration group against organ trade. Further success depends upon the effective implementation of the law, as well as the availability of sufficient organs through live and deceased organ donation programs. There need to be organized strategies to educate and enable participation of healthcare professionals as well as the general public regarding the importance of organ donation, being sensitive to religious and cultural beliefs and practices. It has to be projected as a social responsibility rather than just a 'medical issue'.

<sup>14</sup> *Conversations with Kidney Vendors in Pakistan: An Ethnographic Study*, Farhat Moazam, pp. 39-41.

<sup>15</sup> Pakistan's experience with kidney transplantation and trade: a call for international solidarity, Farhat Moazam, Aamir Jafarey, *Indian Journal of Medical Ethics*, Vol. XI no 3 July-September 2014, pp. 4-8.

Since organ trade and trafficking is a transnational issue, international collaboration is needed to eliminate it. Affluent countries will have to sensitize and encourage their citizens, including healthcare professionals, to respect the law against organ trade and trafficking, and foster altruistic living and deceased donation. While highlighting the importance of live and deceased donor programs, she discusses the importance of 'sharing the burden'. Sharing the burden involves not only considering the rights of the patients, but also a responsibility to the impoverished and vulnerable sellers. It also involves the responsibilities of the healthcare professionals as well as that of nations to one another.

### *The Anti-Human Trafficking Interventions of the Government of India*

The Ministry of Home Affairs (MHA), Government of India, has come up with several guidelines and instructions to deal with the problem of human trafficking, including trafficking for organ trade. The Office Memorandum<sup>16</sup> released in 2009 by the MHA has included human trafficking for illegal organ removal as one of the concerns. While respecting the autonomy of the State Governments in dealing with crimes that happen in their territory, this document also provides several guidelines and support systems for State Governments. These guidelines deal with the implementation of existing laws, capacity building of state machinery, investigation and prosecution of perpetrators, rescue and rehabilitation of victims, and prevention of trafficking. The document also encourages State Governments to involve Non Governmental Organizations (NGOs) wherever possible, especially regarding prevention, rescue and rehabilitation. The ministry has also instituted awards<sup>17</sup> for State Governments, police officers and NGOs for outstanding work done in the anti-human trafficking field in order to encourage sustained action. The Ministry of Home Affairs has published a list of nodal anti-human trafficking officers in all the States and Union Territories of India.

A joint initiative<sup>18</sup> taken up by the Ministry of Home Affairs, Government of India, and the United Nations Office on Drugs and Crime (UN-

<sup>16</sup> ENO.15011/6/2009-ATC (Advisory) Government of India Ministry of Home Affairs, Advisory on Preventing and Combating Human Trafficking in India, Office Memorandum, New Delhi, 09.09.2009.

<sup>17</sup> F.No.15020/08/2007-ATC Government of India Ministry of Home Affairs, Awards for outstanding work done in the field of Anti-Human Trafficking, New Delhi, 30 January 2012.

<sup>18</sup> Comprehensive Scheme for Establishment of integrated AHTUs and ToT, Ministry of Home Affairs, Government of India, North Block, New Delhi.

ODC), has worked on an effective model called the Anti-Human Trafficking Unit (AHTU). The AHTU is supposed to strengthen the District Police Headquarters with equipment and tools, institutional coordination mechanism, and Standard Operating Procedures (SOPs) in order to tackle all aspects of human trafficking, including prevention, rescue, rehabilitation and reintegration.<sup>19</sup> The AHTUs will also “help to enhance cooperation between law enforcement agencies, concerned government departments and NGOs who have the expertise and capacity to assist trafficked victims by institutionalizing this cooperation”.<sup>20</sup>

### *The Potential of the Catholic Church in India*

After the Government of India, one of the largest organized networks in India is that of the Catholic Church. The Catholic Church in India has 168 dioceses, reaching almost every part of the country. The four major apostolates the Church is involved in India are Education, Social Work, Healthcare and Pastoral Care. The strength of the Church in India also includes the Conference of Religious of India (CRI),<sup>21</sup> a network of 822 major superiors from 334 congregations representing 115,587 professed full-timers contributing to one of the 4 apostolates, based in the above-mentioned Dioceses. The social work network of the Catholic Church in India works with about 2.5 million Self Help Groups. The Catholic Education<sup>22</sup> network has about 15,000 schools, 654 colleges, and 15 higher education centers in India. The Health Care network of the Catholic Church in India includes the Catholic Health Association of India (CHAI), with a membership of about 3,500 institutions all over the country, caring for more than 21 million sick people every year; the Sister Doctors Forum of India (SDFI) with more than 1,000 Sister Doctors; the Catholic Nurses Guild of India (CNGI) with about 50,000 nurses; and the countless Catholic lay professionals. The immense resources of the Church can be mobilized to deal with the problem of human trafficking, including organ trafficking. Given the potential of the Church in India, she can also be a powerful partner to the government of India in building a better society.

However, while the strength of the Catholic network includes numbers, reputation, experience and a pan-India presence, the biggest weaknesses are

<sup>19</sup> Ibid, pp. 3-4.

<sup>20</sup> Ibid, p. 6.

<sup>21</sup> <http://www.cridelhi.org/home.htm>

<sup>22</sup> Accurate data not available according to the Education Secretary of the CBCI.

working in isolation, duplication of resources, and sometimes even subtle competition within the network itself. As a result, even organizations and NGOs that are much smaller than the Catholic Church are able to project themselves at various forums and generate mileage. In this context, there is a growing awareness that there needs to be much more collaboration within the Church, at the National, Regional, as well as grass-root levels.

### *The MOHAN Foundation*

MOHAN is an acronym for Multi-Organ Harvesting Aid Network and was established in Tamil Nadu, India, in 1997. The MOHAN Foundation<sup>23</sup> is the brainchild of a group of practicing medical professionals and their friends to promote 'Organ Donation'. To achieve this objective, it works as a support group for Patients, Physicians and the Public. The following have been the objectives of MOHAN Foundation:

- Creating public awareness.
- Motivating families of brain dead patients to donate organs.
- Training professionals, especially Transplant Coordinators, in facilitating organ donation.
- Liaising with Central and State Governments to pass favorable legislation.
- Networking with other organ-procuring organizations in the country.
- Raising resources to promote organ donation efficiently.

One of their several campaigns is to include the 'clause of organ donation on the driving license'. With 80,000 deaths on the road and almost 40,000 of them being brain death annually, this inclusion in the driving license can save many lives. The MOHAN Foundation succeeded in convincing the Government of India to have Transplant Coordinators as a mandatory requirement, in order to get a license for Transplant hospitals. The Foundation conducts Transplant Coordinator Training Programs, which involves training social workers, medical and paramedical staff in counseling families of 'brain dead' patients to donate organs, and coordinating the entire process of organ donation, retrieval and transplantation. The course also succeeded in creating a strong network amongst the coordinators, which is helping in taking the organ donation movement forward as a whole.<sup>24</sup> The

<sup>23</sup> <http://www.mohanfoundation.org/Annual-Report-2009-2010.pdf>

<sup>24</sup> <http://www.mohanfoundation.org/annual-report-2009.asp>

MOHAN Foundation has also formed a support group which is open to kidney failure patients, kidney transplant patients, kidney donors, relatives of the patients or any individual who wishes to help kidney failure or transplant patients.<sup>25</sup>

*Fr Chiramel, the Organ Donation Activist Priest from Kerala, India*

Fr Davis Chiramel,<sup>26</sup> a Catholic priest from the Archdiocese of Thrissur, India, is the Chairman of the Kidney Federation of India.<sup>27</sup> According to him, organ selling and buying is still going on in Kerala. Brokers know how to do the necessary legal documentation to ensure that organ selling and buying is documented as 'altruistic donation'. Fr Chiramel receives frequent calls and emails from different parts of India as well as outside the country asking for information about kidney donors or sellers. Because of the problems of anonymity, fear, social stigma, and guilt, it is very challenging to identify the victims of organ trafficking and assist them in their rehabilitation.

It is in this context that Fr Chiramel is promoting organ donation, following the Gospel principle of 'defeating evil with good'. His own act of donation of one of his kidneys to a Hindu, Mr Gopinathan, on September 30, 2009, with whom he had no blood relations, happened in such a context. Mr Gopinathan was dying of kidney failure, had no money for his treatment and wanted to commit suicide. A committee was formed under the leadership of Fr Chiramel, who was Parish Priest of St Xavier's Church, Vadanapally. At that point in time, in order to save the life of Mr Gopinathan, the committee raised about 1.2 million rupees (21,818 USD) for the transplantation process and made all arrangements. However, Fr Chiramel realized that the kidney for the procedure was going to come from an agent from one of the neighbouring states of Kerala, and raised objections of the ethics of selling and buying kidneys. This situation inspired Fr Chiramel to donate his own kidney to save the life of a stranger, and to prevent the exploitation of a poor kidney seller. Fr Chiramel donated his kidney in order to defeat organ trafficking in a positive way. The surgery conducted on Fr Chiramel was the inauguration of the Kidney Federation of India, by the symbolic cutting and removal of his kidney. "When there is sufficient

<sup>25</sup> <http://www.mohanfoundation.org/patient.asp>

<sup>26</sup> From my personal interaction with Fr Chiramel on Feb 16-17, 2015, at Bangalore.

<sup>27</sup> <http://kidneyfed.com/father.php>

supply of organs, organ trafficking will come down”, says Fr Chiramel. Through the intervention of the Federation, live and deceased donors have increased in the past three years in Kerala. The supply of organs is reducing the need for trafficking. From his experience so far, Fr Chiramel puts forth the following recommendations to counter the evil of organ trafficking:

- Projecting organ donation as a glorious act can foster more organ donations which, in turn, will decrease organ trafficking.
- Doctors – especially those who are involved in transplantation – should be sensitized to prevent organ trafficking and to foster live and deceased organ donation.
- Organ donation can be fostered through two major networks in India, the Government as well as the Church. The Bishops, Major Superiors, priests, other religious leaders, secular and political leaders can play a major role in fostering organ donation.
- The enforcers of the law have to be encouraged and supported to prevent organ selling and buying.
- Foster healthy lifestyles to prevent organ failures.
- The sinful dimension of organ trade has to be highlighted among the Catholic network, especially the doctors.
- In addition, the general public can also be sensitized on organ theft.

Fr Chiramel firmly believes that if a communication comes from the Pope highlighting the magnitude of the problem of organ trafficking, and the value of saving lives through organ donation, the Church and society may take more interest in preventing the evil of organ trafficking by fostering organ donation.

## Summary

The vast majority of the poor people suffering from end-stage renal disease (ESRD) in India do not have access to treatment. Early detection and treatment of diabetes and hypertension can reduce the incidence of renal failure and is more cost effective in a country like India.

Even though the ‘Transplantation of Human Organs Act’ (THOA), 1994, has considerably reduced organ trafficking in India, it is still happening in a subtle way. Indebtedness to moneylenders and availability of the organ market is pushing poor people to sell their organs, especially kidneys. In the long run, more than the kidney buyer, the main beneficiaries of the kidney trade are the brokers, the doctors, the transplant centers, and the

drug companies. Organ trafficking is happening mostly through ‘five-star’ hospitals in the name of transplant tourism. Even though the government has enacted the law (THOA) and implementing mechanism, those in the kidney market find loopholes to sustain the market.

Further success depends upon the effective implementation of the law as well as the availability of sufficient organs through live and deceased organ donation programs. There need to be organized strategies to educate healthcare professionals as well as the general public regarding the importance of organ donation. Media, religious leaders and educational institutions need to be involved, and the Indian Society of Nephrology can be a significant partner in this process.

With 80,000 deaths on the road annually, and almost 40,000 of them being brain dead, the inclusion of the ‘clause of organ donation in the driving license’ can save many lives. Establishing support groups for patients with kidney failure and kidney transplant, and for kidney donors, relatives of patients and other well-wishers, can be of much help.

Legalizing organ sales in India will not work due to the lack of strong law-implementing institutions, skewed distribution of wealth with massive riches and massive poverty, too many patients needing transplants, and corruption existing at all levels. It will only help the organ brokers and debt brokers, rather than helping the poor sellers. Moreover, most of the organ vendors are poor and helpless, in that they do not follow the principle of autonomy over their bodies in selling their kidneys. Poor people who live in kidney-selling zones often consider their kidneys as a commodity, sometimes as the only valuable possession they have in order to redeem them from their debts. In such situations often doctors are considered as agents of kidney trafficking.

The Anti-Human Trafficking Units (AHTU) initiated by the Government of India need to be activated and strengthened. Since organ trade and trafficking is a transnational issue, international collaboration is needed to eliminate it. Affluent countries will have to sensitize and encourage their citizens, including healthcare professionals, to respect the law against organ trade and trafficking and foster altruistic living and deceased donation.

Given the potential of the Church in India, she can also be a powerful ally to the Government of India in building a better society. A communication from the Pope highlighting the magnitude of the problem of organ trafficking and the value of saving lives through organ donation, can motivate the Church in India to work towards preventing the evil of human trafficking, including organ trafficking.

- ▶ THE NORMATIVE REDUCTION OF 'DEMAND' FOR TRAFFICKED PERSONS. WHAT INCREASES AND REDUCES 'DEMAND'?





# HOW THE GLOBAL ECONOMY FOSTERS HUMAN TRAFFICKING

STEFANO ZAMAGNI

## 1. Introduction

The topic of human trafficking has evolved from sensational interest in the early 1990s to maturity as a recognized global problem at the present moment. Fortunately, a wide range of state and NGO programs are being implemented to address some of the most immediate issues of human rights violations and to aid those most victimized by the promise of a false dream. But this is no more than a remedial answer to a heinous crime. As suggested in D. Kyle and R. Koslowki (eds.) *Global Human Smuggling*, The JHU Press, Baltimore, 2001, much of the initial governmental and academic analysis on human trafficking has been concerned with narrowly descriptive questions, which, unfortunately, often results in highly speculative numbers in an attempt to procure more funding and lend it an air of scientific objectivity. This is to be expected, but we need to keep in mind that there is still much we do not understand about this phenomenon and its potential to transform civil societies.

Following Naim, three great myths still persist in the way global human trafficking is usually addressed. (M. Naim, *Illicit*, London, Arrow Books, 2007). The first is the opinion that there is nothing new; it is often said that trafficking is age-old. Therefore, skeptics would argue that since trafficking has always been more of a nuisance than a scourge, it is a threat we can learn to live with as we have always done in the past. But this attitude ignores the important transformations that have occurred since the 1980s. These transformations are strictly connected to the emergence of a global economic order that has come to represent the most characteristic feature of our age. Today, capital appears to have acquired a new freedom: no longer does it have to account to the people in the countries where its profits are made. It is as if economic power had acquired an extra-territorial status. It follows that big corporations are able to react to profit opportunities quite independently of their national authorities and in so doing they play a key role not only in the organization of the economy – which is obvious – but also in that of the whole society – which is much less acceptable. Thus globalization is modifying the foundations of both the economy and polity, reducing

the degrees of freedom of nation-states and giving rise to a new form of sub-politicization: the familiar of nation-state's policy instruments are tied to a well defined territory, which is not the case with big companies.

The second myth is that trafficking is just about crime. It is true that criminal activities surged and became global in the 1990s. But thinking about trafficking as just another manifestation of criminal behavior misses an important point: the role played by demanders of the services of trafficked people. Networks of stateless traders are changing the world. In a recent paper, P. Buonanno, L. Ferguson and J. Vargas ("The crime Kuznetz Curve", CEDE, Bogotá, April 2014) document for the first time the existence of an inverted U-shaped relationship between income within US states and crime for the 1970–2011 period. Crime – in particular human trafficking – increases with per-capita income until it reaches a maximum and then decreases as income keeps rising. As expected, this relationship has attracted the attention of social scientists. The basic version of the economic model of crime due to Gary Becker (1968) suggests that rational agents engage in illegal behavior as long as the expected benefits offset the expected costs. However, this opportunity-cost theory of crime is unable to account for the "Crime Kuznets Curve" and the main reason is that such a theory works almost exclusively on the suppliers of trafficked persons and forgets the demanders of the services of these people.

The third myth is the idea that human trafficking is an "underground" phenomenon. Even accepting that it has grown in volume and complexity, many people seek to relegate it to a different world than that of ordinary, "honest citizens". This is the most dangerous of all illusions, since it treads on moral grounds and lulls citizens and public opinion into a sense of heightened righteousness. On the contrary, the phenomenon under scrutiny is contagious across society, in the sense that it can spread rapidly even among "honest citizens". While human trafficking has made it even more pressing to make the public aware of the issue of moral complicity, it has also made it far more difficult to tackle the problem in practice, since it has made the chain of causation much more intricate. The consequence is that it has become increasingly difficult to individuate culpability for communal faults. That is why we need to consider – as suggested by M. Archer (2015) – the normative attitudes that sustain the demand side. It is urgent to intervene on social norms so that clients of brothels and companies using forced labor also become socially stigmatized.

Human trafficking could be approached in multiple ways: as a moral issue, a public order problem, a labor question, a human rights problem, a

migration issue or a matter of organized crime. So far, most of the focus has been on the migration and organized crime component of trafficking. The emphasis on trafficking as a migration problem has also led to the criminalization of victims who generally violate prostitution and immigration laws of the hosting countries. Despite their traumatic victimization, these persons tend to receive only very limited assistance from the authorities in the countries in which they were forced to work. Neither regular admonitions by UN agencies, nor accusation by civil society organizations have changed this approach. Today, it has become clear that the immediate repatriation of trafficked people because they are undocumented migrants generally prevents the successful prosecution of the traffickers (N. Demleitner, “The law at a crossroad”, in D. Kyle and R. Koslowski (eds.), *Global Human Smuggling*, JHU Press, Baltimore, 2001).

The data on human trafficking we can read in the *Global Report on Trafficking in Persons* (November, Vienna 2014) produced by UNODC signal that this phenomenon is not only on the rise, but its interplay with social crises – conflict, corruption, injustices – is more complex than it has been since the abolition of the Atlantic slave trade. Those who benefit from human trafficking operations are not always careful to hide in the shadows. Many exercise their trade in the open, daring authorities to crack down on them or inviting them to collude. Let’s have a quick look at the major key findings of the *Report 2014*: 49% of detected victims are adult women; 33% are children (21% girls and 12% boys); the remaining 18% are adult men. If one sums up the two figures referring to the female component of society, one obtains that 70% of all trafficked persons belong to the feminine gender. On the other hand, 72% of traffickers are men, and 28% are women. No comment is needed about these figures: they are self-explanatory.

Human trafficking happens everywhere, but most victims are trafficked close to home, within the region. Statistics show a correlation – not a causal relation – between the affluence measured in term of GDP of the destination country and the share of victims trafficked there from other regions. Richer countries attract victims from abroad, whereas less affluent countries are mainly affected by domestic or sub-regional trafficking flows. It follows that responses need to be tailored to national and regional specificities if they are to be effective at all. Another data set of great interest refers to the fact that while the majority of trafficked victims are subjected to sexual exploitation, other forms are increasingly detected. Trafficking for forced labor – manufacturing, cleaning, construction, catering, domestic work, textile production – has increased steadily in recent years. Trafficking

that is neither for sex nor for forced labor is also increasing: children for armed combat, for petty crime, forced begging and also organ trafficking. To this regard, it should be noted that organ trafficking is not classified as human trafficking since it is not possible, from a legal point of view, to ascertain whether the act of organ removal was committed against a living person or from a corpse. Yet organ transplants (kidneys, livers, hearts, corneas) are commonplace today in many countries. The shortage of donor organs has given rise to an international organ trade in view of the fact that customers of organs are increasing year after year.

More than 90% of countries criminalize trafficking in persons since the Palermo Protocol came into force more than twelve years ago. However, impunity prevails, with all too few consequences for the perpetrators. This reflects the fact that legislation does not always comply with the Protocol and even when legislation is enacted, implementation often falls short. The result is that the number of convictions globally has remained extremely low, while the number of detected child victims, particularly girls, has scandalously increased. I will suggest later some measures of how to cope with this specific problem. For the moment, I would like to draw attention to the difficulties of the criminal justice systems to respond to trafficking in persons, in spite of the adoption in July 2010 by the UN General Assembly of the “Global Plan of Action to Combat Trafficking in Persons”.

What is striking in the by now vast literature dealing with human trafficking is the nearly total neglect of the demand side for trafficking flows. This is a point appropriately underlined by M. Archer (2015) where she writes: “If trafficked are recognized to be victims of modern slavery, we have to acknowledge that this has to be attributed to national and multinational demands for exploited labor or sexual exploitation”. This is a real paradox, to say the least. If one considers that trafficking is driven by high profits or – to be more precise – by rent-seeking attitudes, it is obvious that the engine sustaining this trade is the demand side. It is the demand for cheap labor, for organ transplants etc. that explains how traffickers and their networks have continually adopted and refined their activities, even at the cost of temporary setbacks, such as jail sentences. Until traffickers face diminished incentives to trade, i.e. less demand and lower margins, it is futile to talk about increasing criminal justice measures.

The celebrated Say’s Law – which states that supply generates its own demand – does not apply to human trafficking, where it is rather demand that determines the direction and the intensity of the trade. It is true that the characters involved in trafficking are abominable criminals. But what

drives them is rent-seeking. It is certainly true that the bands trafficking women for sexual exploitation deserve the harshest possible punishment. But what about those who purchase these services? Or the families that rely on illegal aliens for domestic help? We will never make progress in the struggle against trafficking if all our attention is placed on the suppliers of most morally repugnant trades and not the upright citizens where appetite for them creates the incentives that make it all possible.

## **2. The migratory question in the era of globalization**

Much more than a subcategory of international migrations, human trafficking is a topic that intersects contemporary anxieties concerning the global political economy, ethnic and gender stratification, political corruption, human rights abuses and the (in)ability of states and global agencies to control any of these effectively. This is certainly true. However a brief consideration of the *res novae* of present-day migratory flows may help to better contextualize the human trafficking plague. Indeed, the trade in people is deeply entrenched and interwoven with the world's ever more complex migration flows. In his influential book, *The political economy of slavery* (1965), Eugene Genovese, one of slavery's greatest historians, emphasizes the role of torture in the increase of slavery's productivity. As he put it, "we don't usually see torture as a factor of production. Economics teachers don't put it on the chalkboard as a variable in a graph". If he had to rewrite this book today he would certainly consider the form of slavery represented by trafficked people as the most relevant and problematic.

It has been common knowledge for some time that the migratory phenomenon is a theme with a high potential for conflict, which often tends to divide public opinion in a radical way, and consequently the political powers. In particular, we all know that today, in Western societies, immigrants represent the only category of subjects that are both wanted and unwanted. For example, for at least four to five years, the Eurobarometer has been pointing out this contradictory attitude of Europeans towards immigration. On the one hand, there are segments of people who ask to expand the flows of arriving migrant workers because they are aware of the benefits that would derive from the flexibility of the European labor market and the management of public finances. Indeed, the aging of the advanced countries' populations has made the existing structure of debits and credits of the social security systems no longer sustainable. On the other hand, there are other segments of the population that harbor various fears, three in particular: a) immigrants cause unemployment at the

expense of the workers of the host country; b) immigrants take advantage of our welfare systems (in fact, the available evidence confirms that immigrants do receive welfare services to a proportionally greater extent than the native populations. As J.S. Mill already wrote in the mid-nineteenth century: “It is useless to think that all the mouths which the increase in population brings into existence will also bring manpower with them. The new mouths require just as much food as the old ones, but their hands do not produce the same amounts as the old ones”); c) immigrants have already exceeded the saturation point to the extent that they jeopardize the host countries’ social cohesion because of the impossibility to implement balanced cultural integration policies. The electoral outcomes in not a few European countries and the public discussions on the theme, which are more animated than ever today, seem to indicate that the second type of citizens is in the numeric majority today.

It has been widely demonstrated by now that in the countries of the North of the world a real and proper vicious circle has been established. The people show a hostile attitude towards immigrants. This leads governors, who are always in search of political consensus, to restrict their entrances or make them uselessly difficult. In turn, policies of this kind end up increasing illegal immigration. It is estimated that there is a stock of 11 million irregular migrants in the world, many of whom entrust themselves to traffickers whose turnover has now surpassed that of drugs. Illegal immigration ends up creating a powerful incentive for criminal behaviors by those immigrants who cannot pay the high costs demanded by the criminal organizations to get them to the immigration countries and see themselves forced to find alternative sources of income other than work. Lastly, the sense of insecurity which illegality spreads ends up confirming the perceptions of hostility, which thus tend to be self-fomenting.

A few statistics are enough to make us understand the scope of the migratory phenomenon. In 2005, the United Nations estimated that there were 200 million international migrants in the world, including approximately 9 million refugees. Around the world today, one person in 35 is an international migrant (according to the UN definition, an international migrant is someone who resides outside his/her own country for a minimum period of one year). Even more striking than the stock of migrants is the migratory flow which in the five-year period from 2000–2005 amounted to 13 million people (an average of 2.6 million a year). Moreover, while before 1990 most migrants lived in developing countries, today the opposite is true. Since that date, the presence of immigrants in

the developed countries has gone from 48 to 100 million and from 52 to 65 million in the developing countries. Regarding the direction of the flows, it should be noted that the flow from the South of the world to the North has generated 62 million people present in the North; the flow from North to North, 53 million; from the South to the South, 61 million, and from the North to the South, 14 million. Therefore, the migratory current from the North to the South is the only one that experienced a reduction in relative terms. (Cf. K. Koser, *The international migrations*, London, 2009).

While it is relatively easy to estimate the bulk of immigrants in the countries of arrival (60 million in Europe; 44 million in Asia; 41 million in North America; 16 million in Africa; 6 million in Latin America and in Australia), it is much more difficult to know what countries the immigrants come from. This is due to the fact that the statistics of the countries of origin do not take into account their citizens residing abroad. In any case, it is estimated that there are 35 million Chinese abroad; 20 million Indians; 9 million Pakistanis and 8 million Filipinos. Finally, it is not possible to ignore the great moves on the intra-regional level. For example, there are approximately 5 million Asian workers in the countries of the Persian Gulf, 8 million irregular immigrants living in South Africa, almost all from Black Africa, and so on.

A major element of profound differentiation between today's migrations and those of the past is that the thesis in vogue since the 80s of the last century does not seem to be supported by the facts. According to the thesis the most effective instrument for reducing the migratory pressure would be to increase the employment potentialities in the developing countries. That is, the only credible way to stop the *increase* in the migratory flows would be to intervene on the process of economic growth of the countries that generate the flows. How solid is this conviction? It is often stated that economic development, by increasing pro capita income, reduces the incentive to emigrate. This belief is fallacious for two reasons: on the one hand, as the well-known "Kuznets curve" teaches, in the first phases of the development process the increase in income is always accompanied by an increase in the inequalities between social groups. That is, the increase in income *never* takes place in an equi-proportional way among all the segments of the society. And as we all know, an increase in inequalities is a powerful factor that encourages emigration. On the other hand, empirical evidence confirms that in the initial phases of the development process an increase is always recorded in the propensity to emigrate as a result both of the structural change (development expels workers from agriculture in



order to channel them towards the industrial sector, but this takes time and so a part of the ones expelled takes off and goes abroad), and the change in life expectations (once the old equilibrium of stagnation is broken, not everyone feels like waiting for the definitive takeoff and so they take off and go abroad).

My conclusion is that it would be irresponsible to make people think that the migratory problem could be solved by aiming at restrictive and/or discriminatory policies of one kind or another (the USA's ten-year experience with regard to Mexico offers us eloquent confirmation of this). Instead, what is urgent is to take note once and for all that the strongest encouragement today to the magnification of the migratory flows comes from globalization. While globalization has created and continues to create a global market of capitals and goods, it still has not succeeded in laying the bases for a global labor market. It is not possible to want one thing and not the other from globalization. The only certain result that derives from this pragmatic contradiction is plain for all to see: a worrying, inhuman increase in illegal immigration sustained by the new industry of organized crime, the trafficking of human beings. We should not forget, in fact, that legal and illegal immigration can replace one another. The whole body of empirical research agrees on this: the more the conditions of access to regular entry permits are restricted, the more the offer of illegal migrations increases.

I do believe that a consensus could be found to give a foundation to a sustainable policy *of* immigration (and not merely a policy *for* immigration) based on two reasonable and surely applicable lines of intervention. First, migrations must turn to be in the interests both of the countries of origin and the countries of arrival. Second, in the case of migrations, labor services that cross the national confines *incorporated* in people are the object of exchange. Adam Smith already understood this fact very clearly when he wrote in *The Wealth of Nations* (1776): "Of all the kinds of baggage, the human being is the most difficult to transport". To presume to regulate the flows of labor services without "seeing" the human being who conveys them would be real economic shortsightedness and grave political irresponsibility.

### **3. Human smuggling versus human trafficking**

It is commonly asserted that, in spite of some overlaps, human trafficking is not to be confused with human smuggling. The argument runs as follows. Human smuggling involves consent and quite often the person involved pays the smuggler for passage. On the other hand, trafficking vic-

tims either never consented or, if they initially did, that consent has been rendered meaningless by the coercive or deceptive action of the traffickers. Moreover, migrant smuggling ends with the migrant's arrival at their destination; trafficking involves the ongoing exploitation of the victim (UN-ODC, 2013). Now, apart from practical considerations such as "voluntary" smuggled migrants are left with exorbitant debts that lead them into sweatshops or other exploitative working conditions, I do believe that, even at the conceptual level, the presumption of voluntary action as a prerequisite to differentiate smuggling and trafficking is not as robust as it might appear (M. Archer, 2014). In substance, the reason is the following.

The market is the place where the coordination of economic decisions is carried out through voluntary cooperation. And this is fundamentally because "both parties in an economic transaction benefit from it, provided that the transaction is bilaterally voluntary and informed" (M. Friedman, *Capitalism and Freedom*, Chicago, Chicago University Press, 1962, p. 13). As a consequence, when two (or more) parties, with no trick or coercion, and therefore free to make their own choices, originate an economic transaction, they also agree to any consequences. This is the ethical justification, in economics, of consequentialism. The concept of consent based on freedom of choice is well explained by R. Posner when he writes: "I personally believe that he who buys a lottery ticket and loses, agrees to the loss if there was no fraud or coercion" (*The Economics of Justice*, Cambridge, Mass., Harvard University Press, 1981, p. 94).

Therefore, apart from these last cases, choosing freely means giving one's consent and agreeing means legitimizing. As is pointed out by F. Peter ("Choice, consent and the legitimacy of market transactions", *Economics and Philosophy*, 20, 2004), the market does not need to ask for a certificate of ethical legitimacy, because it is capable of legitimizing itself on its own. This is not the case of the State which, on the contrary, in order to be able to use coercion – which is the main tool for attaining its goals – needs the approval of the electorate, for the State can only be legitimized from them. Where is the mistake in this reasoning? Basically, freedom of choice almost never postulates consent. It would be so if the subject of the choice took part in the determination of the choice menu – which is never the case in real life. The parent voluntarily offering, under no obligation of any kind, to sell one of his organs to alleviate the poverty of his family, certainly does not agree to the consequences of his act. Free choice of an option has the power to legitimize only if the set of alternatives is somehow part of the subject's choice problem. If this set is *given*, this prerequisite is by no means fulfilled.

Everybody knows that the key role of the category of consent is typical of the tradition of social contract theory starting with Hobbes. The idea is that if I signed a contract with you to do something I now no longer want to do, your answer could be “but you agreed to do it at the time, now you have to abide to the terms of the contract”. That is, consent generates obligation. Among those who embrace the social contract theory, no one better than J. Rawls was able to show that in order for consent to produce obligation the constraints under which the parties to the contract take their decisions must be shared by everyone. Only if it can be proved that the parties to the social contract agreed (or intended to agree) to the rules of the game they are in, can it be legitimately claimed that the agreement reached through consent implies obligation.

Of course, it is evident that in our market economies this condition is never fulfilled, in practice. Indeed, freedom of choice describes the absence of coercion by others. It has to do with the *possibility* of choice, that is to say with the existence of a domain or space within which the subject can exercise his/her sovereignty. But this still says nothing about the *ability* to choose, in other words the real exercise of the choice. Having a large number of possible choices is not enough if you don't know how to choose or if you don't have the resources to translate the means into the capability of promoting your own goals. This is the great lesson taught by Pope Benedict XVI and Pope Francis when they remind us that the use of freedom is somehow essential to its definition. Someone who is free to put into practice his/her action plan, but who does not possess the capacity to do it, cannot really be said to agree to the consequences of his/her actions. Therefore, if the market is not capable of finding within itself the reasons upon which to construct its justification, the reference to ethics becomes fundamental.

In May 2007 humanity witnessed a true turning point in world history. For the first time ever, just over half of the global population was confirmed as living in urban environments. No less than 95% of the current urban growth is accounted for in developing countries, all of which are having to absorb five million people each and every month in cities, compared to a growth rate of half a million in developed countries. Unlike the first wave of urbanization, today's process has been radically decoupled from industrialization, sometimes even from development *per se*. The present urbanization process is driven by nothing else than poverty. It is no longer true that “all roads lead to the towns” (F. Braudel); they lead to the slums.

Human development has in large part been a story of mobility. People move to seek a better job or a better life and when they succeed they move

up the socioeconomic ladder, whether as assessed by income or by capabilities. People's aspirations fuel these efforts; yet aspirations can be quashed by poverty, or social exclusion. Upward mobility is a dynamic counterpart of equality, offering the possibility that those born in poverty might escape it. Support for basic capabilities, especially in the areas of health and education, is essential to enable such upward mobility. That is why the Catholic Church insists so much, in its many documents, on the attention to give to those forced to flee epidemics, economic crises, natural disasters, human conflicts, and human trafficking. Importantly, the Church insists on the point that people aspire to agency as well as to well-being. People seek democracy and liberty. Aspirations deserve to be studied because they represent a deeper layer of human psychology than is ordinarily captured by preference-based models.

In the light of the above, one can understand the fundamental role that in present-day market economies is being played by socially responsible consumers (see *Caritas in Veritate*, n. 66, where for the first time in an official document of CST it is stated that the consumer, as such, has a specific social responsibility). It is by now a fact that the figure of the consumer as a passive receiver of offers coming from producers is transforming ever more into a subject who wants still to consume, but in a critical way. This means that through his/her purchasing decisions, and in general, his/her "voice", the consumer seeks to "create" the offer of the goods and services he/she wants to see in the market. The relationship between price and quality no longer suffices, he/she wants to know *how* that good was produced and *if* in the course of production the company has violated, let's say, the fundamental rights of the people working for them or has polluted the environment in an unacceptable way and so forth.

Let's take the by now classic example of the multinational company, Nike. After a few consumer associations sued Nike for using child labor and enforcing unfair labor policies that gave way to below minimum wages in India and Pakistan, Nike's stocks sank from 66 USD in August 1997 to 39 USD in January 1998, following a well-orchestrated boycott. Similar experiences happened to Reebok and Nestlé. And how can we forget what happened to the companies that produced napalm during the Vietnam War or to those who supported apartheid in South Africa during the 60s and the 70s? And yet, there's more. Recent market studies have shown that 80% of European consumers declare themselves ready to support the development of companies involved, in some way or measure, in social responsibility activities. They would pay a higher price for goods if they

could be guarantee that the companies were certified socially (e.g. Social Accountability, SA 8000) or if they committed themselves to relevant social causes.

Corporate boycotts, which first surfaced in the 70s to protest against napalm producers, spread all over advanced, Western countries, following technological advances in telecommunication infrastructure and the rapid diffusion of social networks. Success cases, other than the Nike example, are found in movements that targeted the company behavior of Exxon-Mobil, Shell, and Starbucks. Now, if it's true that the successes registered thus far shouldn't be overestimated – as the road is still long until the various consumer associations unite to create a power strong enough to instill a full affirmation of Corporate Social Responsibility – it's also true that one can't deny being confronted with a true novelty. So much so that it's logical to think that in the near future, the various associations will be able to enact new strategies of protest and advocacy based on alliances between groups of critical shareholders and responsible managers, a phenomenon which is actually already happening.

This trend seems to confirm the intuition of the great economist, John Stuart Mill, who in the mid-1800s had formulated for the first time the principle of the sovereignty of the consumer (the principle states that the consumer is sovereign when, given his/her purchasing power, he/she is able to direct the supply side according to his/her own values). If the times weren't yet mature for this sovereignty to be enforced, now it is clearly evident that the transformation of the client-consumer to the citizen-consumer is concretely possible. The citizen-consumers act as agents who don't limit themselves to the services that they prefer, but instead “demand” to co-create with the supply what they need. The citizen-consumer hence takes advantage of available opportunities given by new technologies, particularly communication networks, to create forms of aggregated demand capable of reaching a satisfying economic scale by which to interact from a strong point with the powers of the supply. This means that companies must recognize the capacity of consumers, organized in NGOs, foundations, or associations to become active partners in the planning process and production of goods and services. At the same time, companies who have captured the profound meaning of today's consumption have every advantage to renounce the risk of going without the input of its consumers and to include them as advisors, consultants and collaborators.

Today's companies in fact are learning – slowly – that respecting the autonomy of citizen-consumers doesn't mean “surrendering” the supply, and

hence it's not worth hindering or ignoring the positive aspects of the transition occurring from freedom of choice as a means of self-determination (freedom is evaluated by what it consents to do and obtain) to the freedom of choice as a means of self-realization, or in other words, as a "having in order to be", so to give meaning to one's consumption. This is why today it would be counterproductive for a company to think of consumption as merely a transmission belt of production, and not as an important opportunity to seize to civilize the market. This is the virtue behind the phenomenon of "voting with one's wallet": the tool with which consumers express their social responsibility. The citizen-consumer, through his/her consumption choices and savings, is today able to reward the companies that can combine economic value with dignified work, respect for the environment, human rights, etc.

Another significant novelty that has been occurring in the last 30 years is the diffusion of Sustainable and Responsible Investment (SRI). The history of SRI starts in the second half of the 19th century when the Quaker Reverend John Wesley started his battle against those companies that harmed the territory and exploited their workers by prohibiting his religious community from investing their savings, however big or small, in them. The innovative idea that Wesley had was that the principle of responsibility doesn't concern solely what one does, but also that which you allow others to do with the resources that s/he has at hand. So if I invest my savings in a company that works against my moral values, and I'm aware of this, I'm indirectly responsible for the consequences that come from the operations of that company.

How can we account for the extraordinary evolution and fast acceleration of SRI practices in last quarter of the century? We should remember that in 1971 the Baptist Reverend Leon Sullivan entered – not without difficulty – into the Board of Directors of General Motors to start a strategy of pressure (through counter-arguments) on the multinational companies that contributed to keeping apartheid alive in South Africa. His work was so successful that in 1977 he was able to publish the *Sullivan Principles*, seven principles that now form a sort of *Magna Carta* for the active shareholder. The important point to highlight is that a society that offers concrete opportunities that facilitate virtuous behavior is a society that prioritizes the diffusion of SRI practices. This is why the work of civil society organizations is simply crucial, NGOs in particular. Consider, as a laudable example, the work carried on in the last decades by ICMC (the International Catholic Migration Commission, based in Geneva and created

after the war by Msgr. Montini, the late Pope Paul VI). Its anti-trafficking strategy includes initiatives such as supporting local structures in assisting victims to be protected from further abuse, legally disengaging them from abusive signed contracts and offering assistance to return to their country of origin where possible. Or developing specific programming including prevention through awareness-raising on the human trafficking risks related to migration as well as cross-border initiatives to curb trafficking and debt bondage of women and girls. And, above all, advocacy and policy work with governments and civil society.

SRI can be compared with the hornet. According to Newton's laws of physics, the hornet shouldn't be able to fly because its small wingspan isn't sufficient to hold the weight of its body. And yet, the hornet flies. Likewise, according to official economic theory (specifically the celebrated portfolio theory by Nobel Prize winner, Harry Markowitz), SRI can't function well or for long because the meta-economic objectives would hinder in the long run the achievement of the economic objectives (every obstacle to the diversification of the portfolio of products reduces in fact the profitability of the investment). On the other hand, if SRI can last over time – it's upheld – it's due to public intervention of exogenous factors that compensate: fiscal advantages, legislative favors or political collateralism. That this doesn't reflect how things actually are is well known, even if it's true that in some cases – very limited ones – those factors can play an important role.

#### **4. The role of transnational corporations in human trafficking activities**

Human trafficking has been conspicuously neglected by economics. There is instead a huge literature on organized crime and illegal markets, such as black markets dealing with prostitution, gambling, stolen goods, contraband, tax evasion. How can such a state of affairs be explained? The main reason is that economics, since its constitution as a scientific discipline during the 19th century, has always devoted much more attention to the supply side of the economic problem than to the demand side. It is a fact that the theory of production is much more developed and sophisticated than the theory of consumption in economics. A secondary reason is that there are much fewer people operating on the supply side than those positioned on the demand side, which implies that it is simpler to pass legislation to penalize traffickers than customers. Yet the potential contribution of multinational enterprises (MNE) to the creation of more and better jobs is large, mostly in their supply chains but also through foreign direct investments. Despite this enormous potential, MNEs are not sufficiently

living up to expectations. Many have come increasingly under pressure to demonstrate that they operate in a socially responsible manner. But we are still at the beginning.

Consider, for instance, the role that can be played by MNEs to overcome the problems stemming from the lack of international legal personality and the limited liability of enterprises, as well as the consequences arising when their activity is performed within the territory of those states that are not willing or not able to protect human rights. The UN *Protect, Respect and Remedy Framework on TNCs and Human Rights* is articulated into three pillars: the State's responsibility to *protect*; the corporation's responsibility to *respect*; the construction of *effective remedies* mechanisms. However, it is a fact that, so far, the three pillars have not produced the expected results. Indeed, by trying to overcome the difficulties that arose with regard to the *UN Norms on the Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights* and by trying to distance itself somewhat from the criticisms made to that approach, the *UN Framework* has opened the door to some disquieting consequences. These difficulties stem from what can be called the "reductionist" move, which the *Framework* rests on, i.e. the reduction of business responsibilities towards human rights to mere generic responsibilities.

It's a fact that over the last few decades the systemic violation of human rights, of this special category of moral rights (known as *iura hominum*), has been associated with the action of multinational companies. The UN estimates that today there are over 70,000 multinational companies worldwide and roughly 700,000 subsidiaries (Doc. N.E/CN.4/2006/97, p. 5). Globalization has highlighted a novel aspect, unknown to the ages preceding it: that while multinational companies work globally, governments regulate nationally. The consequence is that the legal tools that best fit into the process of economic transformation are not the authoritative ones, but those forged by those who work in the market, like the contracts that have by now become the top regulating source. The international circulation of atypical contractual models is ever more intense. Legal offices of big multinational companies and international entrepreneurial associations create them. This is how the business community – a clear example of soft law – created a communal law that surpasses the juridical discontinuities of national legislatures.

For (almost) all of the 20th century, problems like those now highlighted have been conceptualized as political problems, whose solution should be entrusted to public actors whose job it is to fix the laws (and enforce



them), while the companies should follow the laws. What is happening today is the result of the disappearance of adequate mechanisms of enforcement whenever the norms are broken. If, on the one hand, the global outsourcing of production boosted production levels and profit margins enormously, on the other hand, it brought to light the problems of human rights and gave birth to a new interpretation of the principle of responsibility, i.e. multinational companies have to be held responsible not only for what they do directly but also for what happens along the entire supply chain, in application of the ethical principle of the capacity to choose – which shouldn't be confused with the possibility of choosing. The capacity to choose implies the capacity on the part of the agent to consent to the consequences that come from the choices made.

As an example, consider the Nike case, a multinational company that doesn't have its own factories but buys from a myriad of manufacturers around the world all of what it needs to package sport shoes. When NGO awareness campaigns shed light on the human rights violations done by Nike and encouraged a boycott, the multinational company changed its production strategy giving itself a code of conduct in which it clearly states, among other things: "We conduct business with all of our partners on the basis of trust, teamwork, honesty and mutual respect and we expect that our partners in turn operate on the basis of the same principles". Philip Knight, the founder of Nike, not only acknowledged the various situations of exploitation that Nike was the cause of but also admitted their moral responsibility on the basis of the ethical principle cited above (G. Knight "Activism, Risk and Communicational Politics", in S. May *et al.* eds., *The Debate over Corporate Social Responsibility*, Oxford, OUP, 2007). There are many other cases that could be elaborated upon, coming from many different industries, for example from companies held to be accountable for the actions of their primary resource suppliers (Ford and Firestone; Starbucks and Fair Trade coffee; StarKist and tuna fishermen; Walmart and cleaning companies; McDonald's and farmers, etc.) or even from companies accountable for the way in which their clients use their products or services (weapons, gambling, cell phones, etc.).

In recent years, public discourse on the relationship between companies and human rights has been based on two distinct yet convergent processes: on the one hand, the philosophical critiques of the principles of the UN's *Global Compact* on human rights launched in 1989; on the other, the discussion that accompanied the conclusion of the work of the Special Committee of the UN Commission for Human Rights. The Committee,

which should have brought an end to the work done from 1997–2002 by Mary Robinson, the then-Head Commissioner of the UN for Human Rights, actually ended with no results to speak of. In other words, it is not possible to find the necessary convergence of the notion of human rights. Hence, on April 20, 2005 the Commission adopted a resolution on “Human Rights and Transnational Companies and Other Companies”, in which the UN Secretary General was asked to nominate a “special representative” to define a set of non-negotiable principles regarding the inalienable rights, precisely because human rights cannot be given by the State but only protected, given that the rights exist even if a government doesn’t welcome or protect them (a notable example comes from the US laws of racial segregation that were considered Constitutional by the Supreme Court until 1954).

On July 28, 2005, UN Secretary General, Kofi Annan nominated John G. Ruggie from Harvard University as the “special representative” to whom he entrusted to identify the most clamorous cases of human rights violations by companies and to compile a compendium of good practices. In April 2008, Ruggie published the report, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*. The report presented guidelines for companies to follow and be judged by public opinion. As illustrated by K.M. Leisinger (“On corporate responsibility for human rights”, in H. Spitzbeck *et al.* (eds.), *Humanism in Business*, Cambridge, CUP, 2009), the Ruggie Report states that companies are held to respect human rights no matter what the national laws are. Whenever the national laws where the companies operate conflict with the international standard, the multinational company must go by the latter, naturally taking the local context into account. The report also specifies what it means to be complicit in human rights violations committed by others. The fact that the subsidiary company has to follow orders or follow contractual obligations according to the laws of the country is not enough to justify the violation of human rights. Lastly, companies are encouraged to apply *values management*, defined as the systemic use of “specific tools aimed at defining the moral constitution of the organization and its guiding principles”.

In summer 2011, Ruggie finished his term by publishing the “Guiding Principles” – those in 2008 were termed Guidelines – also known as *Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework*. Which problems were brought up in the report? Firstly, the approach followed was traditional, according to

which national governments were held responsible for human rights; the responsibility of companies came after, in a secondary position. The rationale of this principle is that these phenomena, the incredible increase in delocalization processes and outsourcing and the diffusion of responsibility among all the members of the organization along the supply chain, have increased the places and centers of responsibility that the company is not able to know or control (one should remember that bureaucracy is often denominated the “rule of no one” exactly for this reason). Secondly – and this aspect is immensely intriguing – the ultimate reason for which human rights should be respected, wherever and in any case, is economic and not moral in nature: companies respect human rights – this is the message – because otherwise they would lose reputational capital accumulated over time after the sentence of the “tribunal of public opinion”.

This misleading (and reductive) conception of responsibility generates difficulties overall, but these difficulties become even more serious when applied to human rights. Moreover, Ruggie’s “Guiding Principles” suffer from a grave aporia, as postulated by F. Wettstein “Human rights as a critique of instrumental CSR”, *Politeia*, 106, 2012. In fact, to induce responsible behavior in companies, the *business case* has to entrust moral reproach. If the clients didn’t find the irresponsibility of companies reproachable, they wouldn’t have any reason to boycott the products placed on the market. Likewise, if the investors didn’t find morally reprehensible the behavior of companies, why would they have to abstain from investing in them? And if public opinion wasn’t right to reproach the company, the company wouldn’t see their reputational capital harmed. It’s hence obvious that referencing moral judgment is inevitable in any case, even if we welcome the thesis of the *business case*. Bernard Williams wrote that reproach “is the characteristic reaction of the moral system every time we miss complying to our obligations” (B. Williams, *Making sense of humanity*, Cambridge, CUP 1995, 177). It should be noted that the thesis of the *business case*, that appeals to be applauded as a tool to acquire economic advantages, is symmetrical to the one based on reproach. In fact, you praise that which you repute an expression of the moral discretion of the agent.

On another note, we find that the 1977 *Sullivan Principles* which – as remarked above – were specifically elaborated for multinational companies operating in South Africa. These companies were asked to sign a clause that held them responsible for operating to “eliminate laws and habits that impeded social, economic and political justice”. The idea behind these principles is that the company has to hold itself responsible not only for what it

does, but also for what it doesn't do; in other words, when facing a human rights violation that it could have prevented, the company cannot remain indifferent or put itself to the side. The contrast of this point to Ruggie's "Guiding Principles" couldn't be more clear-cut. The principle 13b holds companies responsible for all direct and indirect human rights violations. Ruggie himself illustrated the rationale behind such a position with the argument that we must avoid fundamentalism when managing values from both those who refuse to consider human rights and those who consider them non-negotiable. Yet as history teaches *ad abundantiam*, moderatism in the moral sphere generates perverse consequences more often than not.

How to choose then between the Sullivan Principles and the Ruggie Principles? The theoretical proposal of M.A. Santoro, (*Profits and principles*, Ithaca, NY, Cornell Univ. Press, 2000; and "Sullivan principles or Ruggie principles?", *Politeia*, 106, 2012), based on the fair share theory of company responsibility on human rights, seems to me a simple and suitable way. The criteria by which to understand when a multinational (or any other) company commits a human rights violation has three distinct but related elements. The first is the relationship between the moral agent and the victim. The principle of benevolence, as enunciated by David Hume, states that the closer the relationship is, the stronger the obligation to help. The second element concerns the potential effectiveness of the moral agent to promote human rights. This is a particular application of the Kantian principle according to which "duty implies power": if the agent is able to do something, then it must. Finally, the capacity to contribute: those who are more able to sustain the costs for the tutelage and affirmation of human rights are obliged to intervene. In other terms, the rich have, *coeteris paribus*, more responsibility than the poor.

It is up to the moral caliber of management to establish a system of points to attribute to the three judging elements and hence to determine whether to apply the Ruggie Principles or the Sullivan Principle to the situations at hand. For example, in the specific case of South Africa, the Ruggie Principles wouldn't have required the multinational companies operating in that country to intervene against apartheid, which is instead what actually happened. Some of these companies stayed in the country practicing civil disobedience and eliminated all internal discrimination; others instead chose to leave South Africa to testify their aversion to apartheid, even refusing highly profitable investments. This is an important case in which the "prophecy" of Peter F. Drucker – "Successful companies concentrate on responsibility instead of power, on the long run and on the

reputation of society, instead of accumulating one short-term result on top of the other” (Drucker 1993, 57) – found a way to come true. We can’t however say the same thing about the celebrated case of Shell. Towards the end of the 90s, this multinational oil company started to extract oil from the Ogoni territory in Nigeria, a country that was governed at the time by a military council offering adequate protection for its plants. When the opposing leader, Ken Saro-Wiwa, together with other human rights activists, started to criticize the oil extraction policies, the dictatorship didn’t hesitate to take up weapons. On that occasion, Shell remained silent even if its voice and intervention would have avoided the executions. In the name of defending the interests of its stakeholders (shareholders, employees, clients), Shell accepted that human rights be glaringly violated (cfr. W.E. Newburry e T.N. Gladwin, “Shell and Nigerian Oil”, in P.H. Donald and P.H. Werhane, eds., *Ethical issues in business*, Upper Saddle River, NJ, Prentice Hall, 2002).

Ruggie’s Principles demonstrate their scarce effectiveness in facing the authentic novelty presented today, represented by the disintegration of the supply chain following the rise of delocalization (direct investment; partial or total tenders; creation of special economic zones): from acquisition of primary material to manufacturing; from final assembling to its transportation to the final user. At every link of the chain, a multiplicity of suppliers from different countries is associated. If the benefits of reorganizing the production process are evident, in terms of cost and time reduction, equally evident are the costs in terms of human rights violations (unjust salaries; inhumane working conditions; failing to respect human dignity; gender inequality; and more). What is the greatest risk that the global market is facing today? Giving birth to a *moral divide* between different countries and different areas within the same country. The plurality of ethical standards, associated with different cultural matrices present in the various countries is a strong incentive for multinational companies and others to practice *moral shopping*: you choose to delocalize in countries where the moral canons are looser and the control systems are less strict. This is the great risk of the *race to the bottom* of moral integrity in the area of human rights.

The new economic order has brought to the forefront the principle actor of globalized capitalism: the transnational company as the real and true social institution, on which rests a new responsibility: to defend a democratic market economy. It’s exactly because of their role as a social institution that companies, especially the big ones, cannot exempt themselves from contributing to and carrying out the public agenda, and particularly,

cannot fail in contributing to resolve the moral divide. A divide due to the absence of a global, polyarchical governance – as one reads in *Caritas in Veritate* by Pope Benedict XVI – capable of formulating standards that could be rendered enforceable universally. In the presence of the declining normative power of nations, the company cannot exempt itself from the duty to contribute to forging a global market law that incorporates those values that are considered non-negotiable. The urgency of such a task is increased by the consideration that those who benefit from human trafficking operations are not always careful to hide in the shadows. Many exercise their trade in the open, daring national authorities to crack down on them – or inviting them to conclude.

## 5. Ways ahead

The reality of trafficking is exacerbated by multiple sets of interlocking problems such as widening social inequalities, state corruption, ethnic and gender discrimination. Further, all of these are compounded by the contradictions of a contemporary world connected economically and technologically, but in no fundamental way integrated politically or culturally. In this sense, human trafficking, in all its guises, is not so much a disease but a symptom of the enormous contemporary disparities, ironically during the historical apex of mutual global awareness and interconnectedness (D. Kyle and R. Koslowski, “Introduction” to Id., eds., *Global Human Smuggling*, Baltimore, The Johns Hopkins University Press, 2001). As indicated by S. Sassen (“Beyond inequality: expulsions”, Columbia Univ., Sep. 2011), in the last two decades there has been a sharp growth in the number of people that have been “expelled” from the economy in much of the world. The term “expelled” describes a diversity of conditions characterizing what is being termed “surplus” population: the abjectly poor, the displaced in countries who are warehoused in formal and informal refugee camps, the trafficked people and people reduced to mere body organs. This massive expulsion is signaling a deeper systemic transformation that is taking us into a new phase of global capitalism.

An effective action against trafficking presupposes a thorough knowledge of the mechanisms and incentive schemes underneath this domain of human perversion. A partial list of some of the broad issues worthy of further research and action is the following. First, in 2016, ILO – the UN International Labor Office – will tackle, as its main topic, the “Decent work in global supply chains” project. The idea is to consider the implications of global supply chains on trafficking. This will be an important step towards

the implementation of the celebrated *Declaration of Philadelphia* (1944) – ILO’s constitution – where one reads that: “Labor should not be regarded as a commodity”! In 1998 ILO adopted the “Declaration on fundamental principles and rights at work”, that comprises “the elimination of all forms of forced or compulsory labor”. Ten years later, in 2008, ILO took another step by adopting the *Declaration on social justice for a fair globalization*. It states that ILO needs to reach out to new economic actors, including enterprises. This is a real novelty, since it implies a direct engagement with enterprises – beyond State’s intervention – to incorporate the values of decent work. It is easy to understand why the 2016 meeting will prove to be of extreme relevance.

Secondly, the current state system based on territorial sovereignty but characterized by uneven state capacity is wholly inadequate to the task of fighting against trafficking. This fact suggests why it is urgent to take decisive steps toward the creation of a World Anti-Trafficking Agency (WATA). Indeed, in the absence of an Agency or transnational Authority that can enforce the rules laid down in the various Conventions and Treaties, an adequate solution to the trafficking problem will never be found. It is true that there are highly meritorious UN Agencies such as UNHCR and UNODC, but they are not proper multilateral institutions supported and co-managed by a broad spectrum of countries. E.g. the funds continue to come on a voluntary basis from a coalition of a few countries. On the other hand, financial support from private donors seems to have diminished drastically since the end of the Cold War because of the phenomenon known as “donor weariness”. Just as there was a need for a transnational institution to ensure that the markets’ accelerated integration would produce real benefits for all – this was the reason that led to GATT’s transformation into the WTO (World Trade Organization) – in the same way, there is a need today for a WATA to prevent or combat what is occurring.

Thirdly, the economic machinery continues to operate in an unacceptable, unfair way. Inequality has become endogenous to the system and generates not only economic costs (e.g. speculative bubbles; decreasing rates of investment; consumption distortions), but also social and human costs. The case of human trafficking is the most eloquent confirmation. Such a consideration raises a fundamental question: the proper role of ethics in economic affairs. For many people, moral responsibility has a sense in so far as it serves the economic logic of business. The limitation of this line of instrumental rationality is well described by Lynn Paine: “Ethics has gained legitimacy among corporate executives principally by proving its econom-

ic value. However, embedded in the confident assertion that ‘ethics pays’ is a nagging question: ‘What if it didn’t?’ (“Does ethics pay?”, *Business Ethics Quarterly*, 1, 2000; 327). The point here is that if we limit moral responsibility to fit the economic logic of individual or corporate self-interest, we deprive ourselves of any possibility to question the ethical legitimacy of human trafficking practices.

Fourth, because we are dealing with a multifaceted social and political phenomenon, the unintended consequences of particular measures in stopping human trafficking are always counterproductive without an integrated approach. Just to give an example, a militarized border without effective employer sanctions is ineffective and dangerous to the migrants and sends a message opposite to the one intended. The reason is simple to grasp. The presence of trafficking in a country creates a demand for non-productive skills that are associated with violence. As clarified by Laura Ralston (“Trafficking and fragility in West Africa”, World Bank, WP 7079, Oct. 2014), joining trafficking operations has detrimental long-term impacts on an individual’s economic trajectory. By encouraging individuals to develop skills adapted to the illegal economy rather than the formal sector, trafficking may lock them into the former, limiting their future economic prospects. At the social level, having individuals work in a violent and lucrative industry has destructive effects. It disrupts social relations by decumulating social capital, and lowers social support for democracy and the law. In fact, traffickers can have complex relations with the State. They may effectively provide an alternate system of governance based on coercion and corruption. Over time, these alternate governance systems can become entrenched and even legitimized by local populations who benefit from the provision of social services that the State is not capable of providing.

Finally, an intriguing issue deserving further, serious research is the one dealing with the phenomenon of economic complicity. It is known that our decisions can have far-reaching effects by either ennobling or debasing human lives. In his important contribution, *Market Complicity and Christian Ethics*, CUP, 2011, Albino Barrera raises a fundamental question: “Are we morally responsible for the distant harms spawned by our market transaction? If so, what are the grounds for these non-contractual obligations?” (p. 1). The Author identifies how the market’s division of labor and specialization, makes us unwitting collaborators in others’ wrongdoing and in collective ills. There is little scholarship on economic complicity and even less on moral complicity. To what extent – asks Barrera – are we culpable



for the unintended consequences of our actions? Commonsense tells us that we cannot be held to account for everything. But where do we draw the limits of our moral obligations? To compound the dilemma is the fact that we often have to deal with accumulative harms in which acts that seem benign at the individual level become very injurious at an aggregated level.

An important case for market complicity is the strengthening of wrong-door economic viability in the field of human trafficking. This occurs by increasing the demand for wrongful activity. The incremental demand furnished by customers willing to buy the services provided by trafficked victims directly assists the many criminal organizations by pushing them beyond their shutdown point. This occurs whenever increased consumer demand helps these organizations to achieve economies of scale in production. So individual buying decision can potentially be the tipping point in bringing the organization over the top to its optimum scale of production. The power of consumer agency is confirmed by hard empirical evidence. N. Kristof (*The New York Times*, Jan. 11, 2009) describes the economies of prostitution and trafficking in Cambodia. In turn, in his letter to the International Conference on “21st Century Slavery” on May 15, 2002, Pope John Paul II wrote: “Attention needs to be paid to the deeper causes of the increased demand which fuels the market for human slavery and tolerates the human cost which result”.

I would like to conclude with a thought by Hannah Arendt, when in her famous work, *The origins of totalitarianism* (San Diego, Harcourt Inc., 1968), she wrote that to be a human being signifies to have the right to have rights. “This new situation in which humanity has in effect assumed the role formerly ascribed to nature or history, would mean... that the right to have rights... should be guaranteed by humanity itself. It is by no means certain whether this is possible... for the time being; a sphere that is above nations does not exist” (p. 298). Here lies the paradox of human rights: that those who, like the trafficked people, would need them the most are also those who are unable to obtain them. Contrary to Arendt’s pessimism, I do believe that we have reached a time when it is feasible to solve such an intolerable paradox. Indeed, those with no hope in the future have only the present and those who have only the present have no compelling reason to be interested in innovative endeavors. But, fortunately, people who continue to entertain a hope in the future have not disappeared altogether.

# THE NORWEGIAN SEX PURCHASE ACT

STEINAR STRØM, INGEBOG RASMUSSEN,  
SIDSEL SVERDUP AND VIBEKE WØIEN HANSEN

## Introduction

Norway criminalised purchasing sex in 2009. The main rationale for implementing the law (from 1 January 2009) against commercial sexual services was to prevent and reduce human trafficking. By making it illegal to purchase sex, the Norwegian government also wanted to change attitudes in the population, to reduce the size of the Norwegian sex market by constraining supply and demand, and to prevent entry into prostitution and hence to reduce possible sexual exploitation of men and women in prostitution. The law also seeks to protect people in prostitution and to help people with the transition out of sex work.

Five years after adopting the law, the Norwegian government wanted to evaluate its effects. The ban on purchasing sexual services is a topic of frequent debate in Norway, and law-making on this issue is complicated due to moral and ethical questions. There were worries that the law had caused negative side effects for those in prostitution.

Our evaluation was commissioned by the Norwegian Ministry of Justice and Public Security in the autumn of 2013. Our evaluation work was conducted in the period between January 2014 and June 2014.

## 1. Main findings

The prohibition against purchasing sexual services has reduced demand for such services, and thus contributes to reducing the amount of prostitution in Norway. The enforcement of the law, in combination with the laws against trafficking and pimping, makes Norway a less attractive country for prostitution based on trafficking than what would have been the case, if the law had not been adopted. The economic conditions for prostitution in Norway have worsened due to the implementation of the law.

These effects are in line with the intentions of the law. We found no evidence of more violence towards prostitutes after the ban on purchasing sexual services was implemented.

Estimates of the size and composition of the prostitution market is uncertain, in particular with regard to indoor prostitution. There is a declining trend in the market after the law was implemented. The market for

purchasing sexual services was reduced immediately after the introduction of the law. Later the market showed an increase, but it has now stabilised at a lower level than before 2009. The most profound changes are found in the street prostitution market in Oslo (the capital of Norway). Here, systematic field observations by the Pro Centre (a private organisation funded by the government) show that the size of the market today has stabilised at a level of 40–65% of the market before the law.

One main source of our information has been the Pro Centre (Pro Sentret, 2008, 2012, 2013) that has been observing and counting both the number of street prostitutes and indoor prostitutes. Moreover, we have used information from the Church's city mission, and from the FAFO research institute (Brunovski, 2013; Tveit and Skilbrei, 2008). Both have been observing and counting street and indoor prostitutes. The police have provided us with very useful statistics and information. Finally, we have conducted a number of interviews with police, prostitutes and social workers.

## 2. Street prostitutes

In Figure 1 we show the number of street prostitutes observed day and night along the vertical axis, and the period January–May (2008–2014) along the horizontal axis. We clearly see the reduction in the number of

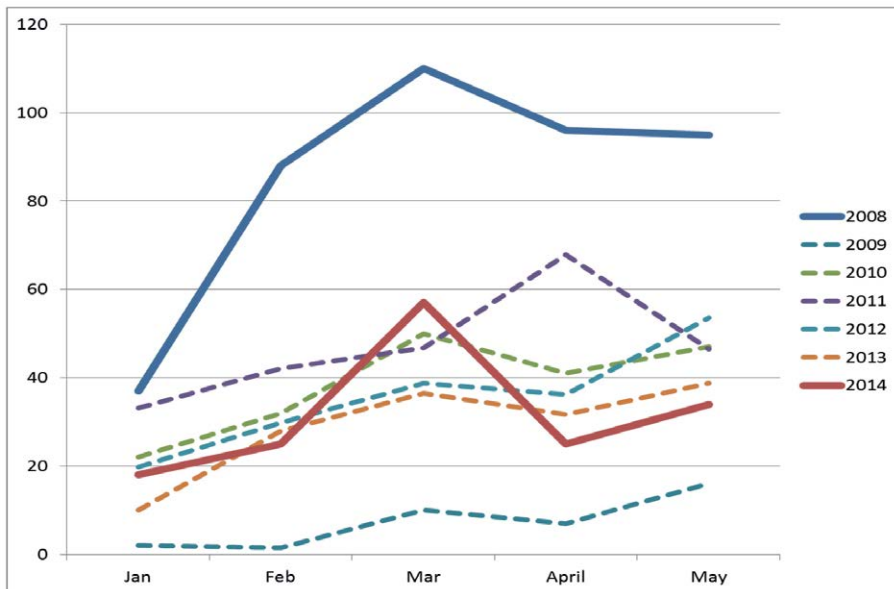
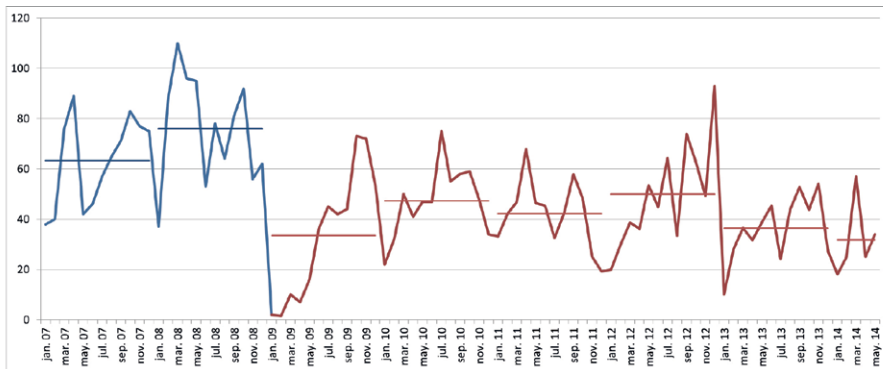


Figure 1. Number of street prostitutes in Oslo, Norway. January 2008–May 2014.

street prostitutes immediately after the law was passed (the 2009 curve). In the following years there was an increase in the number of prostitutes, but the level in these years was significantly below the level in the year before the law was passed (2008), see Figure 2.

A possible source of error in this data material is the timing of observations (i.e. when during the day/night the observations have been made and whether this timing varies over the years in the time frame). However, the market shows the same tendencies also when this bias is controlled. The street markets in Bergen (Norway's second largest city) and Stavanger (another large city in Norway) show similar trends as Oslo after the introduction of the prohibition against purchasing sexual services. When the police have strategically targeted the market, we see a clear fall in the number of people in prostitution.

It was feared that the sex purchase act would lead to a change in market dominance, from street markets to indoor markets. Thus, we had to investigate the impact of the law on the activities in the indoor market.



**Figure 2.** Number of street prostitutes in Oslo, Norway. January 2007-May 2014.

### 3. The indoor market

Estimates of the size of the indoor market are considerably more uncertain than the estimates of size of the street market. This is due to the increasing rotation of the market. The prostitutes frequently travel across cities and countries and only stay at one place for a short term. Furthermore, it is common to have several advertisements connected to the same telephone number (in the sense of a call centre), to have more than one

telephone number, and to have more than one advertisement on the same website.

This makes it difficult to provide a correct estimate of the size of the market. Still, according to informants in this branch of the prostitution market, prices are lower now than before the introduction of the prohibition, which indicates lower demand. More travelling both across borders and within the country, more advertising and somewhat lower prices, show that competition has become tougher after the law was implemented, and demand is lower. It was reported that prostitutes in indoor market prostitution have to work harder now in order to secure 2008 income levels.

Our analysis of the indoor market is that it has stabilised at a somewhat lower level than before the introduction of the law. Our best estimate – with a high degree of uncertainty – is a market reduction of 10-15% compared to the situation before the prohibition. However, since the indoor market is less reduced than the outdoor market, we conclude that the share of indoors prostitution of the total prostitution market has increased.

#### **4. Prostitution in Norway without the law**

In 2008 there was a global financial and economic crisis. This caused negative consequences for the labour markets in a number of countries. Norway, on the other hand, was not particularly affected due to good economic policies and healthy state finances.

The large increase in the number of prostitutes in Norway in 2008 has to be seen in light of the financial crisis which reduced the demand for sexual services in countries which were affected severely by the crisis. Higher unemployment rates in Europe may also have made prostitution a more attractive alternative for the unemployed. As long as the possible profit from prostitution is higher in Norway than in other countries, one has to expect that the market for selling sexual services will increase in Norway. The development in the rest of Europe over the last few years, with reduced revenues in the prostitution market, would thus most likely have led to a larger share of prostitutes in Norway had the law not been implemented.

Without the prohibition against purchasing sexual services, the Norwegian police would have lost an important tool for reducing human trafficking. For instance, the police takes advantage of information from penalised purchasers of sexual services to enforce the laws on human trafficking, pimping and pandering. The traffickers, i.e. those benefitting from the prostitution of others, would thus have faced a smaller risk of being caught had the law not been adopted.

We estimate – again with a high degree of uncertainty – that the market in 2014 without prohibition would have been approximately 15% larger than the market in 2008 and approximately 35% larger than the actual market in 2014.

## 5. Attitudes

A survey conducted by Kotsadam og Jakobsson (2011) concludes that young men in Norway have changed their attitudes towards buying sexual services more than older men. Furthermore, people in Oslo are more liable to have negative attitudes towards buying sexual services than the rest of the population in Norway. This can be due to a more visible prostitution market in Oslo than in other parts of Norway. Our interviews with police in the largest cities also indicate that the prohibition against purchasing sexual services has had a normative effect on people's behaviour.

It is somewhat early to conclude on this matter as it takes time to internalise a norm. Still, our findings indicate that the law has had an effect on attitudes. This is also the conclusion of the evaluations of a similar law implemented in Sweden in 1999 (SOU 2010:49).

## 6. Prices and sales of sex, before and after the prohibition, and in Norway today without the law

As previously outlined, the prohibition on purchasing sexual services has led to reduced demand for buying such services. Women in prostitution use the term «buyer's market» to address this tendency. The typical customer is now anxious of being caught by the police. This can result in shorter time for the prostitute to decide whether to strike a deal with the customer. A combination of a more nervous market and a market with lower demand for sexual services might be a result.

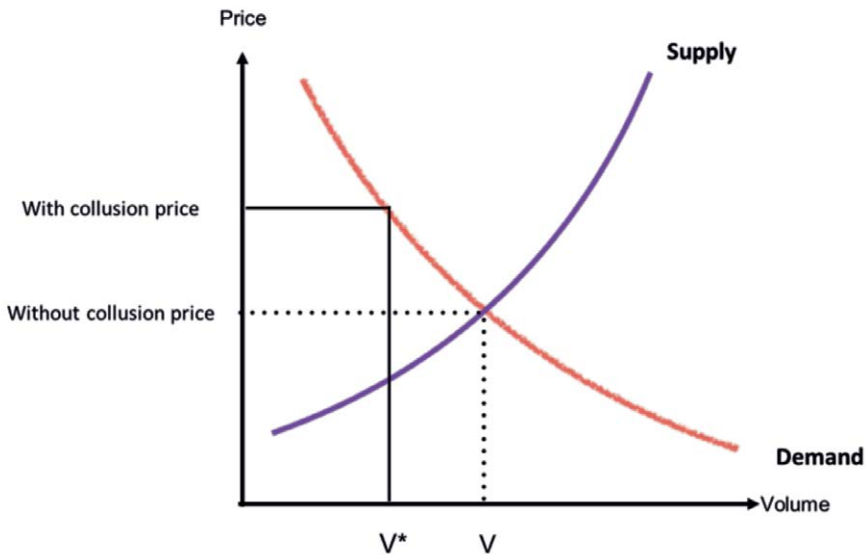
The prohibition on purchasing sexual services in combination with the prohibition on pimping and pandering have made it more difficult to sell sexual services in Norway, particularly if such activities are conducted in hotels and apartment collectives. The costs for the actors benefiting from other's prostitution have thus increased and their profit has been reduced. Put together this has affected the supply side of the market and contributed to less prostitution in comparison to a situation without the prohibition.

A reduced market and increased law enforcement posit larger risks for human traffickers. The profit from human trafficking is also reduced due to these factors. The law has thus affected important pull factors and reduced

the extent of human trafficking in Norway in comparison to a situation without a law.

The prostitution market in Norway has changed over the last decades, from being a domestic market with mostly domestic actors, to a more globalised market.

From 1980 to the end of the 1990's prostitution in Norway was controlled by national pimps and by the prostitutes themselves. Prices and sales of sexual services were coordinated. We call this the semi-cartel period. As shown in Figure 3 this semi-cartel implied prices above the perfect competitive level and consequently with a volume of paid sexual services below the perfect competitive outcome.

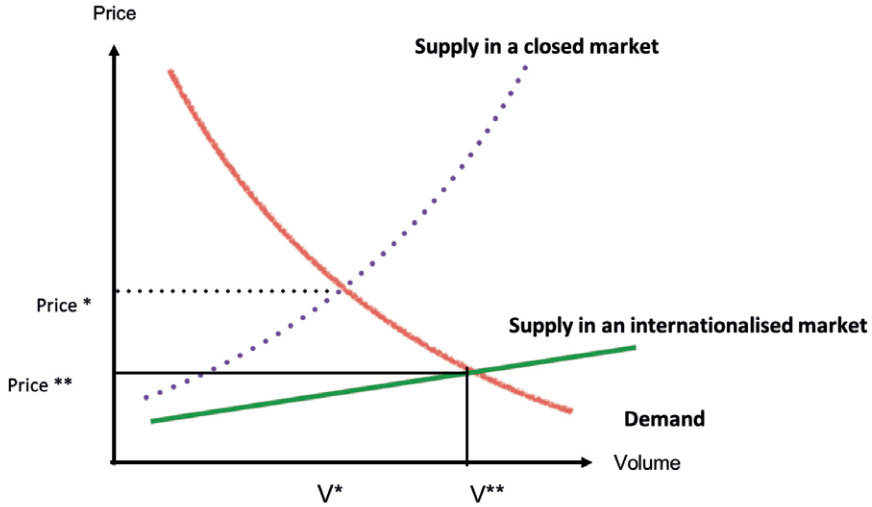


**Figure 3.** Supply and demand in a semi-cartel (collusion).

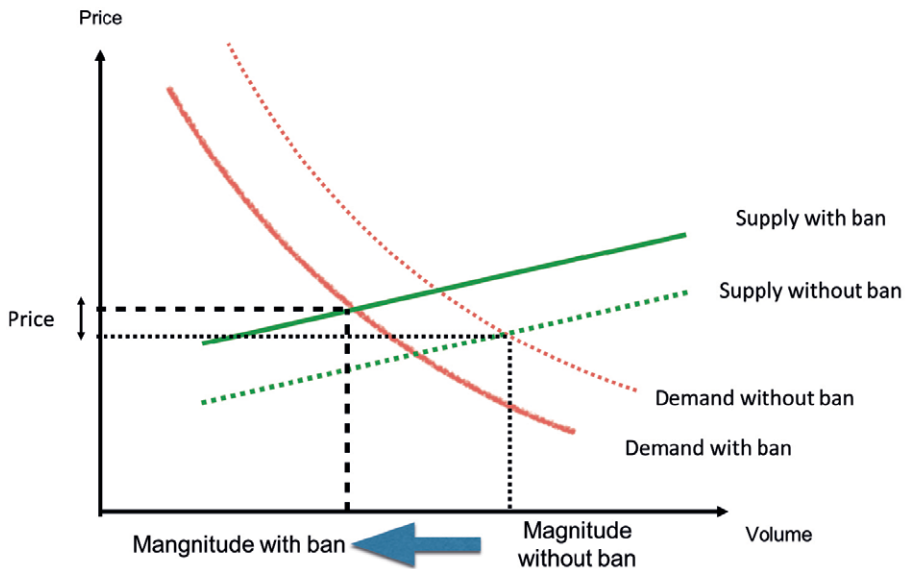
During the last 15–20 years there have been more prostitutes from abroad; from Asia, Africa, South–America and East–Europe. Prices fell and the amount of prostitution increased, see Figure 4.

Since 2009, after the prohibition was implemented, demand was reduced, and prostitutes left Norway and went to other countries where selling and buying of sexual services is legal (Denmark, Germany, Netherlands). The effect on the volume of paid sexual services is clearly negative, while the impact on prices is more uncertain. A lower demand implies lower price,

while less supply due to prostitutes leaving Norway may increase the prices. The net effect is most likely a reduction in prices, see Figure 5.



**Figure 4.** Supply and demand with international competition, compared to a perfect competitive domestic market.



**Figure 5.** The market effect of the ban on purchasing sexual services.



## **7. Working conditions for the prostitutes after the law**

Prostitutes in the street market report to have a weaker bargaining position and more safety concerns now than before the law was introduced. In the indoor market prostitutes experience concern for “outdoor calls”. However, they prefer to have customers visiting them at their own apartment or own hotel room. The threshold for reporting a violent customer to the police also seems to be higher after the law. The prostitutes are afraid that such actions will come back to halt them at later stages (i.e. losing their apartment in a police action).

Even so, we found no clear evidence of increased violence against women in the street market after the introduction of the law. The police have no indications of increased violence as a result of the prohibition against purchasing sexual services. The indications we received from meetings with prostitutes and social workers are that the violence changed in character after the law was implemented to become less harsh and devastating.

## **8. International actions needed**

The prostitution market in Norway is, like in the rest of Europe, characterised by an increasing share of immigrants from middle-income countries and poor countries.

Most of these immigrants are women with few other real options than entry into prostitution. Human trafficking is part of this rotating market. The entry into prostitution is based on economic motives.

Internationally there is the need to provide more options for people who want to get out of prostitution. Language courses, work training and work options are considered to have clear positive effects. Most of the prostitutes in Norway come from Nigeria. Due to the politics of open borders in Europe, lately the number of prostitutes coming from Eastern Europe has grown considerably. Higher economic growth, more ordinary jobs and better social policies in the countries of origin may reduce prostitution in Europe.

If some countries in the EU continue to allow the buying (and selling of sexual services), then prohibition against purchasing sexual services in some countries may result in growing prostitution markets in countries where purchasing is legal. Coordination of laws at the EU level may be needed.

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# A ‘LIBERAL PROFESSION’? THE NORWEGIAN DEBATE ON THE “SEX BUYING ACT”

JANNE HAALAND MATLARY

The Norwegian Sex Buying Act (SBA) was adopted by the Norwegian parliament in November 2008, criminalizing the buying of sexual services. In the Norwegian penal code, art. 202a, it says that buying sex is to be punished by fines or imprisonment for 6 months up to one year. The law also applies extraterritorially, something which is rather uncommon in national legal practice.

The SBA was heavily opposed by the organization for prostitutes in Norway (PION), research institutions like Fafo (Labour party’s research foundation) and Pro Senteret, an organization that helps prostitutes.

The proposal for the new law was sent out to stakeholders for review and comment as is the procedure in Norway. The political parties that supported it counted the Labour Party which is the biggest party in Norway, SV (left Socialists), Sp (the farmers’ party), and KrF (the Christian democrats). All these three parties are small, but together with Labour they made up a majority, and the Labour government which proposed the law, saw it adopted. The opposition consisted of the Liberal-Conservatives (Høyre), the Liberals (Venstre), and the right-wing populist party FrP, the Progress Party. The ‘hearing round’ to stakeholders did not invite substantial discussion about the question of criminalization; it was determined beforehand by the majority that the government held.

The SBA has been legally in force since January 2009. Its main rationale was to prevent human trafficking and to change attitudes to prostitution. Other aims were to reduce the demand for sex in the market and help women into jobs and a different way of life. We will return to the analysis of arguments for and against the law below, suffice it here to say that it was and is very controversial and contested politically.

After 5 years in force the government decided to evaluate it, and the tender for the analysis was won by *Vista Analyse* whose conclusions you have just heard. The main findings are that the law has reduced demand, made it harder for traffickers and pimps to work in Norway (both are criminal activities), reduced economic conditions, and reduced the street

market by 40–65%.<sup>1</sup> Importantly, the report also found that there was an attitudinal change in young men against the buying of sex. This finding is seconded by police information, according to the *Vista* report. They write that “our findings indicate that the law has had an effect on attitudes. This is also the conclusion in evaluations of a similar law implemented in Sweden in 1999”.<sup>2</sup> In the NYT of March 16<sup>th</sup>, 2015,<sup>3</sup> there is a report on the latest study of the effect of the Swedish law that dates from 1999. It says that prostitution has been cut by more than half since 1995 and that demand is down by 40%, and that this is “consistent with an official report completed by the Swedish government in 2010 which concluded that the law has reduced trafficking and transformed attitudes towards buying sex”.<sup>4</sup>

The article also mentions that this policy is being imitated by other states – Sweden’s law dates from 1999, Finland’s from 2006, Norway’s and Iceland’s from 2009, whereas the UK and the European Parliament have called for the same mechanism – punishing the buyer. As policy studies show, imitation of successful policies across countries is common (isomorphism). *We may thus assume that reports that find effect of this type of law will greatly contribute to such policy ‘lending’*. The evaluations of effect are the more important for this reason.

Yet in Sweden there are voices that contest the benign effects of the law. Prostitutes complain that they are forced off the street and into more dangerous situations with clients in hotel rooms or apartments, and that they cannot get social help from outreach groups without feeling the pressure to change away from prostitution. The normative content of the law is crystal-clear: this is not a profession, but something where the customer is breaking the law, i.e. committing a crime, as if he were buying drugs or contraband. The ‘trade’ therefore cannot be treated like any other any longer, the seller is not neutral when the buyer is criminalized – the implication for her is that she should get out of this business that the state tries to destroy by chasing the customer. This is where the various arguments about prostitution come into conflict, as we will see later in this paper. Those NGOs that protect what they consider the work rights of prostitutes are all of a sudden in a new situation where they are tasked with helping girls and women to leave prostitution. Some oppose this

<sup>1</sup> Presentation of the report by Professor Steinar Strøm at this conference.

<sup>2</sup> Ibid.

<sup>3</sup> NYT, March 16th, 2015, «Sweden’s sex-trafficking setback».

<sup>4</sup> Ibid.

vehemently because they regard prostitution as a profession that should not be stigmatized. With the SBA, the work of the prostitute is thus stigmatized as it is automatically redefined as undesirable and an unfree, harmful and destructive when the customer is redefined from customer in a market to criminal actor. Like the famous Hegelian dialectic in the master-servant relationship; once the master defines himself as master, he can define the other as servant. Only when the servant realizes that he is thus defined, can he redefine himself – perhaps in an analogy to this situation: once the sex customer is a criminal, the prostitute cannot insist on being a regular seller of a service in a regular market.

### **Trafficked women or ‘liberal professionals’?**

The Swedish data tell us that in the late 1990s, trafficking was not an issue and most prostitutes were Swedish.<sup>5</sup> Now the women are mostly from Romania, Bulgaria, and Nigeria. More than 8 in 10 want to return to their home countries.<sup>6</sup> The same situation occurs in Norway – whereas most prostitutes were Norwegian in the 1990s, they are now outnumbered by foreign women, mostly from Nigeria and the poorer states of Europe.

There is another interesting parallel in Sweden and Norway: Former opponents of the law have changed their minds after having worked on the problem in daily life: The deputy prosecutor of Gothenburg in Sweden, Tomas Ahlstrand, was against the law. But now he has worked on the problem of prostitution and trafficking for more than a decade he says that, “I realized by meeting and talking to these girls ... that I was wrong. They were victims of oppression”.<sup>7</sup> In Norway, the chief prosecutor in the country of Hordaland where the second largest city Bergen is, has come to the same conclusion. He says that if the law is removed, the police will no longer care about what goes on the market, and traffickers will have impunity: “The sex act brings attention to the market and allows the police to detain traffickers”, he says, and adds that there are now no less than 33 cases of traffickers that have been sentenced in Norway since the law went into effect.

In sum, the laws against the buying of sex have had the intended effects in Norway and Sweden: they have reduced demand, changed attitudes and

<sup>5</sup> According to the spokesman of the Swedish center against prostitution and trafficking, Patrik Cederlöf, cites in *ibid*.

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*.

contributed to police attention to trafficking, leading to court cases and sentences. The women in prostitution in these countries have become non-nationals to an increasing extent, making it likely that many of them are trafficked. Thus, the law's connection with the trafficking problem is a real one, and it enables the police to get to the traffickers and to persecute them.

The SBA is therefore not a law against prostitution in a more generic sense, but against women that are forced into prostitution. This is one of the most contentious points about it. Many argue that we talk about a profession that essentially involves two consenting adults and which therefore should not be criminalized, even if the latter only concerns one of the parties.<sup>8</sup> From such premises a lot follows: freedom to choose what to do in a contractual situation, selling a service for which there is demand, etc. However, if the position is unfree and the woman is under pressure to prostitute herself, the validity of such arguments disappears. Therefore it is very important to establish the factual situation for the women as precisely as possible at the outset.

As we have seen, the number of trafficked women has risen during the last decade, and this is likely to continue, given open borders and globalization. Are these women trafficked or no? Do they chose to come to Norway to work in prostitution? No one has exact data on this, but there is evidence of much trafficking in Europe and elsewhere. This contrasts very much with the so-called 'luxury' prostitutes that advertise on the Internet and are resourceful nationals, like the Norwegian law student Hege Grostad<sup>9</sup> who under full name gave interviews and participated in the debate about the SBA. She claims that there are no negative sides to her work as an escort girl along with her studies. Another student who calls herself "Sarah" says that she makes 10-15,000 NOK per night (1500-2000 euros) and that her customers are Norwegian businessmen who visit Oslo. Another Norwegian category – at the other end of the scale – are the Norwegian drug users who need income, but their numbers in prostitution have shrunk. It is obvious that students like Sarah or Hege live lives far removed from the oppression of foreign trafficked girls, and that arguments about 'profession' or not will vary accordingly. Yet arguments about this activity need not rely on oppression in order to maintain that prostitution is degrading and against human dignity.

<sup>8</sup> E.G.Tonning Riise's report from the liberal think-tank Civita, to be discussed later.

<sup>9</sup> VG, «Det var befriende å stå frem» January 2, 2014, and anonymous debate articles.

## Arguments – the Norwegian debate

The first debate on the SBA took place in 2008, before the act was passed. Fortunately we have an analysis of all the arguments in that debate in the form of an MA thesis in legal sociology by Peter Andersen.<sup>10</sup> He analysed all media debate on this between 2004 and 2009.

The legal arguments mentioned in the law itself concern *trafficking*. The problem that the law addresses is not prostitution as such, but the fact that so many prostitutes are trafficked. Trafficking is a new phenomenon compared to pimping and prostitution as such. Both are prohibited in Norwegian law.

In the Norwegian debate, the number of articles dealing with the act and whether to accept it, rose from a mere 23 in 2003/4 to 239 in 2007/8. The act was adopted in 2008. The main papers contained most of the articles, with the leading 5 papers that are dailies in Oslo. The main theme in these articles was the issue of criminalization of prostitution.

These papers which are opinion leaders in Norway, printed articles that had the following view of the matter: Almost 29% of the articles were in favour of criminalization, 26% were neutral, and 25% were against. The rest were mixed in their view. Thus, we see that there was no overwhelming public opinion in favour of the new act to begin with, but this changed throughout the debate.

The actors in the debate were first and foremost politicians: here we find 126 pieces by this group. Next in line is the prostitution organisation Pro Senteret which had 56 articles, followed by police with 38, and prostitutes by 31. The rest of the articles (N=378) were written by journalists, academics, and the general public. There were 47 editorials on the theme. The opinion leaders were mainly strong actors in society – politicians and various professionals.

Among the politicians we find that most are parliamentarians, mostly from the Labour Party which proposed the act – 75 articles out of 126. The next group of 26 contain articles written by the Left Socialists, 18. The other parties partake less and have on average 6–8 articles. The Christian-Democrats which favour the SBA very much do not seem to debate much on it. Thus, the Labour party and the Left-Socialists which both are in favour of the SBA also argue for it and seek to set the agenda on the issue, something which is logical. The other parties are less interested.

<sup>10</sup> *Sexkjøpsloves fremstilling i media før lovens ikrafttredelse* (The debate in the media about the act before its enactment), MA thesis, Faculty of Law, Peter Andersen, University of Oslo, November 2013.

Among the other participants we find the editorials of the papers. What they say is important in forming public opinion. One liberal paper, *Dagbladet*, moves from being against the SBA to a pro-position during the debate.<sup>11</sup> Such 'conversions' can be important as they communicate that new knowledge and better arguments can move positions, and when one major paper changes its opinion, others can more easily follow suit. This paper which is very liberal towards prostitution writes that the trafficking issue is what made it change its mind as this is no longer about consenting adults, but about oppression of women.

The organization for prostitutes (PRION) and the social outreach organizations for the former (Pro Senteret) are very active in the debate, but the sex buyers are absent. Even in a country where the liberal argument about prostitution as a profession is dominant and prostitution is legal, the soon-to-be criminalized customers did not participate in the debate. They could of course have written anonymously, but the fact that they did not suggests that there is *shame* attached to this kind of business transaction – i.e. that it is not really a normal business of service exchange.

There was at this point no dominant view in the public debate, so that we cannot interpret this as an instance of what Noelle-Neumann<sup>12</sup> calls the 'spiral of silence'. Her thesis is that a dominant view of something in a public debate will force out dissenting views so that they are silent in the end. This could seem to be the case with e.g. abortion in Norway – from a fierce debate in the mid-70s when the law permitting abortion was adopted till the present where there is no debate on abortion at all. But as said, in the case of the SBA, the public debate did not have one dominant position although it was clear that there would be a political majority in favour in parliament. However, the Norwegian political system is one where 'votes count, but resources decide' as political scientist Stein Rokkan<sup>13</sup> famously wrote. The corporate channel of influence may be more important than the parliamentary. In this case there were no corporate actors involved, as the prostitutes are not well organized, but the importance of knowledge and expert findings do play a key role, as we shall see in the current round of re-evaluation of the SBA (2014/15). Moreover, the liberal view

<sup>11</sup> Editorial, 20.4.2007.

<sup>12</sup> E. Noelle-Neumann, «The Spiral of Silence: A Theory of Public Opinion», *Journal of Communication*, vol. 24, issue 2, pp. 43–51, June 1974.

<sup>13</sup> Rokkan, S., «Norway: Numerical Democracy and Corporate Pluralism», in Dahl, R. (ed) *Political Oppositions in Western Democracy*, Yale University Press, New Haven, 1966.



of prostitution as a profession was the dominant one in Norway when the SBA was proposed. For these reasons it might have been possible to influence public opinion and swing political opinion during the debate.

In sum, the main advocates were Labour and Left-Wing politicians, the police, and various feminists groups, in addition to the Christian-Democrats, a largely Lutheran party in Norway. The conservative party H was divided, and still is.

The feminist groups are very clear in their views. They favoured criminalization, but were more ideological than empirically based in their arguments.

Pro Senteret, an outreach organization for prostitutes, was in two minds about the issue, but concluded against criminalization. This organization 'represents' prostitutes to a large extent, especially Norwegian ones and tends to argue that they need to be helped so that they do not lose their income.

### **Did facts matter?**

More than 30% of the articles referred to research on the issue, but there was no clear base of research to be referred to at the time.<sup>14</sup> This makes it interesting to note that the percentage here is fairly high. Most research is mentioned as references to international findings and studies, especially from Sweden which enacted a similar law ten years before Norway. Thus, there is a search for facts that can determine the issue position. Academic studies also clearly provide legitimacy in the public debate, but in this case there is not a large body of knowledge and no 'scientific consensus' on whether a SBA will work. The interest in evaluation of the Norwegian law in 2014 has therefore been great, as we shall see below, and the conclusions of the evaluation report seem to play a decisive role in determining whether the law should be repealed or not.

However, from 2007 onwards there was little uncontested knowledge of the extent of trafficking in prostitution and about the effects of the law in Sweden. It was simply too early to tell and only one case to study.<sup>15</sup>

### **Moral arguments**

It is hardly surprising that moral arguments play a key role in the debate. In the study we cite from, 52% of the article contained moral

<sup>14</sup> An exception is Skilbrei *et al*, see discussed later.

<sup>15</sup> Finland introduced such a law in 2006, Denmark chose not to.

arguments. Most of these were in the articles that advocated a SBA. Most of these arguments are grounded in trafficking as the main problem; then prostitution as degrading. However, the trafficking argument is much stronger. It is an unbeatable argument since no one would argue FOR trafficking. The key issue is whether trafficking is so important empirically that all prostitution should be affected by a SBA. This is, as said, difficult to show empirically, but there seems to be clear evidence that traffick-based prostitution has increased very much since the 1990s and that this therefore has to be addressed. In the editorials in the Norwegian press this was underlined – prostitutes are victims of oppression, they are not free subjects. *The more trafficking enters the argumentation, the less legitimate the opposition to the SBA becomes.* The agenda setting or framing the issue was and remains of key importance.

In sum, the Norwegian debate in 2007–8 was characterized by a majority of arguments in favour of the SBA, led by Labour politicians and seconded by feminist groups. In addition some Christian-democrats participated and agreed with the argumentation, but they also argued that prostitution as such is a moral evil, and adding that trafficked women constituted a new case of immorality was hardly surprising. They played little political role in the government at that time, and therefore were not of key importance in getting the SBA passed.

Once the agenda was set and was based on trafficking, it was unassailable. The framing of the issue largely became one of trafficking or at least of oppression, but there were few moral arguments about prostitution as such – that it is not a ‘free’ profession where a service is sold in a market, but a degrading activity for women. We can assume that, absent the trafficking problem, Norwegian prostitution would have continued as before.

### **The Current Debate – 2014/15**

The Norwegian SBA has recently been evaluated, as discussed at the outset and detailed in professor Strøm’s presentation. As we heard, the law has had the intended effects insofar as it is possible to conclude. These findings have become of key importance in the current debate and seem to change the current government’s policy plan to abolish the law, which is not a small feat on the part of academic research!

The current liberal-conservative government has pledged to repeal the law, and in particular it is the right-wing populist party FRP which argues strongly for this. But the evaluation report has had a major effect on this intention:

As expected, the Christian-democrats applaud the findings: Ingolf Ropstad from that party says that “Now the Conservatives, Liberals, and Right-Wing parties must take heed and not repeal a law that works”, and he adds that “before the law, there were only 5 trafficking cases brought to court, afterwards, we have 33 such cases”.<sup>16</sup> The governing party Høyre (Liberal-Conservative) is now in doubt about what to do: “The Liberal-Conservative Party does not know what to think about the SBA”,<sup>17</sup> reads the headline, but the Young Conservatives remain opposed to the act. One parliamentarian from the party, Peter Frølich, says that the evaluation report is somewhat uncertain in its conclusions, “thus it is not certain that we should accept it now”. Here there is a direct link between the empirical effects of the SBA and the political position, implying that if the law works, it must be retained. The party could have continued to argue that prostitution is work and that it should not be criminalized, but it does not. It simply says that if the law works well, it must be retained. This is not what the argument was about before; it was not that such a law could not work, but that such a law criminalized all prostitution. There is no logical connection between these types of arguments, but it appears that the governing party retreats from its opposition to the law simply because it is proven to have effects. His statement should rather be read as a *retreat in the face of unpopularity, as public opinion now seems very much in favour of the law*. Even the two key politicians in Oslo that both represent this party, the mayor and the head of the city administration, favour the law. Their clear support for it also contributes to the change in the party’s position which is now underway. It is ‘game over’ for the government in this matter, as professor Hege Skjeie wrote in her column in *Dagens Næringsliv*.<sup>18</sup>

In addition, the feminist movement, including the more moderate elements of it, are all “ready for another round of fighting” for the law, as they put it: “Can the government take yet another struggle with the women’s’ movement?” they pointedly ask.<sup>19</sup> Stating that they are ready to fight, they are seconded by the oldest women’s’ organization in Norway – one that is very moderate and close to the conservative party – *Norsk*

<sup>16</sup> Krf.no, party home page, interview with Ropstad, my translation.

<sup>17</sup> «H vet ikke hva det skal mene om sexkjøpsloven», BA, 14.08.2014, online.

<sup>18</sup> «Sexkjøpsideologienes fall», H. Skjeie, 15th August, 2015, online.

<sup>19</sup> «Tåler Erna nok et kvinneopprør?», Dagbladet, 26.06.2014, online.

*Kvinnesaksforening* from 1884. They have adopted a resolution that also strongly condemns prostitution as degrading to women:

*Prostitution is harmful and oppressive to women. There are huge health damages for women in prostitution. It upholds gender stereotypes of women as objects for men. These attitudes lead to violence towards women. We must therefore outlaw the buying of sex also for the future, and the government must enact programmes to help women out of prostitution now*".<sup>20</sup>

Thus, the current political situation is that the positive evaluation of the effects of the law has caused the government to change its stance on the issue. We can assume that the SBA will continue in Norway.

However, opposition continues from younger politicians and opinion makers in the liberal camp. The liberal think-tank Civita published a report in 2014 which advocated decriminalization. Tønning Riise argued that prostitutes in Norway are now much more at risk when they sell sex because they have to hide from the police and also protect their customers from the latter. This leads to more indoor prostitution, to less trust in the police, and to social stigma to a much greater extent than before. The SBA destroys the working conditions for prostitutes, he argues; conditions that were poor enough to start with.<sup>21</sup> A major academic contributor to the debate, Maj-len Skilbrei at the research institution Fafo, argues that trafficking has become almost synonymous with prostitution in the debate, but that this concept is ill defined and that there is little empirical research that proves its pervasiveness. In a report, she and co-author Marianne Tveit write that "it is very hard to say anything conclusive about the extent of trafficking in the Norwegian prostitution market, and our mapping does not yield clear results".<sup>22</sup> Skilbrei also criticizes the evaluation that has been presented at this conference: "Those who know the sex market in Norway also know that it cannot be mapped in just six months", she says.<sup>23</sup>

Tønning Riise argues in a consistent, liberal direction: the SBA means that prostitutes are hindered in their work by police, stigmatized, and categorized with trafficked women. He suggest de-criminalisation of customers and that the police should go after the traffickers and pimps,

<sup>20</sup> «Norsk kvinnesaksforening krever at sexkjøpsloven beholdes», containing the resolution which is translated above in the text. Webpage of the organization, Norsk Kvinnesaksforening, 2014.

<sup>21</sup> K. Tønning Riise, «Trenger vi en ny prostitusjonspolitik?» (Do we need a new prostitution policy?), Civita Report, March 2014, available online at [www.civita.no](http://www.civita.no)

<sup>22</sup> Skilbrei, M-L, and Tveit, M. Mangfoldig marked», Fafo, 2008, online.

<sup>23</sup> Klassekampen, May 10th, 2014.

which are criminals according to Norwegian legislation. There must be a distinction between the sex workers that want to work in this 'profession', he says, and those that are forced to do so. He claims that such a policy is the mainstream solution internationally, citing evidence from various international bodies.<sup>24</sup>

## Conclusions

As we have seen, the SBA in Norway seems to be politically solid by 2015 because it has been evaluated as having the intended effects. The attitudes towards buying sex have changed, especially in younger men, as one major effect, and the market for selling sex has contracted considerably. Street prostitution in Norway has almost disappeared. The facts about trafficking are hard to establish in great detail, but it seems clear that the law has had very important effects. The fact that street prostitution has nearly disappeared is obvious to everyone in Oslo, for instance. What used to be a big problem in the main streets of the city has virtually disappeared. The same objective measure applies to the number of court cases re trafficking: the rise is considerable. It is therefore not a valid argument to say that the evidence is too scanty or subjective to preclude conclusions about effect.

Moreover, the change in attitudes is important in its own right, perhaps very important. Smoking was criminalized some years ago in Norway when the smoker was inside a public building or in a restaurant. Now virtually no one smokes. The social stigma attached to smoking through its semi-criminalisation is great, and *perhaps more effective in combating smoking than the ban itself*. The SBA act conveys that prostitution is no longer a 'liberal' profession, a market relation where a service is sold in a market, but that it is a criminal activity on the part of the buyer. This in turn also redefines the seller as something less than a market actor, and it is understandable that prostitutes protest the disappearance of their livelihood. Yet they must accept that society says that they are engaged in 'work' that is not good for them, although this moral argument about human dignity has been less prominent in Norway than the pragmatic argument about effects. By setting the agenda on trafficking and not on prostitution as such, the debate has avoided the moral dilemmas and the moral arguments about prostitution since no one can oppose criminalization of trafficking.

<sup>24</sup> This is contestable 'evidence'.

Now that the SBA seems to have come to stay, the government has incurred a moral obligation, however: by 'freeing' women from trafficking, what will it offer them instead? There is an obligation here that is just now starting to become recognized. Therefore the topic '*beyond* criminalisation' follows logically, as this conference points out.

# HOW DOES SOCIAL NORMATIVITY CHANGE AND CAN IT BE BROUGHT TO FOSTER THE COMMON GOOD?

PIERPAOLO DONATI

## 1. The issue

This contribution aims at dealing with the morphogenesis of normative change that can approximate more closely to the pursuit of the common good in coping with the issues of human trafficking.

First of all, I will consider and develop an account of the processes by which normative change takes place in a context of globalization and emergence of a new morphogenetic society worldwide. Secondly, I will tackle the issue of normativity in the phenomena of human trafficking, attempting to respond to the need for *preventive* solutions when we ask ourselves how to make malpractices such as forced labour, forced prostitution or unprotected domestic servitude of migrants (legal and illegal) normatively unacceptable not by legal coercion alone and not by financial penalties alone. Of course, legal and financial penalties are an important factor in fighting against the exploitation of human persons. There is nothing wrong with interventions that combine prevention and prosecution. But we need solutions that are of a positive character in order to foster the promotion of human dignity and the common good in a more civilised society. The common good will be understood here as a relational good (Donati 2008, 2015).

The paper is intended to draw mainly a theoretical framework, useful to the design and implementation of social policy(ies). What I am going to suggest is a general conceptual framework which can show how normativity can be changed in those social networks that foster trafficking in persons, so to further processes of social inclusion respectful of human dignity through a relational steering.

In the modern social sciences, moral norms are generally explained as a product of individual actions or as a manifestation of adaptation to socio-cultural institutions. These explanations are wholly insufficient and/or biased in order to understand the phenomenology of the 'social morality' that bolsters, or, vice versa, can fight human trafficking. Social morality is an expression of underlying social networks that feed the trade of human

beings. Such networks can be modified so to reverse them into networks of social solidarity through appropriate interventions inspired by a certain morphogenetic approach.

I argue that, with globalisation, there are emerging processes of morphogenesis of moral norms that, alongside sequential and concomitant forms typical of modern morality, represent a possible *transmodern* form of morphogenesis, that I call ‘relational’, able to avoid the exploitation of human persons. This relational morphogenesis is characterised by the fact that moral norms must respond to the needs of a new relationality between human subjects and with nature. It is asserting itself wherever social relations are considered as a reality endowed with *sui generis* qualities and causal properties, thus becoming the foundational moral criterion of new social networks and practices respectful of our humanity.

In talking about human solidarity we must be careful. In her book *The Ironic Spectator: Solidarity in the Age of Post-Humanitarianism*, Lilie Chouliaraki (2013) has explored how solidarity towards vulnerable others is performed in our media environment. She depicts three major transformations: a) the instrumentalization of the aid and development field that is characterized by tendencies of (NGO) branding and the marketization of humanitarian practice; b) the retreat of “grand narratives” of solidarity resulting in an individualist morality of “feel-good” activism or what Chouliaraki calls an ironic solidarity that rewards the self and is motivated by the emotionality of the donor rather than by the vulnerability of the other; and c) the increasing technologization of communication leading to a new communicative structure that is predominantly defined by an invitation to self-expression through new media platforms and by the absence of normative morality. Drawing on an informed and detailed understanding of these historical transformations, she primarily focuses on the issue of “how changes in the aesthetics of humanitarian communication are also changes in the ethics of solidarity” (*ivi*, p. 3). Central to this book is a theoretical and empirical exploration of a shift in the communication of solidarity from an ethics of pity (anchored on the spectacle of the other) to a dominant ethics of irony (anchored on the spectacle of the others like us and hence self-reflexive) – a shift, Chouliaraki asserts, that, more than ever, needs to be addressed with caution and a critical spirit.

She argues that stories where famine is described through our own experience of dieting or where solidarity with Africa translates into wearing a cool armband tell us about much more than the cause that they attempt to communicate. They tell us something about the ways in which west-



ern people imagine the world outside themselves. By showing historical change in Amnesty International and Oxfam appeals, in the Live Aid and Live 8 concerts, in the advocacy of Audrey Hepburn and Angelina Jolie as well as in human trafficking news on the BBC, Chouliaraki shows how solidarity has become a consumerist choice rather than a conviction, and more about ourselves than others. The mass media spread an idea of solidarity that does not lead to civil engagement, but very often turns us into the ironic spectators of other people's suffering. The ironic spectator is defined as "an impure or ambivalent figure that stands, at once, as sceptical [*sic*] towards any moral appeal to solidary action and, yet, open to doing something about those who suffer". How can we change this sad situation?

Chouliaraki proposes to develop a 'moral strategy for an agonistic solidarity'. In doing so, she relies upon Silverstone's (2006) claim that the task of actively construing the world as 'common and shared' to all is a moral stake in its own right and itself an act of solidarity. This active and continuous reassertion of the world as-if it were 'common and shared' to all, is what Arendt (1958/1999) refers to as the 'agonism' of the public world. These ideas are the starting point for a new vision of solidarity, called 'agonistic' solidarity. I will try to translate this moral appeal into a sociological frame of action that can help us to understand what can be done to achieve 'agonistic solidarity' in favour of people who are vulnerable to trafficking.

Against the contingent morality of irony that reduces the world-beyond-us to our own 'truths' about ourselves, agonistic solidarity re-asserts this world as distinct from us and re-appreciates the role that judgment and imagination can play in turning this world into an object of our reflexivity, empathy and action. Given the dominance of the morality of contingency today, however, how could the agonistic vision emerge as a convincing alternative to ironic solidarity?

I believe that only a peculiar, relational theological matrix of culture and society can really lead us to achieve this goal, i.e. a morality of active solidarity generating common goods (Donati 2010). Today, all Christian denominations are deeply engaged with combating human trafficking. They all are trying to answer the questions: how can we conceptualize the cause of modern forms of slavery and abolition, and why? Nevertheless, they show different modalities of doing so. The recent empirical data provided by Austin Choi-Fitzpatrick (2014), indicate that Evangelicals are more likely (than mainline Protestants) to suggest individual-level (rather than structural-level) causes of and solutions to human trafficking. In the concluding discussion, the Author claims that the difference between

evangelical and mainline respondents is explained by a ‘salvation schema’ that underpins their conceptualizations of social change.

In this contribution, I claim that the Catholic approach is different from both the Evangelical and mainline Protestants in so far as it proposes a structural and relational level in the explanation of the causes of and solutions to human trafficking. This is due to its own ‘salvation schema’, which is based upon a theological matrix that is fundamentally ‘relational’ (Donati 2010). I have no room to enter into the details of these differences. I wish only to remind the reader how much the ‘salvation schema’ matters in dealing with social normativity, given the fact that religion shapes culture, and culture directs public action (Rao and Walton 2004: 28–30). To address a new ‘moral economy’ in combating human slavery, we must remember – as Kevin Bales (2012) warns us – that human rights are based on cultural premises, viz. the privileging and then codification of the victim’s definitions of an action, normally an action that harms them. Virtually every action that we now think of as a violation of human rights was once defined as acceptable. Trafficking and enslavement were once legitimate and legal activities, accepted economic pursuits in which the well-being of the slave was of concern only inasmuch as the beef farmer of today is concerned about the well-being of his cattle. In order to change this social ‘morality’, it is necessary to understand how the culture of social norms is generated and regenerated.

In order to combat human trafficking effectively, before asking for more restrictions and repressive binding norms, we need to understand how to foster a new culture of human social relations and its intrinsic normativity.

## **2. The issue: morality in the crucible of late modernity**

**2.1.** It is important to underscore that the object of this contribution is not ethics as a reflexive theory on morality but, rather, it is morality as social phenomenon. The norms that I intend to address do not make reference to ethical theories, but have to do with practical agency and social relations in different social spheres, that is, in kin networks, families, economic exchanges and markets, politics, the world of ICTs, relationships with nature, and so on.

In late-modern societies we are witnessing changes of moral norms that not only are occurring with unprecedented acceleration, but, moreover, are reversing the sense of what is good or bad from a moral viewpoint. Behaviours that until very recently were considered immoral or even ‘amoral’ are becoming morally acceptable. For example, stigmatising or discriminat-

ing against certain ethnic minorities, once considered morally justified behaviours, are now becoming morally unacceptable and are even sanctioned by apposite laws. Likewise, certain violent and aggressive ways of treating animals or of exploiting natural resources, which have characterised the modern epoch, are now held to be morally ‘unsustainable’. Anyway, to be effective, normative changes need to be sustained by new social networks implementing them.

Talking about ‘modern slavery’, maybe what is ‘new’ in it, compared to the past, is paradoxically produced by the same society that tries to enforce *individualised* human rights. I say ‘paradoxically’ because the change in social morality inspired by what is called ‘institutionalised individualism’ does not always go in the direction of the better, but may go towards the worse. In fact, while the past forms of human slavery were legitimised by traditional customs and an established normative order, it is precisely the disappearing of that old morphostatic society that fuels the ‘modernised’ forms of human slavery. In short, what I am suggesting is to observe present human trafficking as the product of new cultural and economic drives that are made possible precisely by the contradictions and double binds introduced in the normative order of our society by the morality of ‘institutionalised individualism’.

**2.2.** Some speak of a loss of morality in society while others applaud the birth of a new morality. Behind these diverse opinions we find a crisis of the traditional modern morality derived from the Enlightenment and its dissolution into so-called post-modern culture. The emerging morality seems to obey a ‘normative metacode’ that imposes the reversibility of the distinction good/bad. How it can happen constitutes our topic, related to the question of what the normative mechanisms peculiar to the ongoing morphogenesis are.

All social systems (the economy, politics, justice, family, etc.) are now operating without significant relations with a presupposed morality, understood as a predefined system of values and norms that justify actions in different social spheres.

We can cite many indicators of this trend. For instance, in September 2014 the Ethical Council of the German Federal Government recommended the decriminalisation of incest between consenting adult brothers and sisters on the grounds that “it is not the task of criminal law to apply moral standards”. The law is clearly separated from morality. The law waives its purview of evaluating how good or bad social relations are (sex-

ual relationships between brothers and sisters, for instance), on the ground that the moral dimensions of social relations are a matter of private choice. In my language, moral norms are no longer the integrative components of social relations, since morality is placed in the environment of the normative system, which is made adiaphoric – i.e. rendered morally indifferent or neutral. Social relations are considered only as forms of communication between individuals who exercise their own (subjective) rights.

Notwithstanding these changes, it remains true that every subsystem encounters the moral problem of how to define good and bad social relations if, for no other reason, for the purposes of governability and social justice. For instance, the rise in human trafficking requires the activation of public policies aimed at changing the social relations in which trafficked persons are enslaved. This issue cannot be reduced to a problem of communication of esteem towards trafficked people through humanitarian declarations. It is a social fact that every societal system continues to have the moral problem of its own regulation in terms of substantial, and not only communicative, references to distinctive criteria of what is good/bad in social relations. Public choices such as the decriminalisation of incest or the legitimisation of polygamy imply moral choices that cannot be reduced to mere communicative acknowledgments of esteem or disesteem toward the individuals involved, for the simple reason that these choices are conducive to relational goods or bads.

Socio-cultural systems are now supported by a ‘contingent morality’ that decides case by case, based on the situation, what is good and what is bad. Distinctive criteria must always be reversible and crossable in every direction, which signals that, behind the changes of moral criteria, there is a meta-norm<sup>1</sup> that guides them. This meta-norm recommends indifference toward substantial, absolute distinctions between good and bad, given that making such distinctions is considered to be an act of discrimination. Moral distinctions should be contingent and used for mere communicative functions. Their ontological status should be considered adiaphoric. On these grounds, morality is trapped in a double bind, because social actions are forced to make moral distinctions, but the latter lack any legitimisation and are to be avoided.

Waging war on another nation or torturing prisoners are no longer problems to which one must respond with decisions based on univer-

<sup>1</sup> On the concept of meta-norm, see Axelrod (1986).

sal and absolute moral assessments, inspired by what modernity has called ‘principles of justice’, but become a mere question of utility and opportunism. This is the post-ethical society spoken about by Doug Porpora and others (2013). No wonder if this same moral attitude is adopted when dealing with human beings and their exploitation.

Should we speak of a ‘loss of morality’ or of a ‘replacement of one morality by another’? For the morphogenetic approach it is clear that the process is that of a crisis of a traditional structure of morality and its transformation into new configurations, among which some are favourable to the availability of human slaves.

### **3. Understanding morality as a social fact**

#### ***3.1. Beyond individualistic and holistic views of morality***

In the modern social sciences two types of explanations about the origin and transformation of morality prevail. For some, morality arises from individuals’ agency; for others it arises from adherence to socio-cultural structures that are imposed on individuals through processes of socialisation and internalisation of norms and values. In short, the explanation of morality is based on methodological individualism (interpersonal or ‘private’ morality – i.e., *hyposocialised* – which is prevalent among philosophers and economists) or methodological holism (impersonal or ‘public’ morality – i.e., *hypersocialised* – which is prevalent among sociologists and political scientists). For example, on one side, scholars such as Emmanuel Lévinas and Zigmunt Bauman deny that the encounter between two subjects constitutes a social situation.<sup>2</sup> Their approach to morality is strongly individualistic.<sup>3</sup> On the other side, Bourdieu and his followers treat morality essentially as a set of constrictions/constraints imposed by the cultural system and the social (class) system on the individual.<sup>4</sup>

<sup>2</sup> As Junge (2001: 105) rightly claims: “Bauman’s attempt to develop a sociological theory of morality turning around fundamental premises of Durkheim’s approach fails in the last analysis, since in Bauman’s view the ‘moral party of two’ does not constitute a social situation”.

<sup>3</sup> Bauman (1998, pp. 18-19) claims that a social relationship exists in a contract, not in a moral norm.

<sup>4</sup> See the critique of Bourdieu’s works by Sayer (2005). Nevertheless, Sayer’s own critique against the structuralist viewpoint held by Bourdieu is grounded in an individualistic approach. He maintains that morality is not just a matter of convention or an arbitrary social construct reflecting material interests, but anchors morality in universal physical and psychological human qualities, including the capacity of human beings

In recent decades theories that combine these two paradigms in various ways have multiplied. We see this in the vast and ongoing debate on morality as the product of the binomial agency/structure and of its possible variations. The most widespread version is that of *institutionalised individualism*<sup>5</sup> as the morality typical of advanced modern societies.

In this contribution I start from the assumption that these modalities for explaining morality are reductive and fallacious for many reasons, basically because they conform to the structures of modern society, which is based on the individual/State (the micro/macro economy, etc.) axis. Today they no longer capture the dynamic of emergent morality because they are unable to treat morality as a social phenomenon, that is, as a relational fact between human persons. Moral norms are social relations and not only a dimension of individual actions (as Bauman holds) or an expression of structural (class) relationships (as Bourdieu thinks). We have to understand what this means in the context of a society undergoing globalisation in which typically traditional modern morality is being eroded and abandoned.

My intent is to show that the moral norms that regulate the social sphere are generated starting from social relations and not from individuals as such or from systems as such. Social morality is altered with the morphogenesis of relations (which is agential, structural, and cultural). Obviously, individuals are the ones who activate social relations, which are enacted in the context of structures, but moral norms correspond to their own order of reality, which is the order of social relations.

I would like to immediately clarify what this reasoning means.

The binary moral distinction of good/bad works as the observation and assessment of first resort of actions and social facts (first order of reality). However, if the binary distinction explains simple individual actions (the acts that the agent carries out in relation to first level observation directed toward an object or state of things), it is not sufficient for explaining *social* morality, which implies something more complex. Binary distinction, in fact, is in and of itself polemogenous. In order to prevent social life from

to suffer and flourish, our psychological need for recognition and self-respect, and our ability to feel emotions such as shame and empathy.

<sup>5</sup> Institutionalised individualism was first theorised by Talcott Parsons, but was later reformulated by various authors who completely altered its moral meaning. According to Parsons, institutions morally orient the individual in a positive way toward the common good and social order. According to the post-moderns (for example, Beck and Beck-Gernsheim 2002), institutionalised individualism consists in the fact that institutions legitimate the individual to become the creator of his/her own morality.

transforming itself into a continual conflict between opposite moralities, social agency must give itself moral norms that are capable of a greater complexity than the simple counter-position of good/bad. This is realised by transforming binary distinction into a relation by means of a certain reflexivity (observation of the observation, on the second order of reality), which I call ‘relational reflexivity’. Binary distinction is applied to the outcome of such a relation *after* the norm to be followed in order to preserve or change the desired relation has been decided, on the basis of relational reflexivity.

To exemplify: if a farmer observes a field of wheat in which a great deal of weeds is growing, he immediately distinguishes the wheat (the good) from the weeds (the bad). His intent (moral end) is to promote the growth of the wheat and to eliminate the weeds. When he has to decide what to do (which norm to follow), he can stop at the first observation. If he proceeds to immediately pull out the weeds, he will also ruin the wheat, causing a disaster. He must decide what to do on the basis of the relation between the wheat and the weeds, and on the basis of the properties and causal powers of this relation. In fact, he will be able to harvest the ripened wheat only on condition of letting the weeds grow too. It follows that he *must preserve their relation, in which the good mixes with the bad*. And, thus, we cannot say whether that relation is in itself only a good or only a bad because it is a carrier of both. On the second order of observation, the moral norm becomes, “It is good to let them grow together”. In other words, that *it is good not to break the relation*. When the wheat is ripe, the farmer will harvest it and will separate the wheat from the weeds, applying the binary good/bad distinction. In this process, he refrained from using positive/negative feedback as a first recourse.<sup>6</sup> He applied it only after elaborating a moral norm based on a relational feedback.<sup>7</sup>

Obviously, in social life actions that generate conflicts (‘simple’ actions, those based on positive/negative feedbacks) are much more widespread than ‘complex’ actions (based on relational feedbacks). But I am interested in clarifying the origin and morphogenesis of the actions that follow the social morality that often, and only in an implicit and barely conscious way, constitutes the normative cement of social coexistence.

<sup>6</sup> It is evident that the subject acts with a certain rationality and reflexivity. Morality implies different modes of both rationality and reflexivity, just as it implies different degrees of both (“‘Being immoral’, just as ‘being moral’, is a state that admits of degrees”: Zavalyi 2012: 365).

<sup>7</sup> The concept of relational feedback is explained in previous contributions (Donati 2013, 2015a) and will be further commented on below.

### 3.2. *The principal arguments of this contribution*

What is it that comes to be socially defined as ‘morally good’ or at least acceptable? And by whom? Who defines which moral norms are accepted and which are excluded? For example, the morality of the ‘politically correct’ imposes the norm of not expressing any judgement (implied: *negative* judgement) on other people’s behaviours and lifestyles, which they believe to be positive, given that, according to post-modern public morality, a universal truth does not exist: only partial truths exist, all debatable and private. Who defines and imposes this new universal morality? Is it so-called ‘public opinion’, that is, the normative orientation of a supposed majority? Or is it certain social groups (lobbies) that are acquiring greater power in society? Or does this morality spread because it is imposed by laws enacted by the political system, making it legally binding?

Possibly all these explanations (public opinion, lobbies, laws) play a role in changing social morality. It remains always to be seen which specific combinations of them are working in a particular case.

The thesis that I intend to argue is that with the processes of globalisation, a dynamic of morality is emerging that, alongside the processes of privatisation and collectivisation of moral norms, is opening spaces for the moral norms that are the expression of autonomous social networks acting as mediators between individual morality and system morality. This dynamic is what characterises the different paths in changing social morality through a peculiar combination of public opinion, lobbies and legislation.

This thesis implies that changes in social morality are originated by the birth of a type of morality that is neither private (when the moral norm is defined or interpreted from a self-referential point of view) nor public (when the moral norm is defined by some sort of ‘public opinion’ or the like). The new morality becomes ‘public’ only at a later time.

This argument is prompted in the first place by two considerations.

On the one hand, impersonal morality is losing strength because socio-cultural systems are becoming increasingly pluralised, social networks are elaborating their own normativity with different types and degrees of individual and social reflexivity, and, therefore, the normative cement constituted by shared values and norms is breaking down. Society is expressing itself in many and differing social networks, which are working out their own morality.

On the other hand, individual (private) morality turns out to be too weak to influence collective processes.



There certainly exist phenomena of privatisation of moral norms (for example, in the area of human reproduction, sexual relations, organ donations), just as there are phenomena of forced collectivisation of moral norms, which are imposed on individuals without their consent (for example, citizens' rights and duties over those of immigrants). From the point of view of relational sociology, these phenomena are also relational in that moral norms constitute themselves on the basis of a specific structure of relations between the involved subjects (for example, between individuals engaged in a process of artificial insemination, sexual intercourse, donation of human organs or between state apparatuses and civil society agents). In all cases, the norms express the power relationships between the involved actors.

Post-modern society is highly ambivalent, contradictory, and paradoxical because in it we see dynamics and mechanisms at work that attempt to assert universal values and moral norms while, at the same time, social groups (circles) are emerging in which individuals attempt to elaborate a new, 'group' morality separate from the tendencies that they perceive to be predominant.

All of these processes point to different paths of morphogenesis. I am interested here in elucidating those processes in which morality is changing in social networks. We can distinguish two kinds of networks. On the one hand, we find networks where social morality is devoted to the interests of a group working for its own interest. Among these, there are the networks operating in the field of human trafficking. On the other hand, we witness networks orienting themselves in the opposite direction. In these cases, human subjects feel the need to relate to one another according to a moral sense that is neither strictly public (because it is not generalizable in a universalistic way) nor strictly private (because it does not respond to particularistic interests), but is *social* in that it must satisfy the needs, interests, and rights of social groups or communities that want to characterise themselves according to their specific human relational qualities and properties. I am referring to those spheres of society in which moral norms are elaborated because they have to meet the relational needs of a social fabric of an associative type, which is not finding adequate answers in society's institutional arrangement. The issue of fighting against human trafficking is equal to the issue of reducing the former type of social networks while increasing the latter.

In order to cope with this issue, we have to understand how the crisis of modern morality is generating various forms of morphogenesis. We can certainly observe forms of *sequential* (in series) and *concomitant* (in parallel)

morphogenesis, as Al-Amoudi<sup>8</sup> has claimed. It is a matter of analysing in which fields these processes take place, that is, wherever one moral norm replaces a prior norm (as one does with a consumer product that is more refined than the previous one), and/or wherever a new moral norm simply takes its place alongside another one in the framework of a morality that allows various types and degrees of pluralism (as in the political doctrine of multiculturalism). However, here I am interested in focusing on those processes of morphogenesis that – *on a meso level* – create new moral norms through the establishment of social networks that, by altering the interdependencies between acting subjects and social systems, express societal (associational or corporate agents) carriers of a new morality. The question of the scale at which moral changes take place is crucial, since I maintain that the norms of social morality have a different dynamics at the levels of individuals (*lib*, markets), within networks (informal groups, civil associations, more or less organized corporate agents) and in systems (*lab*, structural ‘wholes’). Meso level networks/organizations are crucial in the prevention and uprooting of human slavery.

This is particularly important in the initiatives that fight against human trafficking, because the macro-structural compromise between the market and the state (the *lib/lab* morality and politics) shows more and more failures in dealing with this task. The failure of nation-states in dealing with the informal markets of human trafficking is well known, and does not deserve a long explanation.

In short, the fundamental argument is that an emergent form of social morality exists, which constitutes a (morphogenetic) response to the need to create a new relationality between (individual and collective) subjects, inasmuch as such a relationality expresses an autonomous reality on a meso level, which becomes all the more important the more relationships between the micro and macro levels of the social dynamic slacken, fragment, and, in many cases, collapse.

Alongside those processes of the morphogenesis of morality that are sequential or concomitant compared to the typically modern morality (which, by following a binary logic that separates the private from the public spheres, feeds new informal markets where human beings are freed from

<sup>8</sup> Ismael Al-Amoudi (2014) has proposed the interesting distinction between *sequential morphogenesis* (which consists in the accelerating displacement of one institution by the next) and *concomitant morphogenesis* (which consists in the multiplication of concomitant institutions, without necessarily entailing the disappearance of earlier ones).

moral constraints to be in solidarity), we can see the rise of a *relational morphogenesis* that is characterised by meta-reflexivity, which defines morality as the need to enter into more human relationships with oneself, others, and the world. This impulse is driven by the need to achieve the uniqueness and peculiarity of the outputs that derive from a certain kind of social relation rather than from other types of relations. These trends towards a new social morality are advancing in parallel with the crisis in the *lib/lab* arrangements that characterise socio-political systems, which are guided by a morality of compromise between private and collective interests.

The framework that I am about to delineate asserts that today's rapid changes in morality can be explained as a variety of responses to the 'double binds' that are inherent in the modern dialectic between agency and structure (that is, *lib/lab*). The fundamental double bind is that which consists in the fact that the moral imperative dictated by socio-cultural structures seeking a remedy for the oppression of individuals works exactly like a mechanism for their oppression. The slogans, "You must be free", "You must fulfil yourself by rejecting all constraints", and "You must take care of yourself without depending on others" today represent the prevailing moral norm which, while it promises to free individuals, in reality it oppresses and estranges them from themselves inasmuch as one's identity is formed, exists, and operates in the context of relations with others, and cannot be completely cut off from them.

This mechanism can be detected in many phenomena of human trafficking when trafficked people are recruited with the promise of becoming free through migration and at the same time freeing their families from poverty and deprivations in their native communities.

Responses to these double binds, whether real or virtual, can take various directions. Some individuals remain stuck in the double bind and feel constrained within the *bound morality* of the double bind (communicative reflexives). Others try to maintain an autonomous reflexivity, but with great difficulty and frequent failures. Still others try to exit from the double bind by taking paths that avoid all constraints and adopt an *unbound morality*; a popular song widespread in these days among youngsters tells the youngsters "I do not want to go to school, I want to break the rules"; this kind of reflexivity is no longer able to be communicative or autonomous and becomes fractured or hindered. Still others try to exit from the double bind via various strategies that are based on compassion toward the double bind and on the separation of the two binds ('you must' and 'be free'). These are meta-reflexives. Moral norms are then elaborated through

a *steered morality* that is realised whenever reflexivity becomes relational. On the empirical level, it is a matter of identifying those social phenomena in which we can observe these different processes of morphogenesis of social morality. This should be done in those contexts in which people find themselves in front of traffickers and trafficked persons. We need a critical observation and profound empirical analysis of the normative processes which produce and reproduce social injustice, inequalities, abuses in the relations between those who exploit vulnerable people and the exploited.

#### **4. The failure of the agency/structure debate in explaining social morality**

##### **4.1. The mainstream view of social morality**

According to the scheme that I believe to be prevalent in sociology today,<sup>9</sup> morality is activated in the attribution of meaning to the action taken by individual humans who, in aggregating with one another, arrive at a consensus that constitutes collective morality. The latter is then reflected on to single individuals, directing their actions toward a social order in which the moral distinction between good and bad corresponds to that between normality and deviance.<sup>10</sup>

The two processes that go, respectively, (a) from the system to the individual and (b) from the individual to the system are often thought of as *circular* and somehow *reversible*. In such a case, we have the slide, found in certain theories, that Archer (1995) rightly calls ‘central conflation’ between agency and structure. This dynamics can explain why the collective norms authoritatively issued by political systems against many forms of human exploitation in everyday life worlds, and in particular in human trafficking transactions, do not work.

<sup>9</sup> The list of authors who use this scheme is quite long, and I thus avoid citing them. Just to give an idea, I shall limit myself to naming a few emblematic authors: Coleman (1990), Bourdieu and Coleman (1991), Hechter, Opp and Wippler (eds.) (1990).

<sup>10</sup> To be more specific, I can say that the mainstream explanation for the emergence of norms is evolutionary and employs the behavioural model of economics, plus the research findings from social psychology and sociology (Opp 1982). According to this narrative, norms may emerge in a variety of ways: institutions may prescribe behaviours (institutional norm formation), they may be created by a social contract (voluntary norm formation) or they may gradually emerge without either bargaining or the involvement of a norm-making institution (evolutionary norm formation). According to this model, the evolutionary emergence of norms starts with a recurrent behaviour, leading to the development of preferences for a behaviour, and, ultimately, to the acceptance of norms (internalisation) and the enforcement of activities.

What I want to emphasise is that, in the mainstream view of social morality, the circularity between agency and (cultural and social) structure glosses over two problems: (i) the issue of the relational constitution of agency/Self<sup>11</sup> and (ii) the issue of the relational constitution of cultural and social structures.<sup>12</sup>

In my opinion, much of the debate over *agency and structure* is flawed by these ways of reducing morality to a game between individuals and social structures. What they seriously undervalue and distort is the theme of morality as a relational phenomenon. The morality of social relations is understood in terms of the morality of individuals *as such*, who feel uncertain, anxious, insecure. The autonomous role of social relations in forging morality is overlooked or relegated to the shadows.

As an alternative, I propose the framework of Figure 1, which will have to be explained specifically in terms of morphostasis/morphogenesis.

My intention is to understand the origin and change of morality, not as the result of more or less spontaneous aggregations of individuals in a context defined by certain (social, cultural, and communicative) structures or, vice versa, as the influence of structures (e.g. legislative binding decisions) on individuals' agency, but as the product of the relationality that develops in networks of social relations that connect social agents/actors. The problem needs to be brought into focus.

It is a matter of understanding if – and if so, how – one can speak of an intervening variable such as *the morality of social relations as such*, which constitute their own order of reality inasmuch as relations have to simultaneously meet individuals' needs, on the one hand, and those of the governability of institutions, on the other. The question is: does a morality of networks of relations exist that is distinct from the morality of individuals and from that of socio-cultural systems? Put another way: can we speak of morally good social relations/networks and morally bad social relations/networks? Can we do this without falling into the holistic fallacy of believing that social relations/networks could think (morally) on their own?

In my view, the morality of a social relation (or network of relations) is due to the fact that it can produce relational goods or relational bads. In order to produce relational goods, a social relation should meet the following requisites: i) be an emergent phenomenon; ii) be morally good in itself (in its structure or 'molecule' goal-means-rules-value pattern, and not only

<sup>11</sup> Stetsenko and Arievitch (2004).

<sup>12</sup> Porpora (1987).

in the feelings of the subjects); iii) be such as to give the subjects individual goods that they could not reach otherwise (the achievement of a collective good may be present or not, in any case it is not utterly necessary).

Solidarity, subsidiarity, or friendship are social relations – and not only individual feelings – that are morally good, obviously on certain conditions (the structure of the relation must have an ethically good end). Contempt, the refusal to help, aggression, and violence are morally bad social relations, and not only individual feelings. Certainly, the moral qualities of social relations have correspondences in the qualities of individuals, but they are not the same thing because they are two different orders of reality. The morality of reciprocity on the part of the individual (as feeling, attitude, or act) is not the same as the morality inherent to the social relation of reciprocity. I will now try to explain these assertions.

#### 4.2. An alternative view

In Figure 1, morality can be analysed from three points of view, which correspond to three different paths for the formation of moral agency.

Path [1] explains social morality as the conditioning of social and cultural systems which, with their normativity, impose themselves on individuals' agency. This is where theories of 'collective conscience' (for example, Durkheim and Douglas) and cultural traditions (for example, Putnam and Fukuyama) are situated. The morphostasis/morphogenesis of morality is explained here as the product of normative systems that reproduce or alter themselves on the basis of a logic that is inherent in the same social and cultural institutions, in functional and/or communicative terms. As Mary Douglas would say, morphogenesis happens when institutions, which are supposed to be thinking entities, change 'their way of thinking'. As Luhmann would have it, the morphogenesis of moral norms is the product of the change of semantic codes due to the effects of reflective mechanisms of communication (it is assumed that the process of communication depends on the inherent laws of the communication system itself, which is ironically expressed in the aphorism, "*Only communication can communicate*").<sup>13</sup>

<sup>13</sup> Luhmann defines morality as a special form of communication that carries with it indications of approval or disapproval. "The moral is not something good. Of course, that should not lead us to say that the moral is something bad. [...] The moral functions only as a distinction" (Luhmann 1993: 996). Trust itself, which for Parsons arose from the normative order of the open society, in Luhmann can no longer count on norms that disappear and must be entrusted to communication (Jalava 2003).

Path [2], which is opposite and complementary to the first one, explains social morality as the product of individual actions that generate a collective system of values and norms *by aggregation*. A broad-based number of individuals, driven by mechanisms of an aggregative type, participate in processes of identification with a shared set of symbolic and normative values that replace other, existing values. This is where the collective movement theories of Smelser (1963), Pizzorno (1966), and others are situated. Examples are radical feminist, no-global, LGBT (actually, *LGBTIN*, where “I” stands for ‘indifferent’ and ‘N’ stands for ‘none of the above’) movements, and protest and revolutionary movements, such as the so-called ‘Arab Springs’. The collective movement replaces certain values and moral norms with others. It is a matter of understanding what this path’s specific morphostatic/morphogenetic process is. In general, it consists in the fact that, given certain systemic conditionings, large groups (or even masses) of individuals set themselves up in reaction to them and radicalise certain values: these groups can be of a conservative type (for example, fundamentalist religious or racial movements) or of a transgressive or rebellious type (for example, when gender difference or market competition is radically rejected).

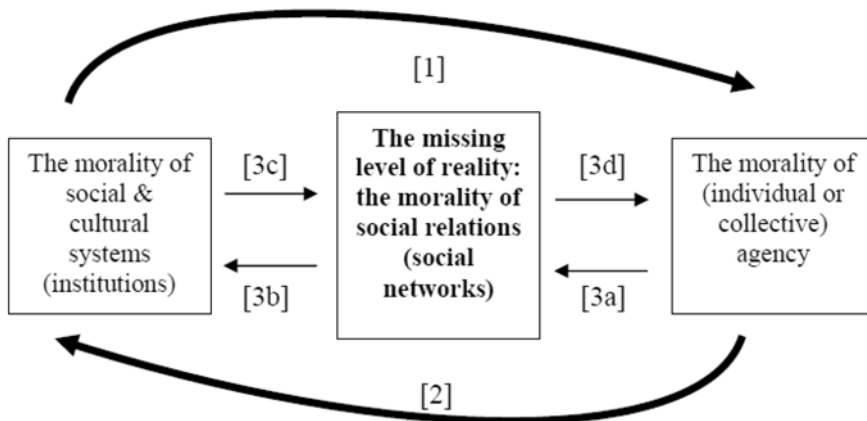
As I have already said, the majority of theories explain social morality as the product of a sort of ‘combined provisions’ between these two paths. The most emblematic example is the morality that I call *lib/lab*. This consists in the fact that, on the one hand, the morality of individual freedom and of free aggregations of individuals (*lib* morality) is invoked while, on the other hand, morality is considered as an institutionalised entity that has the task of guaranteeing equality of opportunities in the relationships between individuals (*lab* morality).

In the language of Figure 1 (path [1]-[2]), it is assumed that: (i) on the one hand, free individuals can adhere (or not) to a shared system of values and moral norms (the *lib* dimension of moral agency) and (ii) on the other hand, the system of shared moral values works in such a way as to guarantee its own effective realisation through systemic mechanisms of an ‘automatic’ type (the *lab* dimension of moral agency), which end up strengthening individual orientations. Morphogenesis happens only if aggregations of free individuals change the moral system; otherwise, the system continues to be reproductive.

A macroscopic example of the *lib/lab* view is the idea of the European Union’s master plan supported by the former President of the European Commission, Romano Prodi (2002: 20): “The integration of free market

forces and competition, on the one hand, with equality of opportunity for all citizens, on the other, is the master plan of the new European construction”. This is a vision of society that has its roots in early modernity and in recent times has found expression in such authors as Ralf Dahrendorf and Anthony Giddens (his *Third Way*, 1998). It was relaunched by Tony Blair in his speech to the British Parliament in July 2014, when he proposed the compenetration of state and the market because neither of them can resolve social problems by themselves. *Lib/lab* theoreticians care little that actual reality demonstrates that this model produces more problems than it solves. They do not see that its failures are due to the fact that it forces social subjects to act within the double bind between state and market.

Figure 1 indicates a rather more complex path. In this path [3/a,b,c,d] morality certainly depends on moral (primary and corporate) agents, but it has its own relational dynamic. If we think that individuals necessarily find themselves confronting already existing institutional structures, the morphogenetic process starts from individuals who create networks of social relations (line [3a]) which, *on certain conditions*, confirm or alter moral institutions (social and cultural systems) (line [3b]). Institutions, in turn, and always on certain conditions, strengthen or alter the morality of networks of social relations (line [3c]) and, thus, influence individuals (line [3d]). In this path the explanation of morality must come to terms with what happens in the intermediate space between individuals and institutions



**Figure 1.** The three ‘layers’ of morality (agential, relational, and systemic) and the different paths of their contributions to the moral fabric of society.



(normative systems). The ways in which (intersubjective and/or impersonal) social relations, which structure social networks, operate become crucial. The understanding of the social morphogenesis of morality becomes much more problematic because the intermediate transitions are subject to great variability.

What I want to elucidate is the difference between the morphogenesis described through path {[1]-[2]}, which corresponds to the morality of *lib/lab* arrangements, and the morphogenesis that passes through social networks (path [3]), which corresponds to new relational configurations.

In the circular path between [1] and [2], the T2-T3 phase of the morphostatic/morphogenetic diagram is observed as an aggregation of individual behaviours that identify themselves – positively or negatively (with positive or negative feedbacks) – with the same symbols/values that, if they are institutionalised, reflect on the aggregations of individuals and can be confirmed (morphostasis) or altered (morphogenesis) by new aggregations of individuals. The keystone of this interpretation of social morality lies in individual agency's adhering to one or another 'group consciousness' (corporate actors), which can be of the majority or specific to minority groups (as called for by the doctrine of multiculturalism). According to this view, the participation of individuals happens through identification with a shared symbolic 'centre' (a social class, a cultural or religious tradition, a movement making demands, protesting, or in revolt) that does not necessarily require specific interpersonal and network relations among the participants.

In path [3], instead, we can observe changes of morality in much more detail through four moments (a, b, c, d) because a 'relational logic' operates in phase T2-T3, which is overlooked or underestimated by explanations based on the {[1]-[2]} path. I propose that we analyse these processes in greater detail and with several examples.

## **5. The morphogenesis of morality according to the relational paradigm**

### **5.1. The obsolescence of classic paradigms**

The *lib/lab* paradigms of social morphostasis/morphogenesis (M/M) can generally be traced back to a framework in which the conditioning structure at the initial time T1 dictates the moral norms with respect to which individuals must take a position in their interactions in phase T2-T3.<sup>14</sup> This is true whether the conditioning structure privileges moral

<sup>14</sup> I am referring here to the M/M scheme elaborated by Archer (1995, 2013) and discussed by other authors (contributions to Archer (ed.) 2014, 2015).

norms of a libertarian and individualistic type (as it happens in the U.S. since the *lib* side prevails over the *lab* side there), or whether the opposite happens, as in Europe, where the *lab* side of political regulation prevails over the *lib* side of the free market. In this paradigm it is claimed that individuals can conform, or not, to the conditioning structure according to modalities that Merton (1938) synthesised in his famous five types of adaptation to legitimate ends and means (among which are moral norms) that characterise the conditioning structure.

Changes of moral norms are certainly combined provisions between the pressure of structures and individual behaviours, as Merton says, but in between there are network phenomena. ‘Relational’ reasons that lead to changes in morality are the same ones that also make theories of collective agency in response to systemic structures obsolete.

First of all, we have to admit that the conditioning structure does not have that relative homogeneity of ends and norms that Merton, just like many theories in the agency/structure scheme, assumes. In late modernity the conditioning structure becomes *intrinsically* plural in its ends and means (including norms), above all because it introduces a principle of indifference in the evaluation of values and moral norms. This fact changes all the processes of the formation of moral norms. Since the conditioning structure becomes plural in its cultural ends and moral norms, it becomes quite reductive to fall back on a binary code of acceptance/rejection. The problem of the agents in phase T2-T3 becomes how to manage relationality between *plural* ends and *plural* norms. In order to grasp these dynamics, it is not enough to know the networks between nodes and the power relations between the various networks that are established in phase T2-T3 on the empirical level, but it is necessary, instead, to introduce another type of feedback: the second order feedback that I call ‘relational feedback’.

Let us consider an example. In studying social capital, Cartocci (2007) explains the persistence, growth, or decline of social capital – defined as adherence to values of civic morality – using a Mertonian type of scheme. According to this author, social capital increases (or decreases) when the number of individuals who adhere to certain ends and civic norms increases (or decreases) apart from social networks and their forms. A large amount of research on the changes of civic culture and social morality follows the same scheme according to which society’s morphostasis/morphogenesis (M/M) depends on the number of carriers of a certain social morality. For example, it is assumed that the spread of environmental morality, which supports the rights of animals and the earth, is producing a morphogenesis

of society in that sense due to the fact that a greater quantity of individuals adhere to it.

My thesis is that the Mertonian type of scheme (which follows the [1]-[2] path of Figure 1) commits a series of fallacies. The first fallacy is that it explains morphogenesis only with positive and negative feedbacks. The second fallacy, in parallel, is to assume that morphogenesis is produced by automatic mechanisms. For example, Cartocci assumes that buying newspapers, donating blood or participating in sport or cultural associations automatically indicates that these individuals share a civic culture and have relations of trust, cooperation, and reciprocity with one another. Such a correlation or causal connection does not have an empirical foundation.

In other terms, these theories overlook the feedbacks activated both by individuals and institutions on social relations, and they think that adherence to certain norms produces social change in and of itself. In my way of thinking, it is not so. Adherence alone to the change of a moral norm (positive feedback) is not sufficient to explain the changes in the relations that individuals have with one another and with the object of their actions. If we want to understand the current morphogenesis of morality, it is necessary to introduce a relational view on the ways in which moral norms form and change society.

### ***5.2. Why relationality matters in generating different morals***

In previous contributions (Donati 2014a; 2015a) I have argued that feedbacks to social relations follow a different logic compared to the logic inherent in feedbacks to single actions.<sup>15</sup> In this contribution I want to develop this argument and make the claim that feedbacks to social relations (relational feedbacks), rather than feedbacks to simple actions, change the normativity (the logical rules) of the generative mechanisms that produce social morphogenesis through positive and negative feedbacks.

The argument's key point is that reactions (feedbacks) to the single actions of Ego and Alter and reactions to the relation between them are different orders of reality. It is possible that Ego rejects (or accepts) Alter's action and accepts (or rejects) the relationship with her/him, and vice versa, if and only if the feedback exercised toward the single action is of a different order of reality with respect to the feedback played out toward the reciprocal relationship. The different order of reality implies a different

<sup>15</sup> 'Logic' here means principles, or rules, of reasoning.

normativity inasmuch as agents refer to single actions or to social relationships, instead.

Table 1 synthesises the differences between conceiving M/M processes on the basis of mechanical mechanisms (MeMe) and on the basis of relational mechanisms (ReMe), with some examples. In the case of MeMe, moral norms arise due to the adherence/deviation of individuals' actions vis-à-vis systemic morality. In the case of ReMe, moral norms arise as a consequence of taking into account the autonomous relationality between agents. Let us look at this in more detail.

(I) In the case of *mechanical mechanisms (MeMe)*: moral norms are expected to operate independently of the social inter-relations among actors, and therefore:

- The normative order depends on conformity/deviance of individuals' actions toward the system (this is the logic of the 'agency and structure' debate).
- The feedbacks can be positive and negative, but not relational.
- The black box of the mechanism works with a trivial causality (operating with internal functional constraints and given boundary conditions).
- The normativity of social mechanisms is supposed to be 'automatic' in so far as the interactions in the mediating social network (phase T2-T3 of the morphogenetic process) are bound by standard norms.
- The outcomes are aggregative social phenomena or functional performances, i.e., the outcome is determined by the mechanisms inherent to the social network conforming to structural constraints.
- As examples we can think of: social systems/institutions working as goal-seeking machines (e.g. traffic norms); organisations relying upon belief-formation mechanisms, bandwagon effects, snowball effects, etc. (e.g. advertising agencies or election campaigns); procedural justice; procedural democracy.

(II) In the case of *relational mechanisms (ReMe)*: norms are expected to emerge and operate through the dynamics of sociability/relationality among agents, and therefore:

- The normative order depends on social relations generated by agents and their networks.

- The feedbacks are positive and negative at the first order, and relational at the second order of the interactions in the network.
- The black box of the mechanism works with a non-trivial causality (operating in dependence on internal complexity and in interaction with the environment).
- The normativity of the social mechanisms is sensitive to the interactions in the mediating social network (phase T2-T3 of the morphogenetic process) and, for that reason, is *nomos-building*.
- The outcomes consist in the emergence of relational subjects (primary and corporate agents) whose normativity is an expression of an underlying interacting social network.
- As examples we can think of: relational couples (e.g. the higher the connectivity of the couple's external network, the greater is the sharing of conjugal roles); civic associations; social streets; peer production, co-production; relational goods; 'Beyond GDP' indicators (where economic well-being depends on the quantity and quality of bonding and bridging social capital); justice based on norms of equity; deliberative democracy; associative democracy.

Relational mechanisms are generative inasmuch as they are relational operations. They are so when the normative dimension of the mechanism corresponds to a 'logic' (in the sense of a rule or set of rules) that combines the elements of the relationship between the agents (Ego and Alter) in such a way as to ensure some validity and efficacy in what emerges from their relationship. Otherwise, it is an automatic mechanism. For example, the basilar mechanism of Western political democracy is the rule that after a contest between the majority and minority, one votes yes or no on a proposal. This logic (normativity) is not relational. The morality is inherent in the logic of numbers: the political decision is taken with the criterion of the majority of votes. This is the moral norm leading to political decisions. In this case, voters vote with the mechanism of positive and negative feedbacks. Therefore, morality (the logic) is mechanical: what the majority of votes decide is (to be considered) good, what gets fewer votes is (to be considered) bad. The democratic process is regulated by power relations, and therefore its morality is based on power, not on truth or on certainty regarding consequences. If, instead, democracy proceeded on the basis of a reflexivity having as its goal the activation of a certain type of relations and a certain societal context (and not to do 'something'), then democracy

would use not only positive and negative feedbacks (which still decide the final vote), but also relational feedbacks. Their use makes it possible to better understand which type of society one is thinking of generating, and not only what one decides to accept or reject. Democratic procedures would become mechanisms of a relational, rather than a mechanical, type.

**Table 1. Two different types of social mechanisms working with a different normativity and producing a different normative order.**

Types of mechanisms	<b>Mechanical mechanisms (MeMe)</b> (norms are expected to operate independently of the social inter-relations among actors)	<b>Relational mechanisms (ReMe)</b> (norms are expected to emerge and operate through the dynamics of sociability/relationality among agents)
The normative order	Depends on individuals and systems (agency and structure)	Depends on social relations
Positive & Negative feedbacks	Yes	Yes
Relational feedbacks	No	Yes
Black box	Trivial causality (operating with internal functional constraints & given boundary conditions)	Non-trivial causality (operating in dependence on internal complexity & in interaction with the environment)
Normativity of the social mechanisms	The interactions in the mediating social network (phase T <sub>2</sub> -T <sub>3</sub> of the morphogenetic process) are bound by standard norms	The interactions in the mediating social network (phase T <sub>2</sub> -T <sub>3</sub> of the morphogenetic process) are <i>nomos-building</i>
Outcomes	Aggregative social phenomena or functional performances where the outcome is determined by the mechanisms inherent to the social network under structural constraints	Emergence of a relational subject (We-relation, including a corporate agent) whose normativity is an expression of an underlying interacting social network
Examples	<ul style="list-style-type: none"> <li>- Political-administrative systems that combat human trafficking through repressive apparatuses which impose only sanctions</li> <li>- Organisations/agencies relying upon belief-formation mechanisms, bandwagon effects, snowball effects, etc. in advertising humanitarian messages</li> <li>- Procedural justice</li> <li>- Procedural democracy</li> <li>- etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Primary networks and civic associations producing social inclusion and relational goods</li> <li>- Co-production between a plurality of public and private (socially strong and weak) agents</li> <li>- Public services fostering the quantity and quality of bonding and bridging social capital among vulnerable and poor people, immigrants, etc.</li> <li>- Justice based on norms of equity</li> <li>- Deliberative democracy</li> <li>- Associative democracy</li> <li>- etc.</li> </ul>

The activation of relational mechanisms does not happen in the current political system of parties because they operate with a binary morality and do not allow consensus building to happen through the establishment of networks of relations among the political decision makers who are situated in the different political parties. If this were possible, it would be possible to form networks of decision makers in political bodies who reflect the networks of civil society. This possibility is available, instead, in the decision making sphere of certain Third Sector organisations (such as in true social cooperatives) if and when they give priority to the value of the relations of civil society, which their decisions create. It could also happen in the political system if a ‘relational state’ model were adopted, which would operate through relational inclusion rather than through a compromise between market and state, i.e., *lib/lab* inclusion.<sup>16</sup> ‘Relational inclusion’ means that full participation of people in society (or a social subsystem) is realised by providing citizens with the opportunities to act as relational subjects in relation to other social subjects – with the same rights and obligations – and not on the ground of adhering to a market competition ruled by the political power.

Put schematically, the reason that the individualism/holism mix (in other words, *lib/lab*) does not work and is generating moral bads – due to the double bind into which it is forcing individuals – is that it does not take into account the fact that the individual, with his/her action, alters or interprets in his/her own way the moral norm (*lib*), but it is not a given that the actual relation that ensues from this will change the system in a morally good direction (*lab*) because a network of relations operates between the individual and the system. The *lib/lab* system is built precisely in such a way as to make the system immune to this network of social relations.

Conversely, if the system alters its own normativity, it is not the case that social relations are automatically altered in the same direction and, then, that individual actions conform to systemic change of norms. In between there is the normativity of relational networks. Luhmann’s a-relational functionalism<sup>17</sup> leads to erroneous conclusions because it assumes

<sup>16</sup> On the ‘relational state’ see Donati (2002/2003, 2015b), Cooke and Muir (2012).

<sup>17</sup> I call Luhmann’s theory ‘a-relational’ not because he ignores the relation – indeed, it permeates his thinking – but because he refuses to base sociology on the social relation. Specifically, it is a-relational for two reasons. The first is that he uses a binary code, which is notoriously inappropriate to treat relations (Luhmann 1995: 445). The second reason is that the system as such (specifically: biological, psychic, and social) is for him immune to the social relations of the living world.

that the functional mechanisms of social differentiation can separate what is human from what is non-human in moral norms, given that the moral norm becomes a pure, functional communication,<sup>18</sup> whereas communications are non-human when operated by the social system and human when they are enacted by humans in the system's environment. His slogan is: "Everything that is possible becomes morally licit". In such a way, *paradoxically* with respect to its premises, the Luhmannian theory ends up by converging with the *relationalism* of neo-constructivists (for example, McFarlane 2013), who assume that the human and the non-human can merge with each other, giving life to moral norms which are identical for human beings, animals, and other non-human living beings. In this way, the human-social and non-human moral norms are 'fused' (conflated) with each other while experience and empirical research tell us that they remain ontologically and practically distinct from each other, precisely due to the substantial differences in their inner relational constitution. For instance, animals do not have relations of sophisticated mutual envy or long-term strategies in their behaviour, while humans do.

## 6. Applying the relational framework: the case of welfare morality

From its inception, the welfare state has been the object of endless discussions regarding its moral foundations and its consequences for the morality of society as a whole. It is not possible herein to extensively discuss this issue, which has been the object of a vast literature. I will come to the point.

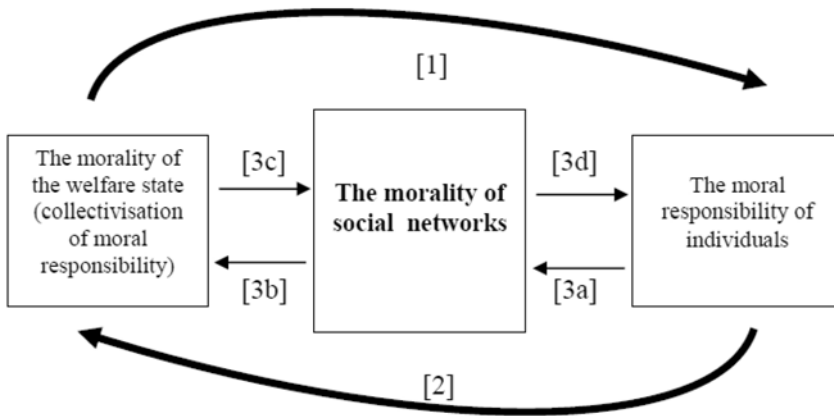
The point is that over the course of its development, the welfare state has adopted an increasingly impersonal morality. The moral responsibility for social problems (poverty, unemployment, health needs, pensions, social assistance, as well as education and housing, etc.) was handed over to the

<sup>18</sup> According to Luhmann, morality is becoming a self-referential system that is specialised in responding to the problem of esteem and disesteem in communication. He defines morality as an ability to sustain the self-referential reproduction of communication: "Neither life as such, nor the functions of the brain, nor the conscious operations of perception and thinking have intrinsic moral quality. [...] The moral makes an important difference only in communication, namely, a difference in the communicative reaction to the expression of esteem or disesteem. [...] There are, in other words, no good people or bad people, but only the possibility of indicating people as good or bad" (Luhmann 1993: 1000). To him, recourse to the 'normativity of norms' or to 'values' proves to be untenable because all norms and values reveal themselves to be undecidable (Luhmann 2008b).



'system'. The welfare package (inclusive of all basic needs that must be satisfied to have a decent level of life) has become an automatic social right (a right of citizenship), in the sense that it does not take into consideration the beneficiaries' conduct. The morality of this welfare resides in the principle of solidarity (that is, of inclusion and social cohesion) realised through state redistribution.

With reference to Figure 2, we can say that moral responsibility passed from individuals to the system (from [1] to [2]), completely skipping social networks (path 3/a, b, c, d). The system has thus proceeded to protect single individuals, relieving the social networks (families, informal networks, associations and institutions of civil society) of obligations toward the collective well-being.



**Figure 2.** The three 'layers' of welfare morality (agential, relational, and systemic).

In recent decades a vast literature has shown the negative effects that this course of action has had on the forms of primary solidarity (informal networks) and secondary solidarity (networks organised in associative forms). The outcome of this story has been, and is increasingly, the crisis of the welfare state, which is due not only to the State's inability to address social problems (the fiscal crisis, the inadequacy of public bureaucracies, etc.), but also, and especially to the fact that it generates perverse effects, among which are the de-responsibilisation of individuals and the fragmentation of the social fabric. Undoubtedly, the rhetoric of conservatives and parties

on the right when they speak about this issue is overblown.<sup>19</sup> Nevertheless, beyond the rhetoric of conservatives, the problem is real.

The morphogenesis of the moral norms that justify the welfare state has thus encountered a radical crisis. My thesis is that the morphogenetic process of the moral norms that must give a moral meaning to welfare is blocked today because the existing model of the welfare state is propped up by the reproduction of *lib/lab* morality: the *lib* side calls for a return to individual responsibility (autonomous individual reflexivity) while the *lab* side relaunches public intervention with Keynesian types of adjustments, reaffirming the primacy of collective responsibility. The proposal of a ‘third way’ that introduces a new mix between moral *lib* principles and *lab* principles (Giddens 1998) has not given significant results. In my scheme, proposals of this type cannot work because *lib/lab* morality is blocked; it does not produce a creative morphogenesis, but only a bound morphogenesis.

In the past there were those who attempted to propose a typology of the welfare state according to its differing constitutive moralities. For example, Zijdervel (1986) has observed that welfare systems are rarely moral (with the important exceptions of the United States and Japan), but more often are a-moral (like Italy’s) or immoral (like Holland’s).<sup>20</sup> The moral ones take into account the moral responsibilities of single individuals. The amoral ones consider the person’s conduct as morally indifferent when it comes to enjoying the rights and benefits of welfare. The immoral ones offer compensation without conditions or reward – directly or indirectly – morally irresponsible behaviour. According to this author, only moral welfare systems can adequately deal with the social challenges that result from a constant and progressive inclusion of the population in the politics of welfare.

<sup>19</sup> ‘Moral Atrophy in the Welfare State’ (Robert E. Goodin, in *Policy Science*, 26, 1993, pp. 63–78). ‘Moral Inferiority of the Welfare State’ (by Rev. Robert Sirico, Acton Institute); ‘The Rise of Government and the Decline of Morality: the growth of government has politicized life and weakened the nation’s moral fabric’ (by James A. Dorn, Cato Institute, 1996); ‘How the Welfare State Corrupted Sweden’ (*Mises Daily*: Wednesday, May 31, 2006 by Per Bylund).

<sup>20</sup> Zijderveld’s favourable assessment of the morality of welfare in the United States is merely comparative. His affirmation that the welfare state in the U.S. is more moral is not meant to imply that it is always ethical, but merely that in the U.S. debate regarding the ethical criteria of welfare is more explicit and carries more weight than in other countries.

It is evident that Zijdervel's moral argument, and the moral typology of the welfare state that he elaborated, is carried out from the point of view of individual morality. He overlooks the problem of solidarity and redistributive justice as elements of morality. On the other hand, however, one could ask: can the moral norm of solidarity (and redistributive justice) nullify the moral responsibility of individuals?

It is here that the argument about the morality of social relations makes its entrance. Individuals must be morally free, and the social system must guarantee social solidarity, but how can we proceed so that by choosing one we do not eliminate the other term?

Figure 2 suggests that we look at how individuals and systems interface through social networks: in other words, whether or not they invest the relationality of the networks with morality and how they consider the morality of interpersonal and communitarian relations as such. Freedom must make reference to the concrete relations that individuals create and in which they live. And the system must take care of relations by evaluating whether they produce relational goods or bads (this is the 'relational state'). The good or bad of social relations comes into play, in and of themselves and in their effects. It is here that a new morality of welfare comes into being. Alongside other morphogenetic processes, another type of morphogenesis is taking form, which I call 'relational'.

On the theoretical plane, the sequence of change that the morality of welfare has undergone can follow different paths of morphogenesis in the cycle T1-T4. I offer three as examples (Figure 2).

- T1: the starting situation is given by the systemic crisis of the welfare state's morality: the welfare state enters into crisis perhaps because it nullifies individuals' moral responsibility with completely impersonal principles of responsibility, or perhaps because – vice versa – it appeals to individual responsibility while overlooking the norms of solidarity.
- In the intermediate T2-T3 phase: the interactions between agents represent the search for moral norms in response to the systemic crisis; these interactions can follow, roughly, three paths.
  - (I) The interactions are guided by an action model that tries to adjust the norms of negotiation between state actors and market actors, leaving aside other actors; this modality (of communicative reflexivity within the *lib/lab* system) represents a search for internal adaptations to the 'system', which are generally of an opportunistic type.

- (II) In the interactions, action models characterised by an autonomous reflexivity prevail, so that the social networks, lacking any shared moral constraints, become chaotic.
  - (III) The interactions adopt action models supported by a meta-reflexivity that is oriented toward building social networks in which there is an important effect of ‘open coordination’<sup>21</sup> between the parties, valorising the morality of reciprocal relations (relational steering).
- T4: the structure of emergent morality depends on how the normativity of phase T2-T3 was elaborated; according to the three aforementioned paths, three types of morphogenesis are possible:
- (I) A morphogenesis of *lib/lab* morality (the *lib/lab* is not in and of itself morphostatic); the emergent norms are a combination of criteria of efficiency and efficacy in the definition of welfare morality.
  - (II) An unbound morphogenesis of *lib/lab* morality, which means the appearance of moral norms of individual freedom and of collective constraints that proceed on their own, without significant connections, thus producing contradictions and perverse effects.
  - (III) A morphogenesis of morality that amplifies, selects, and stabilises new opportunities on the basis of a normative criterion that valorises relationality between the parties as primary good; for example, welfare measures come to be considered as morally good/bad depending on whether or not they lead to the flowering of interpersonal relations (in the positive case, one speaks of ‘relational state’, ‘welfare society’, etc.); here the moral norm of social structures is based on the qualities and causal properties of the social relations that are promoted.

The third alternative (III) indicates a morality characterised by the moral norms of an equitable and sustainable welfare as product of *sui generis*

<sup>21</sup> As an example, we can refer to the open method of coordination (OMC) adopted by the European Union. The OMC provides a new framework for cooperation between the Member States, whose national policies can thus be directed towards certain common objectives. Under this intergovernmental method, the Member States are evaluated by one another (peer pressure), with the Commission’s role being limited to surveillance. The European Parliament and the Court of Justice play virtually no part in the OMC process. The open method of coordination takes place in areas which fall within the competence of the Member States, such as employment, social protection, social inclusion, education, youth and training.

relational networks. As examples one could cite: co-production (Pestoff 2009),<sup>22</sup> public-private partnerships generating new networks at the local level (Evers 2015); social cooperatives able to be counter-cyclical instead of having only a buffering role on the impact that the systemic crisis has on citizens (Vidal 2015); and, in general, the so called ‘relational turn’ in social innovation (Fløysand and Jakobsen 2011).<sup>23</sup>

Every society has to come to terms with an intrinsic ambivalence: on the one hand, it must make individuals understand that they *depend on the collectivity* and that, therefore, the altruistic orientation must prevail over an individualistic orientation but, at the same time, it has to push individuals to maintain a certain *distance from the prevalent norms* so as to be able to always also develop their own evaluations and thus guarantee a certain degree of *creativity*, innovation, and pursuit of change on the part of the individual.

The problem of *lib/lab* is that its moral norms do not provide a solution to this ambivalence. We can take the case of the bibliometric evaluations of scientific research. Leydesdorff (2014) considered the ethical and cultural consequences of relying on metrics to assess the quality of scholarship, and reached the conclusion that the present system, centred on individual production, penalises the research of groups, networks, and between cooperating individuals. The answer to the problem of how to combine individual creativity and collective subjectivity can only come from a relational

<sup>22</sup> “Co-production of social services offers new opportunities as well as challenges for collective solutions to growing problems facing the public provision of social services in Europe. It gives citizens both more choice and more voice, as well as a more active role in the provision of public services. But, greater citizen participation and more third sector provision of social services can meet resistance both from traditional public administration and New Public Management (NPM), each based on a separate logic. However, New Public Governance (NPG) is based on network governance and relies on greater citizen participation, co-production, and more third sector provision of public financed social services” (Pestoff 2015).

<sup>23</sup> Fløysand and Jakobsen (2011) argue that recent contributions within the system of innovation approach are marked by an instrumentalism that views innovation as a predictable and standardised process that in most aspects counters theories and empirical observations stressing the multilevel, spontaneous, and complex features of innovation. Informed by the relational turn within economic geography these scholars develop an alternative analytical framework. They do this stepwise: first, by elaborating on how innovation was originally defined within the systems of innovation approach; second, by outlining a relational based analytical framework based on the concept of social fields; and, finally, by demonstrating how it has been applied.

approach that highlights that innovation is a product of networks that share norms formed in an autonomous manner by the sociability of participants without being imposed by a superordinate structure. The problem is whether the network is able to avoid the absence or lack of clarity in the norms. The answer is the relational subject, the morality of the we-relation (Donati and Archer 2015). Lacking this, networks fail.

What this excursus on the concepts and practices of social welfare wants to teach us is that welfare interventions, when dealing with human trafficking, should be configured in such a way as not to be addressed to mere individuals or ‘people in general’, but to social networks. Through the application of life course theory, a more complete understanding of the dynamics affecting vulnerability to exploitation in sex trafficking can be gained, providing enhanced information regarding plausible strategies for prevention and intervention (Reid 2012).

The morality of welfare interventions must be able to foster relationships of mutual help and inclusion not only among the destitute, but among all local actors concerned with the well-being of a population, which is proper to a ‘relational state’ (Donati 2015b). Surely we need to work on the normative reduction of ‘Demand’ for both forced labour and prostitution. But we must be aware that welfare policies following the mere philosophy of ‘damage reduction’ are often ineffective in changing the normative context that produces the demand for human trafficking, since these policies do not change the networks where people live and act. On the other side, relying upon the simple statement of human rights proves to be ineffective, as it is generally the call to ‘obey the rules’. As Land and Russel Beattie (2008) have demonstrated in regard to the rules governing international security, compulsory morality not only guides a variety of practices within international politics but also contributes to the chaos and tension on the part of agents in light of the structures they sustain. The four central themes – practice, legitimacy, regulation, and responsibility – that reflect the main dimensions of a rule-governed political order are extremely difficult to implement at the international level. While many assume that ‘obeying the rules’ will bring more peaceful outcomes *per se*, the argument presented here seeks to demonstrate that this may occur in some cases, but more often than not the very nature of a rule-governed order will create tensions and stresses that require constant attention to underlying social and political dynamics.

On the basis of the above considerations, I believe that any single institution can provide a single new set of rules for governing an increasingly

chaotic international system that produces human trafficking. Instead, I think it is possible to pursue a course of action that aims to change moral rules at the level of civil society, by engaging the transnational networks in setting up some sort of 'civil constitutions' (Teubner 2012) against practices of trafficking in persons.

If we really want to reduce the demand for slave labour, we need welfare interventions based upon good practices aiming at building civil networks shared by families, corporations, third sector organizations and local institutions. The trafficking of women and girls for the purpose of sexual exploitation has reportedly been booming in Europe since the 1990s. Governments, international organizations, and private actors have addressed the causes and consequences of sex trafficking in various ways. Cornelius Friesendorf (2007) has shown that, although progress has been made in anti-trafficking measures, the security governance system is marked by several pathologies, especially a lack of programs that prevent trafficking in countries of origin and destination, insufficient protection for trafficked persons, and *deficient networks bringing together the various actors involved in anti-trafficking*. To make governance against human trafficking more effective, efficient, and just, the security governance system must be better balanced and *networked*.

The welfare initiatives aimed at combating human trafficking by reducing or eliminating 'supply', should be reoriented towards a relational perspective of action focused on changing the networks of the actors involved. An example of such a social practice can be found in the way juvenile crimes have been reduced or eliminated by changing people's networks through a relational intervention (Weaver 2012). An example of similar civil projects is given in Table 2.

Let me recapitulate, then, the fundamental argument. In all of these cases, the social and cultural structure given at T1 enters into a systemic crisis as regards the moral norms that it contains, explicitly or implicitly. The crisis leads to the commencement of play in phase T2-T3, from which derive effects to which, *de facto*, society responds, depending on the case in question, with three types of morphogenesis that have three types of outcomes: a) circularity of the morality between subjective norms and institutional forms (Beck, Bonss and Lau 2003); b) widespread anomie and morality of the 'hit the bottom' type (Teubner 2011); c) morality generated through new forms of relational steering (Donati 2013; 2015a). This is the moral scenario of society as it transitions beyond modernity that I would like to now briefly delineate.

**Table 2. Stop Human Trafficking**

‘STOP Traffick!’ is a transnational project on reduction in demand for the sexual services of victims of trafficking. This project will explore different attitudes of buyers and potential buyers to human trafficking, its context and impact in order to inform demand-reduction awareness-raising initiatives, implemented through a partnership of civil society, public and private enterprises. The programme will target employers to pilot the demand-reduction strategy as part of their corporate responsibility.

The programme will aim to develop a strategy leading to the development of a toolkit of products and activities to raise awareness among buyers and potential buyers of services delivered by human trafficking victims in the sex industry, in order to reduce demand for purchase of sexual services. The toolkit and awareness activities will be informed by research on men’s attitudes to buying sex in some of the participating member states and further informed by case studies documenting the experience of women and girls who are trafficked for the purpose of sexual exploitation.

A further aim of the programme is to strengthen the capacity of citizens and civil society organisations, to challenge the demand for victims of trafficking, further influencing the reduction of demand. It will also develop appropriate referral mechanisms for buyers or ex buyers who want to report human trafficking to law enforcement authorities or support victims of trafficking in accessing appropriate protection and support through structured referral to appropriate services.

The priorities of the project are as follows. Prevention, protection, assistance and support to victims, prosecution and investigation of offenders, coordination and cooperation mechanisms, as well as research into new forms of trafficking: 1) Demand and supply reduction for products and services provided by victims of trafficking, including measures aimed at implementing corporate social responsibility and awareness raising among employers and civil society. 2) Protection and support for assistance to victims of trafficking, including specific vulnerable groups.

## 7. The morphogenesis of the societal moral fabric in the era of globalisation

The scenario that we have before us is that of *lib/lab* systems continuing to operate while encountering growing failures and perverse effects. Their morality is self-defeating. The rapidity of failures depends on the accelerating erosion of certain values and traditional norms that early modernity had preserved in the past.

The immediate consequence of such failures is perceived as unbound morphogenesis, which means growing widespread anomie.

If we generalise the scheme in Figure 2, we can hypothesise that morality in the era of globalisation will proceed according to three *concomitant* types of morphogenetic changes (Figure 3).



The processes can be described through the morphogenesis of the basic structure of social relations (see the framework in Donati 2014a: 144–159), or what we can call the ‘founding relation’ – or else the ‘relational pattern’ – that characterises a social network.<sup>24</sup> Such a structure (CTMN) consists in the emergence of interactions among the following components: (C) the value attributed to the relation’s concern/interest; (T) the concrete and situated target/goal selected or selectable for the implementation of the relation on the ground of the relation’s value; (M) the means available to pursue the relation’s concern/interest; (N) the logic of relating C, T, and M (through distinctions and connections).

At time T1 we find a structure that contains its own Morality-1, which conditions agents when they begin to interact with one another.

In phase T2–T3 three scenarios are possible:

(a) The network of agents operates on the basis of Morality-1, which at time T4 can produce both morphostasis (communicative reflexivity) or a *bound* morphogenesis (autonomous reflexivity); for example, in the double bind of *lib/lab* morality, CTMN-2 is unvaried compared to CTMN-1.

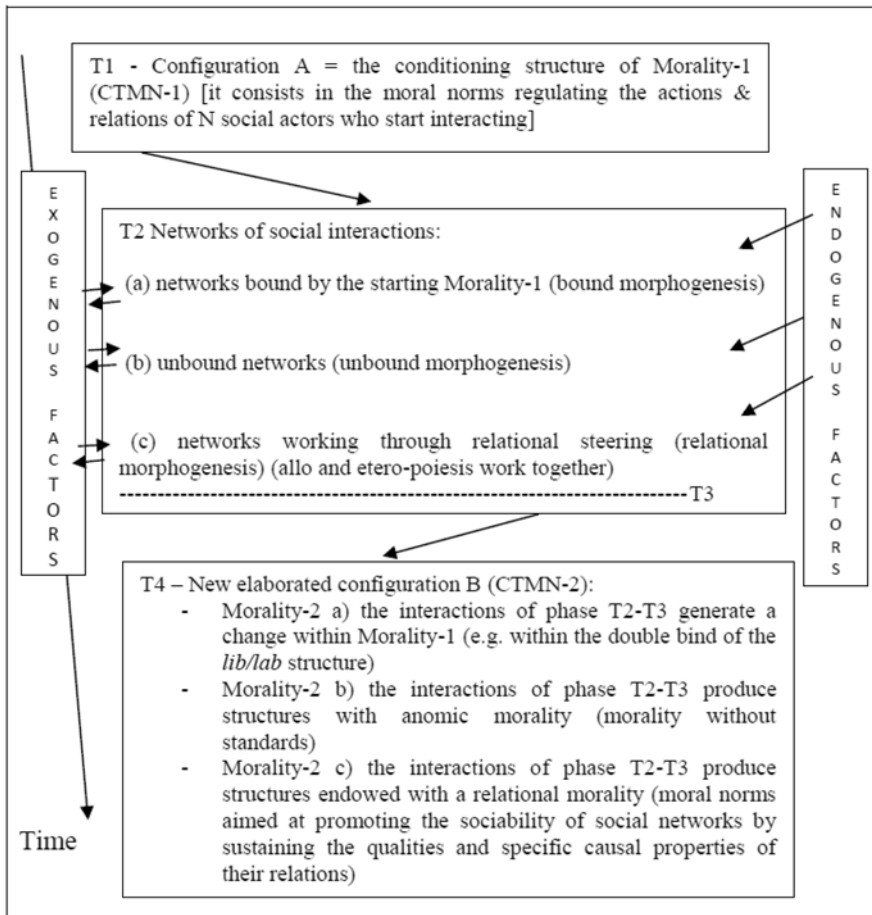
(b) The network of agents breaks the structure of Morality-1 and at time T4 generates an *unbound* morphogenesis, that is, an anomic morality. Here the CTMN-2 structure is characterised by a relational logic that is unable or refuses to draw distinctions (thought to be discrimination)<sup>25</sup> and, thus, does not valorise connections, but reflects in a fragmented or hindered way. Clearly this is the way in which malpractices such as forced labour, forced prostitution or unprotected domestic servitude of migrants can arise. What I want to stress is the fact that they can be produced, and as a matter of fact they are produced, by the *lib/lab* structure of state control

<sup>24</sup> Every social network has a ‘relational pattern’. We could think of any organisational or associative form describable as a network that is inspired by a certain relational modality among participants (a company can be hierarchical or not, a voluntary association or a rehabilitation community for drug addicts identifies with (and uses) a certain relational pattern of help, a cooperative has a relational pattern among members, a sport or cultural association contemplates a certain modality by which the members relate to one another, a network of families think about their relations as ‘family’ relations, a social network on the Internet comes into being from a relation-type among people who communicate, etc.

<sup>25</sup> For example, in his essay *On Being Morally Considerable*, the American ethical philosopher Kenneth E. Goodpaster (1978) maintains that any distinction between organisms thought to be in some way “worthy” of moral consideration and others that are not is clearly a case of discrimination.

apparatuses working on individual behaviours with normative regulations that do not use an adequate relational reflexivity.

(c) The network of agents operates with strategies of a relational steering type and produces *relational* morphogenesis. The structure of CTMN-2 is characterised by a meta-reflexive logic that indicates ends and means as a function of relations' value. This is the case of morality that is generated in those social spheres where relationality is taken seriously as a source of moral norms. In other terms, interactions are guided by the morality of the relation as such, which is based on relational feedbacks. New opportunities



**Figure 3.** The different paths of the social morphogenesis of morality from a relational perspective (as it emerges in late modernity) (in a cycle T1-T4). For the more general theory, see: Donati (2013: 216)

are created by means of relational steering: the network, in interaction with the outside, introduces variations in resources, actors, power relations, and norms that legitimate the variations that stabilise relational feedbacks.

The framework of Figure 3 underscores the fact that the structure of the relation that establishes and characterises the social network contains the moral norm that organises the means and ends of agency – both individual and collective – as a function of the value of the relation itself.

In case (a), a norm of collective utility prevails that maximises the criteria of efficiency and efficacy. An example is found in organisations that operate with a managerial style (business morality).

In case (b), a norm that maximises criteria of contingent preference prevails. It could be an expressive or opportunistic type, in the sense of seizing the most attractive opportunities of the moment: for example, the morality of Facebook networks.

In case (c), a norm that gives priority to the criterion of the moral value (the dignity) of the relation that characterises the social network prevails. Civic networks, such as ‘social streets’ (<http://www.socialstreet.it/>), are an example of this type if and when the relation that inspires associative agency is the value to be pursued, independently of its utility, efficacy, or efficiency. In these social practices, what matters is not the material goal that can be achieved (for instance, the maintenance of a common good like a public garden in the neighbourhood) as such, but ‘the sociality behind it’, i.e., the sociality among the neighbours that produces it.

The third solution at time T4 (Morality-2 c in Figure 3) entails the primacy of the *moral value* over the relation’s other components.<sup>26</sup> Moreh (1986) has shown that the economic theory of utility does not take into account moral behaviour, that is, behaviour in which an individual faced with two courses of action may choose the one that is *less* profitable to him or her. According to relational theory, when the goals that the individual has to achieve consist of peculiar social relations (e.g. personal care, education, friendship, etc.), then the morphogenesis has to be steered toward the achievement of higher relational goods. My thesis is that this behaviour has greater probabilities of being chosen when the individual is in a relational context endowed with certain qualities and properties rather than in another one. The context is not only a constraint, but also a resource, a pool of opportunities offered by the network formed with others.

<sup>26</sup> I provided a relational theory of ‘value’ in Donati (2014b: Figure 2).

Luhmann (2008b) wonders: ‘Are there indispensable norms in our society?’ His answer is negative. To his view, it is impossible to reasonably expect that any given moral or legal norm is normatively indispensable. This answer is in line with the ontological and epistemological premises of his approach, which is decidedly sceptical and amoral. I think that he should be challenged with an even more paradoxical question: ‘Are there still indispensable social relations in our society?’ The latter issue is strictly linked to the former. Let us take the example of work relations. No doubt that work is increasingly considered an indispensable social relation, not only from the standpoint of economic support, but also of the person’s emancipation/humanisation, and in this sense it is a moral imperative, which of course admits exemptions in special circumstances.

To understand the argument according to which there are social relations that are morally indispensable, it is necessary to consider the fact that social relations always involve a morality. The *practical* moral norm (not the ethical principle, which is located on another level of reality, i.e., in the cultural system) is redefined and changes in the moment that the agent *reflects on relations* with others *in a context*, and not when he/she reflects internally on his/her own ‘I’. The individual’s internal reflexivity considers the moral norm in order to define his/her moral agency in terms of the aspect of his/her subjective determinations (the process of discernment, deliberation, dedication is analysed in depth by Archer 2003), but the moral norm has a dynamic that does not depend only on individual agency, whether of a single individual or of a multiplicity of N individuals (aggregated or interacting with one another) – just as it does not depend entirely on the dynamic of structures (social and cultural institutions). The practical moral norm is formed and created in the relational process among agents. The problem is how we can analyse the contribution given to the formation of the moral norm inherent in the social relation (for example, that of work and family) by, respectively, the single agents, institutions, and the relation itself.

The present *moral imperative* in Western culture, which has been absorbed into social theory, is that individuals *should be* active, intentional, autonomous, independent, reflexive, capable, and constantly able and willing to make rational choices in their lives. Behind this moral imperative to agency, other aspects of what it is to be human lie in the shadows.

In terms of actions, the human aspects consist in the fact that agents ‘always and as such have *patients*, beings which the action affects’ (Reader 2007: 588). Whoever teaches influences the student necessarily, but the student retroacts upon the teacher. Whoever sells necessarily conditions

the buyer, but is also conditioned by him/her. Whoever cares for a poor or ill person has an impact on him/her, but is also influenced by him/her. Whoever cares for an immigrant or a trafficked person has an impact on him/her, but is also influenced by him/her. To put this more sociologically, every action entails a relationship. No single person is ever completely an agent or a patient in any one moment of interaction. The Self is called, like it or not, to acknowledge itself as a relational subject (Donati and Archer 2015). This reality is grasped if one understands that, from the moral point of view, what is at stake resides in the relation; indeed, what is at stake is the relation *itself*, considered for its moral qualities and properties, because it is in the relation that what is good/bad, right/wrong is defined in (and is relevant to) the identity of being an actor or a patient, an active or a passive subject. When the relation presents itself as ambivalent, the ambivalence can be dissolved by observing what type and degree of reciprocity exists between *Ego* and *Alter*, given the fact that it is in the qualities and causal properties of reciprocity that is defined what is good or bad.

### **8. The importance of communication (mass media and ICTs) in distorting or, vice versa, improving the emergence of a new morality toward human trafficking**

Mass media and ICTs play a crucial role in mediating the diffusion and emergence of social morality. They can contribute to combatting human trafficking or, vice versa, can obliterate and distort what we can call ‘humanitarian moral norms’. We should assess their ‘ethics of mediation’ in dealing with the issues of changing the mentality of those who despitefully use of vulnerable people, on one side, and nurturing relationships of care and responsibility for the people in need. Empirical research is lacking on these issues.

Indeed, it is not easy to evaluate the mediating role that the virtual reality of the ICTs exerts in sustaining or, vice versa, undermining a culture of ‘humanity’ and proper human relations through the positioning of vulnerable others along the axis of proximity–distance which that characterizes the different media. As Silverstone (2006: 47) reminds us, a ‘proper distance’ is in itself a normative dimension when facing the issue of changing the normative orientations of people for the humanization of vulnerable others.

Chouliaraki (2011) has highlighted the different ways in which the particular articulations of proximity–distance in media communication produce distinct conceptions of humanity and, therefore, distinct proposals for solidarity towards vulnerable others. To this regard, she has proposed

a typology of paradigms of solidarity, namely ‘pity’, ‘irony’ and ‘agonism’.

Pity is associated with ‘universal’ proximity solidarity, which assumes a false sense of ‘common humanity’ and suppresses difference between ‘us’ and ‘them’, whilst irony is associated with self-distance solidarity that takes the self to be the source of morality and assumes an equally misleading radical difference between ‘us’ and ‘them’. Neither paradigm, Chuliaraki argues, puts forward a political and morally productive proposal for solidarity.

Her discussion of NGO-branding appeals, celebrity advocacy and new media journalism, shows how their self-oriented textualities shift the claim to solidarity from a morality of pity to a morality of irony. ‘Irony’ celebrates consumerism as a reflexive distance-from-the self and is, therefore, unable to put forward a morally acceptable proposal of solidarity. This is because, rather than regarding human vulnerability as a politics of injustice, irony views vulnerability as a politics of the self. Specifically, irony renews the promise of solidarity today, by replacing the moral proximity between self and other, inherent in the logic of ‘common humanity’, with an opposing but structurally equivalent moral distance from the self – between us and the motivations of our action (but, consequently, also between the self and the other). Far from a purely philosophical affair, this transformation is co-nascent with the increasing ‘instrumentalization’ of solidarity in the global humanitarian market, which, by turning solidarity into self-centred consumerism, ultimately reproduces rather than challenges the existing relations of power between affluent people and vulnerable others. Solidarity as irony, in this sense, flourishes within a world of situated meanings and values not in the form of a ‘universal’ truth, but in the form of stories of suffering that, by way of ‘*sentimental education*’, mundanely cultivate the virtue of ‘*being kind to others as the only social bond that is needed*’ (Rorty 1989: 93, emphasis added).

On the other hand, even the ICTs (Internet) do not appear to produce by themselves a public realm of reflexive judgment where the voice of distant others becomes an object of our empathetic identification and a cause for our solidary action. ICTs are only technical means which may serve or not, in one way or another, the real (face-to-face, interpersonal) relationships in the life worlds.

Chouliaraki asks the question: would it not be possible to imagine a different communicative structure of humanitarianism that navigates beyond pity and irony and escapes both the arrogant proximity of the former and the narcissistic self-distance of the latter? Is it not possible to produce an alternative vision of solidarity through media communication?

Her response is positive, provided that we reconsider the imperative to act on vulnerable others on the basis of neither proximity nor self-distance. Her proposal is to resort to a different space of communication, that of a proper distance conceived of as '*a space of imagination*', that goes '*beyond the individual and the solitary self*' so that it '*opens the doors to understanding and in turn to the capacity to make judgments in and through the public world*' (the quotation is from Silverstone 2006: 46). Far from maintaining the strategic distinction between imagination and judgment, characteristic of the ironic preference for self-expression as playfully imaginative and its marginalization of judgment as irrelevant to solidarity, Chouliaraki shares Silverstone's views according to which a proper distance favours, instead, the co-articulation between judgment and imagination as the only way in which solidarity can go '*beyond the solitary self*' and become a practice of the '*public world*'. Proper distance requires therefore a dual engagement with human vulnerability, which both enables us to reflect upon this vulnerability as a political question of justice and invites us to relate to the vulnerable other as an '*other with her or his own humanity*'. Her conclusion is that it is precisely this recovery of the public world as a space of both judgment and imagination that promises to renew the morality of solidarity, today.

Personally I can agree only to some extent, since sociological researches show that a public world of real solidarity can only be founded in those civil social networks where primary and secondary interpersonal relations are generated and regenerated regularly. So that we need mass media and ICTs that, instead of manipulating the life worlds, serve them to know and manage better and better the human meaning and social functions of everyday social relationships, certainly in connection with the public sphere.

I can agree on the idea that agonistic solidarity is neither about the sharing of the same humanity for an impersonal 'whole' nor the mere sharing of our own feelings for distant others but about the communication of human vulnerability as a political question of injustice that can become the object of our collective reflection, empathetic emotion and transformative action. This is proven to be true provided that we understand that collective reflection, empathetic emotion and transformative action depend on the sense attributed by people to human social relations in their situational contexts, insofar as the common good is really practiced as a relational good.

## 9. Conclusions

Morality is a social fact, but it is treated like a problem of the individual or the system, or a mix of the two.

Current mainstream sociologies explain changes of morality according to opposing versions. For some, morality evolves by ‘systemic emergence’. For others, morality evolves through an ‘emergence of subjectivity’. If until a few years ago these two versions were seen as antithetical (Durkheim’s ‘collective conscience’ vs. Weber’s ‘individual subjectivity’: in particular, ‘charisma’), today structure and agency seem to operate in a synergic manner. My explanation is that this happens because a *lib/lab* configuration of morality prevails, which intrinsically contains a double bind (the double bind of the systemic constriction on individuals to be morally ‘free’).

a) The theses arguing for morality as ‘systemic emergence’ maintain that morality becomes a product of functional systems that, inasmuch as they proceed only through communications and are (ontologically) only communication, de-normativise society, including human beings, in a system that includes animals, plants, and every other entity, obviously including the entire artificial world of technology.

This thesis claims that in the differential and complex modern societies, the true protagonists of such events and processes are no longer humans or groups of humans with their material needs and their ‘values’, but roles and functions, systems and environments: a whole world of givenness and systemic relations in which human individuals operate like mere interchangeable and perfectly fungible elements. According to Luhmann (2008a), this fact leads to a new style of *morality* that is founded on the shared interest in reducing fear, and no longer on norms.

It is in this way that the era of globalisation presents itself, according to some, as morally ‘adiaphoric’. Decisions that need to be taken can no longer and should no longer be regulated based on a substantial distinction between good/bad that appeals to some ‘nature’, ‘reality’, or ‘objectivity’ because decisions on good and bad become ‘technical’, ethically indifferent, adiabhoric.

In this contribution I have tried to show that this vision commits a macroscopic error of perspective because it does not see the human character of the social as a *nomos-building* activity. The type of morphogenesis that it observes is only that of the de-humanisation of social morality, in particular, unbound morphogenesis.

b) In contrast, the theses arguing that morality is becoming completely subjective (morality as ‘emergence of subjectivity’) commit an error of perspective that is symmetrically opposed to the previous one because they make the morality of institutions (structures) coincide with that of individuals. Those who support this thesis (including many academic schol-



ars and even many magistrates in courts) argue that morphogenesis takes place through those cultural movements that claim that people, as pure individuals, *have the right to define their identities and their relations as they like*. The distinction between social relations (as structures) and subjective consciousness is no longer productive. What individualisation of social relations essentially means is that *the perceived relation is the social structure*, and that, consequently, both the individual perception and the social structure might vary at people's will. In their opinion *culture becomes an experiment* whose aim is to discover how we can live together as equal but different; the aim of normativity is less and less to prescribe a certain way of living and more and more to clear the institutional conditions for a multiplicity of lifestyles to be recognised. This means that *any collectively-shared definition of relationships and individual positions is gone*.

My opinion is that these two broad currents are, at the same time, antithetical and complementary (the moral norm refers to two polarities that are simultaneously opposite and complementary) because they entrust impersonal morality to the system and collocate free individual morality in the system's environment where they can fluctuate at will. Systemic morality guarantees subjective morality, which can create the most disparate social forms. On the basis of this perspective, the morphogenesis of morality would be destined to play out this game between individuals and the social system (the circular and conflative path between 1 and 2, skipping path 3, in Figure 1)

In this contribution, I have tried to show that this scenario identifies the processes of morphogenesis inside *lib/lab* that lead to the dissolution of *lib/lab*. If we manage to see that morphogenesis happens through complex social networks, in which specifically human relationality takes on increasing importance – which is different from that of animals and other living beings – we can glimpse other forms of morphogenesis. These forms are not simply the crisis of morality *tout court* or the replacement of modern morality by the synergy between systemic a-morality and subjective a-morality, but rather the birth of a new morality that valorises the good/bad of social relations upon which people's moral identity and their common goods depend.

Once upon a time, society was believed to rest on a morality. When a foundation could no longer be found in religious beliefs, it had to be sought either through reinterpreting these beliefs or looking elsewhere. Contemporary society does not deny that there still exists morality. Rather, it renders morality morphogenetic by continually generating and de-

stroying moral norms through the reduction of what is moral to pure communication, understood as the transfer of information and images. Moral norms seem to become purely communicative. This kind of morphogenesis configures a society riddled with paradoxes. One of them is the concomitant appearance of a stronger defence of human rights and their large-scale violation in human trafficking.

There are those who play on these tendencies to gain advantages. Others become their victims. Still others react, creating other ways of making society, and are carriers of a new morality. In any case, over the long run, the key to solving the problem lies in the fact that a sustainable morality must come to terms with the normativity that is intrinsic in the qualities and causal properties of each kind of social relation and, specifically, of the 'founding relation' that characterises the social network to which individuals refer their primary identity at any given moment, and in any given context, of their agency. This is true both for the traffickers and for the trafficked people.

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# HOW TO BRING ABOUT NORMATIVE CHANGE IN THE DEMAND FOR TRAFFICKED PERSONS

DOUGLAS V. PORPORA

Over the past decade, the supply side of human trafficking has been vigorously attacked by its greater criminalization. Yet there has been no evident diminution of the problem (Jägers and Rijken 2014). The conclusion, as expressed by this very session of the *Pontifical Academy of the Social Sciences* (PASS), is that criminalization is not enough. In fact, not only is criminalization not enough, nor is it enough merely to attack the supply side of the problem. The demand side must also be addressed. Such shift in attention toward demand was the recommendation of the *Inter-Agency Coordination Group Against the Trafficking in Persons* (ICAT 2014) in its second and most recent report. Accordingly, it was the demand side of human trafficking I was asked to examine and in particular the ways to reduce demand for human trafficking through normative change.

My charge was a tall order. As the ICAT report itself observes, not much yet has been written on this topic. Suggesting how to reduce demand for human trafficking through normative change was also a tall order for me especially, who, although I have written on collective response to such macro-moral issues as genocide and war (Porpora 1980; Malazita *et al.* 2013; Porpora *et al.* 2013); torture (Porpora *et al.* 2013); and terrorism (Porpora 2015; Patwell *et al.* 2015), have had to play catch-up on this equally unhappy subject of human trafficking.

But my charge is also a tall order because of the intrinsic complexity of the issue itself. As we know, human trafficking is a very variegated phenomenon that in the first place ranges between sexual trafficking and forced labor, and, in the second case, in relation to forced labor, extends over a range of abuses from sweatshops to servile domestic service. How people even end up in these situations varies, not just from case to case, but even within cases, over time (Jägers and Rijken 2014). One and the same person, for example, can get smuggled into a country voluntarily, only to be forced subsequently to pay back the fronted expense via threat of expulsion or physical force and, if and when those threats fail, just by having nowhere else to go.

When the conditions of force change over time, one question is what temporal part of a work relation to designate forced labor. Part of the com-

plexity is that forced labor represents a point on a continuum, which ranges from decent work to slavery (Jägers and Rijken; Pope 2010; Skrivankova 2010). Yet, while there is almost universal public opprobrium of slavery, we as a public are much more ready to condone all manner of labor exploitation short of it (Pope 2010). In other words, what used to be called “wage slavery” bothers the global public much less as do the conditions that produce it.

That widespread acceptance of labor exploitation is part of our neoliberal era and the contemporary degradation of work (see Braverman 1998). It is one of the normative conditions I will argue that needs to change if we are to effect reduction in demand for human trafficking. It is a normative concern, however, that carries us beyond human trafficking itself to the broader nature of global capitalism. That destination should not perhaps overly surprise or disturb us. The Roman Catholic Church has long had uneasy feelings about capitalism (Finn 2013), and in this regard, the current pope seems no exception.

With exploitation, we are talking about the relationality that Pierpaolo Donati discusses both in his contribution here (Donati 2015a) and in his broader relational approach to sociology (Donati 2015b). I will build on Donati’s approach in this paper. I similarly will draw on the kindred critical realism (CR) with which Maggie Archer and I both are strongly affiliated and which emphasizes an analytical approach that Archer (2013a) has christened with the acronym SAC. SAC stands for structure, agency, and culture, which, against most dominant currents in the social sciences, CR holds to be analytically distinct and irreducible to one another.

All three, according to CR, must be considered in any concrete case. In the case of human trafficking, for example, we are typically dealing with supply chains, that is, chains of linked relations extending from recruitment to ultimate exploitation. Each anterior position in the chain stands in relation to a posterior position as supplier of a demand – or derived demand (see ICAT 2014: 3) – issuing from that posterior place. Thus, talk of supply chains immediately introduces positionality, which in turn implies relationality, and also the agency of the actors who are the incumbents of the different positions. Insofar as the different social positions within a supply chain entail different, structured interests, the actors responding to those different interests will behave differently, although always in creative ways that cannot be captured by any kind of general laws.

The various actors will likewise be positioned differently in relation to any prevailing norms. Members of the general public, for example, who

are the ultimate consumers of products of forced labor generally just want to purchase their goods at the prevailing low price to which they have become accustomed. For these consumers, low – or at least non-prohibitive – price is both an interest and a norm. To satisfy that demand, corporate suppliers have their own interest in lowered costs of production and, heretofore at least, their own prevailing norm not to ask how their suppliers down the line manage to achieve that outcome for them.

As above, for different actors along the chain, we are dealing not just with different structured interests but also with different norms. Thus, just as the phenomenon of trafficking is itself variegated, so are the matters of normativity associated with it.

We first need to ask what we even mean by normativity. At their least reflective, norms are shared, cultural expectations, the rightness of conforming to which is simply taken for granted. Sometimes such expectations are even enshrined in law. Legalization does not necessarily imply any greater moral weight. Legality and morality only overlap; they do not coincide. There are normative infractions like adultery that are highly immoral without necessarily being illegal and legal infractions like marijuana use that are widely not considered immoral. Norms also differ in depth, some being more fundamental than others, and they differ in provenance as well so that today there is a fair debate as to whether the emphasis in anti-trafficking legislation should shift from criminal to labor law (Jägers and Rijken 2014; Pope 2010).

Presumably, as well, when we speak of norms we also mean to include values, which, unlike norms, are not rules. If we are speaking about how to bring about normative change in the demand for trafficked persons, then we are speaking about changes in both values and norms. We are speaking about what Archer (1982; 1995) has termed *morphogenesis*. We need to ask then what the current norms and values are and how they need to be changed so as to reduce demand, and we need to ask how those changes are to be effected.

In the rest of this paper, I will address both questions. The second question above – how the necessary normative changes are to be effected – is about political marketing and how messages reach a fragmented, busy, distracted public audience. The paper will end with a discussion of this topic and with what the Catholic Church might do to be effective toward the necessary changes.

I will begin, however, in the next section with where Donati's paper leaves us and with the broad critical realist approach that I will bring to the



matter. Then, I will cover some good news, or at least some partially good news. The good news is that when it comes to human trafficking, quite a bit of normative change has already occurred. My own country, the United States, has been a leader in the anti-trafficking movement, and there is already quite a bit of normative change there.

The bad or at least less good news is twofold. First, although all numbers relating to trafficking may be “guesstimates” of varying probity (Archer 2013b; Androff 2010; Chapkis 2003; Gozdziaik 2008; Gozdziaik and Collett 2005), it is unclear whether the normative changes so far have produced much change in the rate of trafficking (Jägers and Rijken 2014). We need here, however, to be careful. Just as we are without solid numbers on trafficking, we are as yet also without any measure or even articulated conception of success in relation to normative change and, likewise without any measure of what impact successful normative change might be expected to have in relation to the reduction of trafficking demand. Thus, although the normative change within the United States does not so far seem to have reduced the demand there for trafficked persons, it may well be that the problem would have been worse in the absence of such change.

The other less good news about normative change in the United States is that it has been focused narrowly on sexual trafficking and women (Chapkis 2003; Gozdziaik and Collett 2005). In North America, however, according to the data, the majority of detected trafficking victims involve forced labor of a nonsexual form (UNODC 2014: 34, 72) and more than a marginal percentage of males. The fourth section of my paper will therefore examine normative change in relation to forced labor of a non-sexual nature. I will then address what I call the social creation of moral indifference and end, as I say, with what can be done to overcome it.

Given the sub-issues to be covered, this paper will range over multiple disciplines: anthropology, economics, law, social work, and sociology. The thread might therefore be difficult to follow. To counteract that problem, I always tell my students that their papers should provide a strong thesis statement. I need to heed that advice myself.

So what is the overarching thesis of this paper toward which I will be moving? It is that when it comes to the reduction of demand in human trafficking through normative change, the problem and the solution mirror each other. In both respects, we need a broader perspective beyond trafficking itself. In the end, I will argue, the demand side of human trafficking is rooted in an economically based degradation of human sexuality, the human person, and human work. To challenge that degradation in a

distracted, half-attentive world, the church's counter-message must be repeated, and repeated across multiple media. But human trafficking is not the only evil against which the church is contending. Thus, so as not to lose the message on trafficking among a plethora of messages against other evils, the church needs to collect them all under a more encompassing if more abstract umbrella. What the church needs to do, I will argue, is to push for the re-sanctification of the human person, a re-sanctification of sexuality, and the re-sanctification of human work. But first, as I say, let me begin with the social relationality to which Donati directed us.

### **Relationality, Relational Sociology, and Material Relations**

Let us begin with a case described by Bales and Soodalter (2009: 84–85), which they title “Barbie and the Gorilla Pimp”. Barbie is the name eventually donned by a college student named Shamere McKenzie. Shamere begins a romantic relationship with Corey Davis, who, unknown to Shamere, is a pimp, in fact a so-called “gorilla pimp” who makes regular use of violence. When Shamere expresses the need for money, Davis convinces her to try stripping and eventually cajoles her into prostitution.

Davis continues to manipulate Shamere both physically and psychologically so that even as Shamere prostitutes herself, their romantic relationship continues, so much so that Shamere even becomes Davis's partner, managing the other prostitutes in his stable and recruiting still other women into this life. In the end, tragically, Shamere becomes both victim and victimizer.

There are multiple features of this case that warrant attention. Here, I want to focus on the element of relationality. Even with regard to relationality, there are multiple things that might be said. At bottom, however, in this case as in any case of trafficking anywhere along the supply chain between recruiter and ultimate exploiter, we are, as Donati (2015a) suggests, dealing with social relations as the basic unit of analysis. As Donati (2015a: 4) puts it, “the moral norms that regulate the social sphere are generated starting from social relations and not from individuals as such or from systems as such. Social morality is altered with the morphogenesis of relations”. Morality, Donati (2015a: 6) goes on to say, “is a relational fact”.

In the case offered by Bales and Soodalter described above, Shamere's personhood is degraded by what Martin Buber (1971) terms the “I-it” relation in which Davis positions her, a relation in which Shamere is objectified, reduced to an it, a means to Davis's ends. Of course, the I-it relation is an aspect of all social life. When we interact with a sales clerk or, indeed,

perform our own job, we all partially treat each other as “its”, that is, as means to each other’s ends. What both Buber and Kant admonish is that we never approach each other exclusively in terms of I-it relations, that is, that we never treat each other exclusively as means to our own ends. Instead, both insist that in all our encounters with each other, the I-it relation always be tempered by an overriding I-thou aspect in which we approach each other as you-to-you, which in turn orients us to each other as ends in ourselves.

In the relation between Shamere and Davis, it is, in abstract terms, the failure of the I-thou to override the I-it that constitutes Shamere’s degradation. If the demand for this sort of trafficking is to be reduced at its source, we are talking about transforming how end users and suppliers like Davis relate to those trafficked.

Even in the case of Davis and Shamere, the I-thou does not disappear. It remains a part of their relationship. The I-thou is central to the *sui generis* relations Donati identifies with the social, and Donati sees considerable meaning built into them. In his “Manifesto for a Critical Realist Relational Sociology”, Donati (2015b) argues that this meaning exceeds just the behavioral transactions on which American relational sociology concentrates (see Emirbayer 1997). Among the other elements Donati (2015b: 9) identifies are goals, means, norms, and cultural values.

I share with Donati the emphasis on the relational and further agree and will say more about it in a moment that the relational exceeds the transactional. I likewise agree with Donati that the *sui generis* social relations he describes, serving as he puts it as social molecules, fundamentally constitute the social realm. My own work (e.g., Porpora 1993), however, has focused on relations that, although less fundamentally constitutive of the social than the *sui generis* relations Donati describes, are nonetheless also socially consequential and analytically important to the topic at hand.

The relations I have in mind are less full-bodied than the *sui generis* relations of which Donati speaks in that they have less cultural meaning built into them. They do not embody goals, norms, or values, although they do structure interests, and in structuring interests also structure cultural and personal perspectives. Thus, without being normative themselves, such relations contribute significantly to the normative.

The relations I have in mind are those that Marx as in his *Preface to the Critique of Political Economy* referred to as material relations. They include relations like power, dependency, competition, inequality, and exploitation. Certainly, power, dependency, and inequality are all in play in the case

above of Shamere and Davis. Davis's control of Shamere, is a power he exerts over her, a relative power that is itself a form of inequality, rooted in still other inequalities such as an asymmetrical dependency.

The relations above are termed material because in lacking any cultural meaning built into them, where they exist they do so with an ontological objectivity that is independent of anyone's recognition of them. Whereas a marriage relation, not being material, can exist only if both the married partners have both a concept of marriage and of their own specific involvement in one, inequality and exploitation can exist without anyone's particular notice or conceptualization. One need not know one is exploited to be so. Similarly, the power of one person over another or the dependency of one on another can also go unrecognized by those so related (Porpora 1993).

Competition might seem an exception, but that impression comes precisely from a tendency to think in individualistic, transactional or interactionist terms. We tend to think of competition principally as the reciprocal behaviors of individual competitors, as, in other words, their interaction.

From a CR perspective, such a transactional view of competition is behaviorist, surrendering thereby analytical force. On the contrary, if competitors behave competitively, it is generally because they find themselves in a competitive situation. The competitive situation precedes the competitive behavior and is itself a relation, a *situational* as opposed to a *transactional* relation. As a *situational relation*, competition can arise in various ways, as from a limited good (relative to those who want it) or from a zero-sum arrangement where one's gain is another's loss. In any case, from a CR perspective, the situational relation is the real and explanatory structure behind the actual behavior observed.

Analytically, what connects the behavior with the situational relation is the category of interests. Relational situations structure interests. Where this connection is not understood, misdiagnosis results. We find exactly such misdiagnosis in the ICAT report. As the ICAT (2014: 4) report presents it, profit maximization – or cost minimization – is conventional among capitalists. Profit maximization, however, is not a convention or norm. It is a positional interest, rooted in the situational relation of competition in which capitalist firms are embedded. In that situation, should an individual firm not maximize profit, it will not stay in business long.

It thus is not as if it is just the habitus of capitalists to maximize profit, a habitus that can be changed simply by inculcating capitalists into a new norm. Norms may play a role in such change but only indirectly. Issu-

ing new constitutive and regulative rules can change the nature of a game, but to avoid widespread cheating, it is the players' interests that must be changed. It is the players' interests that are changed in what seems the successful approach to global warming called *Cap and Trade* (see Duggin 2015). By commodifying polluting emissions, *Cap and Trade* renders corporations an interest in reducing them. I am not saying that trafficking should similarly be commodified, only that we should not mistake interests for norms and that to reduce demand, we need to use regulative norms to target interests.

In the case of sexual trafficking, criminalization is a normative change that does try to target interests. Where procurement anywhere along the supply chain is criminalized, it is the interest in that activity that is targeted. As long, however, as a demand for trafficked persons – women, girls, or even males – remains among the end users, i.e., the men who want to have sex with those trafficked, a derived interest in trafficking among suppliers will also remain.

To attack the demand for sexual trafficking at its source, it is necessary to reduce the interest in it among its end-users, i.e., the *Johns*, as is the recommendation of the *Legislative Guide to the UN Trafficking in Persons Protocol* (ICAT 2014: 5; UNODOC 2004). That effect is partially achieved by criminalizing the *Johns*. Criminalizing the use of prostitutes – or at least of trafficked prostitutes – or more strongly enforcing or strengthening the criminal laws that already exist operates by reducing the demand for trafficking's end product by reducing the end-user's interest in that end product.

The logic is that if *Johns* themselves are more often held criminally liable or more strongly criminally liable for the use of at least trafficked prostitutes, they will demand guarantees of some sort that the prostitutes they use are not in fact trafficked. Demand for such guarantee will then in turn reduce end suppliers' interest in providing *Johns* with trafficked prostitutes with consequent decreases in derived demand down the supply chain.

According to the report of the *Norwegian Ministry of Justice* (2004), criminalizing the use of prostitutes as in Sweden may have reduced prostitution at least at the street level, although it also might just have driven those transactions underground (see as well DeStefano 2008: 113–114; and also Strøm *et al.* 2015). In the Netherlands, by contrast, within the confines of a legal prostitution industry, there does seem an interest among both end users and end suppliers to protect against the illegal prostitution of trafficked persons, an interest that does seem to dampen supply. Still, as the paper by Cho *et al.* (2012) suggests, the basic question is the relative strengths of the scale and substitution factors.

In any case, the Catholic Church always adopts a strong deontological stance that does not permit moral utilitarian choice of a lesser over a greater evil. Thus, even if legalizing prostitution would dampen demand for human trafficking of a sexual nature, that is not an option the church will endorse. Nor for that matter will the United States, where anti-trafficking measures are likewise driven by a strong constituency that advocates the complete abolition of prostitution (DeStefano 2008; Gozdziaik and Collett 2005; Gozdziaik 2015). The problem is that where prostitution remains illegal, establishing a dichotomy between sex workers who are and who are not “deserving” of protection can end up threatening the welfare of those determined undeserving and complicating the issue of undocumented migration with which trafficking is entangled (Chapkis 2003).

In any case, criminalization of trafficking is ultimately limited because it reduces interest in trafficking’s end product only by attaching a cost to its use (ICAT 2014: 9). Cost, however, is only one side of the equation. The root of the problem is the “benefit” side – in the case of sexual trafficking, the desire to use prostitutes. Altering that interest requires examination of why men employ prostitutes. Given, however, that only about 15% of men – at least in America – report ever having used a prostitute (Monto and Miltrod 2013), it is not clear how much lower the demand for prostitution can be pushed. Even if sexual congress were re-sacralized in the culture as a whole, a tall order in itself, it is doubtful how far and how strongly that effect would penetrate among men prone to the use of prostitutes. It may be that there is a lower limit to which demand can realistically be reduced.

Interests, as I say, are built into situational relations, the kinds of relations I have been calling material. As I conclude this section, it is to situational or material relations I want to return. Because material relations are not observable things, and because the social sciences and even popular culture tend to deny existence to what is unobservable, there is wide disregard of material relations. That disregard of material relations is analytically damaging not just generally but also specifically to the analysis of the demand for human trafficking. Which is why I am emphasizing them.

The disregard of material relations stems not just from the denial of existence to all that is unobservable but also from an individualist bias in human affairs that recognizes the causal intervention only of human actors and their actions. Again, that individualist bias obtains not just in popular culture but also in the social sciences. It leads to the equation of all social relations with human transactions. In the process, we lose the ability to analyze those transactions effectively. We see that very problem in the social

analysis of Nobel Prize-winning economist Milton Friedman and his wife, Rose.

Smith's key insight was that both parties to an exchange can benefit and that so long as cooperation is strictly voluntary, no exchange will take place unless both parties do benefit (Friedman and Friedman 1979: 1-2).

The passage comes from the Friedmans' book, *Free to Choose*, which seeks to defend the unregulated capitalist market as the social guarantor of human freedom. Although not as popular as Milton Friedman's (2002) subsequent *Capitalism and Freedom*, *Free to Choose* was accompanied by an entire PBS television series, and the sentiments of the two are the same and still very much with us.

The problem with the neoliberal outlook the Friedman's passage commends is that in its implicit denial of what I have been calling situational or material relations, it drastically undermines our understanding of exploitative transactions. According to the passage, as long as a transaction between two parties is strictly voluntary on both sides, that transaction is beneficial to both sides.

Much depends on what the passage means by benefit and by "strictly voluntary". Surely, if you press a gun to my chest and offer me the choice of my money or my life, it is to my benefit to choose the latter. We would not say, however, that accordingly, it is to my benefit to enter the ensuing transaction in which I hand my money over to you.

And what is meant by "strictly voluntary?" Even, in the above hold-up, as Archer (2013) observes, my agency does not disappear. I can always voluntarily refuse to hand over the money and let you take my life. Presumably, however, Friedman means to deny strict voluntariness from any transaction entered on the basis of physical force.

But there are other kinds of force that operate: Legal force; psychological force; the force of circumstance. The force of circumstance returns us to situational relations, for the disadvantaged position of one person relative to another is a situational or material relation of which the advantaged person can take advantage. When such advantage of disadvantage is taken, the ensuing relation is not truly to the benefit of the disadvantaged party. Thus, what makes even non-physically forced prostitution still involuntary from the point of view of Catherine MacKinnon are "the conditions of sex inequality, abuse, and destitution" that drive women into it (MacKinnon 2005: 997-998; Pope 2010: 1871). That point requires a conception of material relations to see.

The weakness of Friedman's individualist, non-relational analysis is even more pernicious in relation to forced labor of a nonsexual nature, for it represents one of the general sensibilities that allow it. On Friedman's account, no labor transaction is exploitative that laborers choose of their own volition. It matters not how desperate their circumstances. On this account, insofar as being paid half the minimum wage is better than not being paid at all, it is to the workers' benefit to accept the deal. So is being paid a quarter of the minimum wage and so on. The same goes for any adverse working conditions.

Thus, in the end, the individualist, transactional account expressed by Friedman impairs our ability to see exploitative labor relations, forced labor being only the most extreme form of which. True, when it comes to force, even the individualist, transactional account will balk, but countenancing all forms of labor exploitation short of force makes it more difficult to attend to the forced variety and more difficult for us to care about it. In fact, the individualist sensibility is more likely to incline us toward what psychologist Alan Ryan (1976) termed the normative tendency "to blame the victim". We see that tendency often operative, for example, in cases of rape, and it functions as well when we blame workers for "voluntarily" entering labor transactions that are not really beneficial to them.

If we are to reduce demand for forced labor of a nonsexual nature, we must improve our sensitivity to labor exploitation of all forms. That insight is the foundational reasoning behind the suggestion in the ICAT report for "Measures and mechanisms to improve labour conditions in sectors vulnerable to the use of victims trafficked for labour exploitation, through strengthening and enforcing labour standards and regulations" (ICAT 2014: 11). In the contemporary world, however, if anything, the tendency is in the opposite direction, where, in the United States, for example, it has been a struggle even to raise an abysmally low minimum wage.

### **Normative Change Regarding Trafficking in the United States**

I remarked earlier that we are still without clear measures or even conception of how to measure normative change in relation to trafficking or its effectiveness. The two should not be conflated. That is to say, how much normative change has been made is a variable distinct from the effectiveness of that change in solving the problem. As I observed above in relation to sexual trafficking, there may be a lower limit to demand regardless of how much normative change we effect.

With that said, I will cover the normative changes in the United States in an impressionistic way. Those changes include the normative engage-



ment of the general public. When in January I started writing this paper in earnest, my own Catholic parish held a forum on trafficking on a Saturday afternoon that brought out an audience of about forty people. The following weekend, my neighbor's mega Baptist Church held an even more expansive array of events on trafficking that included a Friday evening theatrical performance on the subject. When I tried to attend their Saturday program workshop, I was informed there was no more room.

The coincidence of these church events was no coincidence. In December 2012, President Barack Obama proclaimed January *National Slavery and Human Trafficking Prevention Month*, putting the topic of human trafficking on par with February's *African American History* month. January 13 in particular is *Human Trafficking Awareness Day*. An associated Facebook site, frequently visited, further raises awareness.

Across the country, there very frequently are newspaper reports about trafficking. When I conducted an exploratory Lexisnexis search for 2014, hundreds of articles were elicited. On February 25, 2015, just as I came to this point in my writing, there was a news item in my hometown newspaper, *The Philadelphia Inquirer*, headlined, "Ukrainian Brothers Convicted of Trafficking" (Roebock 2015). Significantly, the piece was about forced labor, and it detailed typical features of that enterprise. The operation was small scale, involving forced custodial work. Victims "were lured to the United States with promises of stable jobs" only to be treated "like slaves". The brothers "ensured their workers' continued labor with beatings, sexual assaults, and threats sent to family in Eastern Europe". Significantly, the brothers were tried by a federal rather than state level jury and convicted on federal charges of racketeering, which carry heavier sentencing – already 20 years and life imprisonment for the brothers' two other brothers previously convicted for their involvement with this crime.

Now, sometimes funded at least partially at a federal level, there are a great many organizations operating in the United States that are devoted to trafficking and its victims. At the forum held by my church, two local ones were represented: *Covenant House* and *Dawn's Place*, which assist young females, often run-aways from American homes, who have been so victimized. Operating at the national or even international level, there are many anti-Trafficking organizations in the United States, all with their own web sites: *Innocents at Risk*; *Safe Horizon*; *Rescue: Freedom*; *Allies Against Slavery*; *Network of Human Assistance*; and so on.

The *U.S. Conference of Catholic Bishops* has a web site on human trafficking as do the national organizations of other religious denominations.

My own university offers a three-course certificate on the subject (Drexel 2015). Even celebrities have gotten involved as in the video campaign launched by actors Ashton Kutcher and Demi Moore “Real Men Don’t Buy Girls” (Kavner 2011). American television has aired documentaries on trafficking and even episodes of routine programs – for example, a recent episode of *Madam Secretary* – that deal with trafficking. So in the United States, there has been a concerted, longstanding, multi-media campaign on this issue.

The U.S. government has actually been active on the trafficking problem for over 15 years, an interest that grew out of its more general efforts in the 1980s and 1990s to combat organized crime and which led the United States to begin drafting a number of international protocols on the trafficking of drugs and guns and on corruption and money-laundering (DeStefano 2008). After the G7 countries were first mobilized in this direction, the United Nations took the reigns toward an international convention on organized crime, which encompassed among many other specific offenses, a protocol on human trafficking. For the 1998 meetings on that matter in Vienna, drafts of the protocol were jointly submitted by the United States and Argentina.

As the proposed protocol eventually adopted by the United Nations called on signatories to pass legislation dealing with human trafficking, the Clinton administration was already pressing the United States in this direction (DeStefano 2008). Thus, coinciding with the December 2000 international signing of the *U.N. Convention on Organized Crime* in Palermo, Italy – together with its protocols on human trafficking and migrant smuggling – the Clinton administration in November 2000 signed into U.S. law *The Victims of Violence and Protection Act (TVPA)*, which, *inter alia*, created the Office to Monitor and Combat Trafficking (TIP Office) (DeStefano 2008). The *TVPA* has most recently been reauthorized in 2013 by President Barack Obama.

How effective have all these normative changes been in changing the overall moral consciousness of the United States in relation to human trafficking? It is important to be realistic in our expectations. As reported by a well-known PEW (2008) study, aside from the weather, no national or international news story is closely followed by any more than a quarter of the U.S. public. Thus, despite all the effort, it is unclear how salient the issue is with Americans generally. Consulting the *Roper Archives* of national public opinion polls, I found none that asked respondents anything about human as opposed to drug trafficking. If, as seems the case, the issue is a

priority for the U.S. Catholic bishops, that sense of urgency is not making its way to the parishes. The forum on trafficking held at my very socially active parish at the initiative of my very socially engaged pastor was an accident. Initially, my pastor was unaware that January was national *Trafficking Prevention Month* and, at the time, frankly, so was I.

In the United States, however, the main problem with the normative change in relation to human trafficking has been its very narrow focus on sexual trafficking. In fact, when the Bush administration reauthorized the *TVPA* in 2003, the legislation contained a rider precluding federal funding for any non-governmental, anti-trafficking organization that failed explicitly to state its opposition to prostitution.

That so-called “anti-prostitution pledge” was struck down as unconstitutional in 2013 by the U.S. Supreme Court, but in the interim and still today, it unleashed a controversy between those who do and do not think that the abolition of trafficking should be tied to the abolition of prostitution. It is a controversy that, with conservative faith-based organizations on the pro side, has actually split the feminist movement between those who consider prostitution intrinsically violence against women and those who, on the contrary, uphold safe and legal sex work as a valid occupation for women. Clearly in part through U.S. efforts, this controversy has also been playing out internationally.

The controversy signifies the narrow focus on sexual trafficking in the United States. Despite statistics indicating the contrary, the model victim of trafficking in the United States is the young, female, trafficked sex worker (Chapkis 2003).

This narrow national focus on sexual trafficking and the associated moral crusade against prostitution has elicited counter-charges of *moral panic* (Doezema 1999; Weitzer 2007), a term that goes back in academia to Marshall McLuhan (1994) and suggests a manipulated, implicitly unwarranted uproar over some aspect of public morality. Certainly, it is true that the U.S. government itself had to admit that its earliest figures associated with sexual trafficking were overblown (Chapkis 2003; Gozdzik 2008; DeStefano 2008), and if, as arguably is the case, only 25% of working prostitutes are trafficked, attacking prostitution as a whole may not be the most effective solution to demand reduction (DeStefano 2008: 115).

Although the broader issues of this controversy lie beyond the scope of this paper, we can at least leave this section with two pertinent observations about it. I remarked at the beginning of this paper that we are without any formal measure of successful normative change in relation to trafficking.

Certainly, however, we can say that if normative change has been such as to elicit charges of moral panic, the change in or challenge to existing norms has at least been successful at some level. The second observation is, as I have been saying, that the controversy points to an overly narrow focus. There needs to be a widening of normative reflection to forced labor beyond sexual trafficking. There is where we go in the next section.

### **Forced Labor of a Nonsexual Nature: What Norms Need Changing?**

As Bales and Soodalter (2004: 6, 54) present it, forced labor or slavery is “capitalism at its worst”, one “end of a spectrum of labor violations” (see also Pope 2010: 1858). Gallagher (2001: 792) puts it similarly, describing trafficking as “woven deeply and inextricably into the fabric of an inequitable, unjust, and hypocritical world”.

As a material relation, inequality is central to the problem of human trafficking in terms of both supply and demand, and in fact the two are interlinked. It is the cheapness of the production input afforded by forced labor that accounts for its demand, and the destitution of the forced laborers that makes their labor so cheap. Normative changes that affect inequality thus affect simultaneously both supply and demand.

Inequality is even more acute now in our neoliberal era, with free trade agreements allowing the easy transfer of capital and commodities across borders. In the words of New York financier Robert A. Johnson, “Now Capital has wings . . . Capital can deal with twenty labor markets at once and pick and choose among them. Labor is fixed in one place. So power has shifted” (from Pope 2010: 1867).

Power indeed has shifted. It is no wonder then that workers, faced with that power shift, seek to migrate to higher wage countries, even illegally if they must. That condition in turn is precisely what makes them as undocumented workers vulnerable to forced labor in a way that is entangled with immigration. In fact, under these conditions, immigration law ends up serving as a form of labor control (Pope 2010: 1867).

Free Trade is promoted largely as reducing costs to consumers, but it cannot be forgotten that to consume, consumers also must earn. Even working at a living wage in the developed world, workers frequently are – and are encouraged by the market to be – overspent (Schor 1999). Thus, even in the developed world, consumer demand is for low prices.

In fact, let me be clearer. It is part of world-scale inequality that consumers in the developed world demand and are accustomed to getting a wide array of what they consume at prices that depend on various levels

of exploited labor – from the vegetables picked by migrant labor to our smartphones – mine included – manufactured in places like China at a fraction of the wages that would be paid in developed countries.

In a sense, then, from the standpoint of inequality across the globe, what we call the developed world might better be termed *overdeveloped* (Erich and Erlich 1971), reflecting the more than its “fair share” of the world’s bounty that it consumes. The *Fair Trade* movement attempts to right that wrong, but if workers in the undeveloped world are to be paid a higher, fairer wage for what they produce, consumers in the overdeveloped world will need to downsize their consumption by adopting simpler lifestyles. That moral shift, however, conflicts with current consumer – and corporate – interests.

As it stands, the intense consumer demand for low prices is reflected backward as derived demand for low production costs among end suppliers – in many cases, large corporations. Normally, the large corporations do not themselves directly employ forced labor, but they also often do not check back to insure that the same purity is practiced by their suppliers. On the contrary, the large, corporate, end suppliers – often collectively *oligopsonies* – project the pressure for low prices back onto their suppliers. That pressure actually does encourage the smaller-scale, less formal suppliers of the corporate suppliers to employ forced labor (Pope 2010; Jägers and Rijken 2014). Thus, as where forced labor is entwined with immigration, private contractors will purchase the debt that illegal migrants owe *coyotes* thereby acquiring cheap, indentured servants (Pope 2010). The problem is compounded when the enslaved work side by side with unenslaved workers, documented and not, who experience the same working conditions and only meager pay. Then, not only is it difficult to distinguish the two categories but also not much reason to do so. The fundamental issue here is labor rights and the dignity of work.

It may be time, as both Pope (2010) and Jägers and Rijken (2014) suggest, for a new approach to anti-trafficking legislation that emphasizes labor law rather than criminal law. A basic question then is which point in the supply chain is best attacked.

Although the large corporations may not themselves be the ones actually doing the trafficking, it may well be their demand for low cost supplies that is the fulcrum of the system. That lesson is suggested by a story told by Bales and Soodalter (2010) and picked up as well by Pope (2010) about tomato workers in Immokolee, Florida. The workers, who included the indentured among their ranks, realized that trafficking and exploitative working conditions would continue as long as the big chains like *Taco Bell* demanded

the lowest possible prices from the suppliers by whom the workers were actually employed. It was thus the big chains the workers targeted (Bales and Soodalter 2010: 61; Pope 2010: 1864).

In the end, drawing support from labor unions, students, and the general public, the workers organized a boycott against *Taco Bell*. Their goal was to get the big buyers to take responsibility for their less formal suppliers and to cease purchasing produce harvested by enslaved and exploited workers. The campaign worked – and worked not only with *Taco Bell* but also eventually with *Subway*, *McDonald's*, *Burger King*, and *Whole Foods* (Pope 2010: 1864).

In effect, through the worker and citizen pressure advocated by ICAT (2014) as well, a moral shift was effected in corporate culture. In 2010 in California at least, that kind of shift has been enshrined into law. The *California Transparency in Supply Chains Act* “requires companies over a certain size with any retail or manufacturing presence in the state of California to post on their website what, if anything, they are doing to prevent slavery and human trafficking in their supply chain” (Jägers and Rijken 2014). The law does not require the companies actually to do anything about their supply chains but only to be transparent about them. Still, it is a start and the type of legislation that can reduce the demand for trafficked persons. Similar legislation is before the U.S. Congress (Jägers and Rijken 2014: 60).

Ultimately, it is with the general public, both as citizens and consumers, that change must occur. It is the general public as citizens who must press their legislatures for the type of law enacted in California. It is as both citizens and as consumers that the public must bring pressure to bear against exploitation and slavery.

But ultimately it is as consumers that the public in the overdeveloped world must change. They must come to terms with downsized consumption. *Fair Trade* purchasing is, as noted, one action step the public can take. Another is what is called *Local Purchasing*, which emphasizes the purchase of local products and food (see Pollan 2007).

Local purchasing is urged for several reasons, including environmental sustainability. Among the reasons, however, is greater knowledge of and responsibility over supply chains. Where supply chains sprawl around the world, it is very difficult to know the conditions under which things are produced. Where goods are produced locally, it is much easier to insure that production does not depend on exploited, trafficked labor.

All such efforts, however, if successful, will result in downsized, more responsible consumption. Will the general publics in the overdeveloped

world make such sacrifice? We turn now to the difficulties of effecting such normative change.

### **Techniques of Neutralization**

Techniques of neutralization refer to psychological techniques first identified under that label by Sykes and Matza (1957) through which people neutralize their sense of responsibility for actions that harm others. Sykes and Matza identified five – denial of responsibility; denial of injury; denial of victim; condemning the condemners; and appealing to high loyalties, but there are others. Techniques of neutralization draw on norms existent in the culture but speaking of them as techniques implies personal agency, and indeed they ultimately are employed by individuals.

The theoretical point here is that individuals will take responsibility for their actions only if they resist or overcome these techniques for or tendencies toward responsibility neutralization. Not everything we will identify in this section is best described as a technique. Some, like what Latané and Darley (1970) called the *diffusion of responsibility*, are structural in nature, and some, like what I (Porpora *et al.* 2013) call the *macro-moral disconnect* are partly cultural. We see here in the span of factors from the cultural to the structural to the individual the need for what Archer calls SAC.

Who are the individuals to whom this analysis applies? In the end, all of us: traffickers, end users, and the by-standing general public whose responsibility as citizens it is to intervene. In this section, we will hardly have space to cover extensively this matter, which has been the focus of my own research. The goal instead will be to provide a sense of what is involved.

I will begin with traffickers and then proceed to widen the circle. One of the people with whom I spoke was a local prison chaplain. She told me of an encounter in the prison with a pimp, who was bragging about his enterprise. Shocked, the chaplain accosted the pimp, asking him whether any of the prostitutes in his stable included his own sisters.

The pimp, the chaplain told me, became immediately indignant, asking her in turn, “What do you think I am?”

The pimp’s reaction is interesting because indignation is a moral emotion. It reflects a sense of having been wronged. Not even the pimp then is beyond morality.

What is interesting is what the pimp is doing with morality, because it exhibits actually two techniques of neutralization that operate not just with pimps but more generally. Both operated, for example, in the Holocaust. The first is a narrowing of the universe of obligation, the universe of those

to whom one feels one owes moral consideration (Fein 1979). Although the pimp's moral universe is exceedingly small, whenever our moral universe fails to encompass the whole of humanity, it is likewise too narrow.

The second technique of neutralization that may operate here is the one Hannah Arendt found in Eichmann, the compartmentalization of an entire domain of life, walling it off from moral consideration. Whenever we wall off business from morality – whenever we allow ourselves, like Mafiosi, to describe a decision as a business as opposed to a moral matter as if the two are separable – we do the same.

Copley (2014) examines other techniques of neutralization as they relate to sex traffickers, but, again, they also apply more widely. Marking the kind of contraction of the moral universe shared by the pimp above, Copley (2014: 52) reports one Czech trafficker saying that his forced laborers were “more like things that I own” than employees”. Traffickers likewise deny their injury to their victims, sometimes even acknowledging victims' vulnerability due to poverty, saying they (the traffickers) help their trafficked workers to survive and that the workers get used to their position. Traffickers also neutralize their own responsibility by citing the role of others. Thus, one Indian brothel owner “emphasized parental agency in bringing young girls into the sex trades by stating “my girls are here to earn money ... their parents desire this” (Copley 2014: 51). Politicians likewise defer responsibility, saying, for example, “It's a cop's job, not a politician's, to root out crime and corruption” (Copley 2014: 51).

As we have noted, the same techniques of neutralization can also apply to corporate executives, who may attribute full responsibility for trafficking to their suppliers, ignoring their own complicity in the exchange. It is for that reason that legislation like California's *Transparency in Supply Chains Act* is so important. Not only does the legislation expressly make it a corporation's responsibility to vouch for its supply chain but in doing so, it helps foster a corporate culture more sensitive to the problem.

It is also the end users, however, who engage in techniques of neutralization, and often the same ones. Apparently common among Johns, for example, is a hyper-commodification that makes them feel entitled, once they pay their money, to demand whatever they want from prostitutes. They expect “customer care” (Farley *et al.* 2009). For many, the most intimate I-thou relation is reduced to an I-it. As one patron put it, “We're living in the age of instant coffee, instant food. This is instant sex” (Farley *et al.* 2009: 7). For many, engaging a prostitute is a normal part of men's coming of age. Many blame the victim, subscribing to a stereotypical Ma-



donna-whore dichotomy. Thus, one man says, “I wouldn’t go out on a date or be in a relationship with one of them. I don’t see myself going out with someone who has been paid for sex. I’m an old fashioned person, Roman Catholic” (Farley 2009: 15).

Ultimately, if there is to be movement against trafficking in all its forms, it is the general public itself that must be moved. It must be moved to take action as a citizenry to demand more from its governments, and it must be moved as blocs of consumers to repudiate goods and services founded on exploited labor.

The barriers to such public movement are many. Pope Francis spoke of the “globalization of indifference” (Allen Jr. 2013), and the social creation of moral indifference – or what looks like indifference – has occupied a good deal of my own work.

Sometimes, it is not that the public is actually indifferent but uninformed. The job then is to better inform them. Sometimes, however, the problem goes beyond a lack of information to general mindset. Just as buying sex appears normal to many Johns, a market place built on exploited labor appears normal to many ordinary consumers. In such context, it is not the purchase of such goods and services that appears deviant but its repudiation.

Just as in a world that commodifies everything, Johns come to think of sex just that way, so do consumers in general come so to think of all labor just as a commodity. The sanctity of labor needs to be reclaimed.

Just as Johns blame the prostitutes they use for the pass to which they have come, so too in an individualistic world without relationality can consumers in general think it is exploited workers who are to blame for the business arrangements they have accepted. The general public must be brought out of its individualism to view of themselves as what Archer and Donati (2015) call relational subjects, each connected ontologically to all.

Even when the general public comes to see the problem, there still can be what is called a “value-action gap” (Blake 1999), a failure of members of the public to act on the values they have. Sometimes, as in the case of the diffusion of responsibility, each one sees the initiative as always someone else’s to take. The need is to organize responsibility.

Sometimes even when the public comes to see the problem, there remains what I have called a *macro-moral disconnect*, a failure of the public to see that morality entails not just what each does alone within the sphere of one’s private life but also how all act together as a collective in public space. There is a need for the Church to emphasize sins of omission as well as

commission and once again, like the Liberation Theologians of the 1980s, to speak of collective as well as of individual sin.

Sometimes, finally, even when the public comes to see the problem and even when it comes to own its responsibility to redress it, members of the public can find themselves morally saturated: So many separate problems; how can any one person address them all? What is needed is for the church to find the common core to these problems and thereby bring them all within the compass of a common agenda. How to do that? We come to the paper's final section.

### **What Can the Church Do?**

How do we bring about normative change in the demand for trafficked persons? That was the question I was asked to address. To answer it, I first needed to clarify it. Normative change could imply change exclusively in moral sensibility, but, although it ultimately is moral sensibility that needs to change, moral norms are not the only norms that need to change. As demand is ultimately driven by interests, we need regulations, not necessarily moral, that reduce the interests that drive the demand for trafficked persons. Interests in turn are rooted in relations and so we had along the way to come to a better understanding of relationality.

Taking a relational view involves seeing things from a larger, relational perspective. In this case, the relational view zooms us out from looking at trafficking directly to the larger, structural forces behind it. I cited global inequality as a primary motor for trafficking in its impact on both supply and demand. On the demand side, I cited the condition of overconsumption, that is, our allowing ourselves to consume goods and services that depend on the exploitation – sexual or otherwise – of labor. What frees our consciences to so utilize exploited labor is the now global reign of a market mentality that renders it normative to commodify everything, including sex, including persons, including labor.

If the normalcy of untempered commodification is the ultimate problem on the demand side, then it is that normalcy that needs to be challenged, and it needs to be challenged by calling on the general public to challenge it.

How to do that? As I suggested, the solution mirrors the problem. To reach a half-attentive, over-saturated public, messages have to be repeated. On one estimate, to move “audiences from unawareness to action requires anywhere from 7 to 15 exposures – and sometimes more” (Phillips 2013: 22). The repetition needs to be across multiple media and it needs to be

consistent. The problem for the church is that it has many issues to which it wants the public – or at least its own members – to respond. The problem is that each such call eclipses the others, and all together drown the audience in conflicting, competing messages.

But just as the problem comes to head in commodification, so can the solution. If on the demand side the ultimate problem is the complete reduction of sex, persons, and labor to commodities, then it is the sanctity of each that needs to be reclaimed.

As sanctity is abstract and therefore encompassing, the message can be repeated and repeated without being repetitive. It need not be repetitive because each individual message can speak of sanctification in relation to a different object – sexuality, persons, labor – and in relation to different aspects. In terms of different aspects, consider how tied up trafficking now is with immigration and immigration with global inequality. The messages can thus be combined under an encompassing commitment that makes sense and that has emotional draw.

What I am suggesting was done in 1983, when U.S. Cardinal Joseph Bernardin popularized the term *seamless garment*. It was a sound bite and an effective one. It collected under one overarching notion “that issues such as abortion, capital punishment, militarism, euthanasia, social injustice, and economic injustice all demand a consistent application of moral principles that value the sacredness of human life” (Wikipedia 2015). The seamless garment was a piece of political marketing. If the church is to have an effect on the demand side of human trafficking, it is to political marketing it must turn. The place of that turn, however, must be broader than human trafficking itself.

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# FINAL RECOMMENDATIONS OF THE PONTIFICAL ACADEMY OF SOCIAL SCIENCES

*From the 17-21 April 2015 Plenary Session on  
'Human Trafficking: Issues beyond Criminalization'*

“Human Trafficking, in terms of forced labour, prostitution, organ harvesting, domestic servitude and other forms of modern slavery, fundamentally fails to respect that all people share the same freedom and human dignity and that trafficking should thus be recognized as a Crime against Humanity.” Joint Declaration of Religious Leaders Against Modern Slavery (2 Dec. 2014). The effective application of criminal law is a necessary condition for its abolition but it is not a sufficient condition for remedying the consequences for victims and society.

## **1. Prevention and criminalization**

- a) International collaboration to make decisive steps towards the creation of a world Anti-Trafficking Agency (WATA).
- b) At the national level, the model of an Independent Commissioner for Anti-Trafficking and Slavery should be introduced with powers to enhance good practice in the prevention, detention, investigation, prosecution and punishment of traffickers.
- c) Each state is encouraged to increase resources and international police collaboration in order to raise low prosecution and conviction rates for traffickers.
- d) All nations having ratified the 1957 ILO Convention and the 2000 UN Protocol Against Trafficking in Persons, to make human trafficking and forced labour a penal offence with commensurate penalties.
- e) Punishment commensurate with the seriousness of the offence, including programs for reform, should be statutorily enforced for all convicted traffickers and deployed by every party to the Palermo Protocol and in line with ILO Convention no. 29, 1930).
- f) Assets seized from convicted traffickers to be devoted to victim rehabilitation and the establishment of a victims' compensation fund.
- g) Victim interaction and engagement with the criminal justice system should be (where possible) encouraged and properly supported.

- h) Development of Global benchmarks for victim support including: civil legal aid, secure witness protection, medical and trauma assistance, support for individuals from social service agencies.
- i) Creation of effective and collaborative mechanisms by government authorities and international agencies to ensure that data collection and recording define and demarcate trafficked persons from non-trafficked irregular migrants.
- j) All personnel working in any capacity with trafficked persons must have proper training that is appropriate to treating them with dignity and respect.

## **2. No involuntary repatriation (non-refoulement involontaire)**

The country of destination should bear the highest burden for the resettlement of victims, including identification, documentation and humanitarian services. Trafficked persons must not be confused with non-trafficked irregular migrants.

- a) Repatriation and return should never be the default rule.
- b) When voluntary repatriation is sought, it must be ascertained that those returning will have full civil rights, negotiated through bilateral governmental and non-governmental agreements.
- c) Temporary residence permits should be issued in the country of destination for those wishing to remain there, irrespective of their legal status in that national territory. This permit should allow access to necessary support, such as compensation, effective access to relevant courts and tribunals as well as access to legal assistance, free of charge.
- d) Concerted liaison with Voluntary Associations and IGOs should be promoted at all times and in all regions to foster resettlement.
- e) Increased Public awareness about Human Trafficking should be a priority for all Governments.

## **3. Resettlement**

Criminal justice is intrinsically tied to social justice. Resettlement and re-integration aim for trafficked people to become economically and socially independent; no longer at risk of being re-trafficked or resorting to illegal, risky or humiliating activities, but contributing positively to the host society.



- a) Procedures to be established in countries of destination promoting informed choice (remain or return) by identified victims with contacts made available for further reliable information.
- b) Assistance and benefits to victims should not be conditional upon co-operation with the criminal justice system.
- c) A flexible and voluntary Resettlement Plan to be developed in every country of destination covering: medical care, language learning, life-skills, access to job training, accommodation, and community integration, making maximum use of help from Voluntary Associations.
- d) For victims remaining in the country in which they were identified, a form of residence permit should be issued allowing access to the job market.
- e) Concerted efforts must be made to reduce delays in receiving benefits and entitlements, as well as accessing legal support for those identified as trafficked persons. Clear printed guides should be provided detailing victims' rights and responsibilities, both immediately and in the longer term.
- f) National Embassies in countries of destination to develop resource centres dedicated to assisting survivors who choose to remain, especially in obtaining the necessary documentation.
- g) Promotion of adult fostering programs via Voluntary Groups and faith communities.
- h) Encourage those who have been helped to volunteer their own help with Resettlement Programs once they have become established in a locality.
- i) Establish accredited programs and support systems in countries of origin to which significant numbers elect to return. Trafficked persons must not automatically be returned to their families; their expressed preference should first be ascertained.

#### **4. Reducing the demand**

Criminalization works with a given supply of trafficked persons that is ultimately determined by the demand for them, which makes Human Trafficking profitable. A complementary approach, is to work on reducing the demand, the profits and hence the supply.

- a) The practice of human trafficking for procurement of organs from the poor, refugees, ethnic minorities, prisoners and other marginalized persons is based on exploitation and should be considered as a serious criminal offence and a crime against humanity.
- b) The buying, selling, brokering, and implanting of organs and tissues from trafficked persons should be prohibited in all countries.
- c) We suggest that all religious communities encourage and promote voluntary organ donation through the signing of Organ Donor Cards in case of road accidents or other incidents resulting in brain death.
- d) We ask the Catholic Church actively to bless and promote this last act of free giving to one's neighbour – be it of kidneys or corneas – by distributing Donor Cards throughout Parishes worldwide.
- e) A tightly monitored “icon-mark” to be displayed on goods sold (e.g. clothing and electrical devices) whose documented supply chain is clean of forced, underage, or trafficked labour.
- f) Link up associations working on supply chain transparency to mount national publicity campaigns about personal responsibility to trafficked persons in consumer behaviour or services procured.
- g) Prosecution of clients of commercial sexual services should become an integral part of anti-trafficking legislation in all states.
- h) Normative emphasis in educational institutions stigmatizing production and consumption activities that entail trafficking.
- i) Establish the Feast of St Josephine Bakhita (8 February) as a national day devoted to increasing awareness about all forms of human trafficking in order to reinforce normative opposition to it.

# RECOMENDACIONES FINALES DE LA PONTIFICIA ACADEMIA DE LAS CIENCIAS SOCIALES

*Sesión Plenaria, 17–21 de abril de 2015*

*Trata de personas: consideraciones más allá de la criminalización*

“Las formas modernas de esclavitud, tales como la trata de personas, la prostitución, el trabajo forzado y el tráfico de órganos, y toda relación que no respete la convicción fundamental de que todas las personas son iguales y tienen la misma libertad y la misma dignidad, constituyen un delito grave de lesa humanidad”. Declaración conjunta de los líderes religiosos contra las formas modernas de la esclavitud (diciembre de 2014).

La aplicación efectiva del derecho penal es una condición necesaria para la erradicación de la trata, pero no es suficiente para remediar las consecuencias de este flagelo tanto en las víctimas como en la sociedad en su conjunto.

## **1. Prevención y criminalización**

- a) Colaboración internacional en la adopción de pasos decisivos para crear una Agencia Mundial contra la Trata de Personas (WATA, por sus siglas en inglés).
- b) A nivel nacional, introducción de la figura de Comisionado de Lucha contra la Trata y la Esclavitud, funcionario independiente con facultades para incrementar las buenas prácticas relativas a la prevención, la detención, la investigación, el enjuiciamiento y el castigo de los tratantes.
- c) Aumento de los recursos presupuestarios de cada estado y de la colaboración policial internacional para elevar las bajas tasas de enjuiciamiento y de condena de los tratantes.
- d) Conforme a la ratificación de la Convención de la Organización Internacional del Trabajo (OIT) de 1957 y del Protocolo de las Naciones Unidas contra la Trata de Personas de 2000, tipificación en todas las naciones de la trata de personas y del trabajo forzado como delitos penales punibles con sanciones proporcionales a la gravedad de esos delitos.
- e) Aplicación legal de un castigo proporcional a la gravedad del delito, que incluya programas de reforma, para todos los tratantes que deban cumplir condena y en todos los países donde se hayan suscrito el Protocolo de Palermo y el Convenio N.º 29 de la OTI de 1930.

- f) Utilización de los bienes decomisados a los tratantes condenados para prestar asistencia a las víctimas con miras a su rehabilitación y para establecer un fondo de indemnización que las tenga como beneficiarios.
- g) Fomento y apoyo (en la medida de lo posible) al surgimiento de espacios de interacción y de participación de las víctimas en el sistema de justicia penal.
- h) Desarrollo de estándares de referencia mundiales para la asistencia a las víctimas, como asesoramiento jurídico, programas de protección de testigos, atención médica y psicológica, y apoyo personalizado de las agencias de servicios sociales.
- i) Creación de mecanismos eficaces de colaboración por parte de las autoridades gubernamentales y de las agencias internacionales para garantizar que en los procesos de obtención y de registro de datos se defina y se delimite correctamente la población correspondiente a las víctimas de la trata de personas, evitando confundirlas con los migrantes irregulares que no sufren este flagelo.
- j) Capacitación adecuada de todo el personal que por su función deba relacionarse con víctimas de la trata para asegurar que estas reciban un trato digno y respetuoso.

## **2. Oposición a la repatriación involuntaria**

El país de destino debería asumir la mayoría de las obligaciones relativas al reasentamiento de las víctimas, incluidos los servicios de identificación, documentación y ayuda humanitaria. No debe confundirse a las víctimas de la trata con los migrantes irregulares que no sufren este flagelo.

- a) La repatriación y el retorno de las víctimas nunca deberían ser la norma por defecto.
- b) Cuando sea requerida la repatriación voluntaria, garantizar que las víctimas que retornan a sus países de origen gocen de plenos derechos civiles, como resultado de la negociación de acuerdos gubernamentales y no-gubernamentales bilaterales.
- c) Otorgamiento de permisos de residencia temporales para quienes deseen permanecer en el país de destino, independientemente de su situación legal en ese territorio nacional. Dicho permiso debería permitir a las víctimas el acceso a servicios especiales de apoyo (como una indem-

nización), el acceso efectivo a las cortes y a los tribunales pertinentes, y el acceso a asesoramiento jurídico gratuito.

- d) Fomento de una coordinación concertada con las asociaciones de voluntariado y con las organizaciones intergubernamentales, en todo momento y en todas las regiones, para favorecer el reasentamiento de las víctimas.
- e) Inclusión en la agenda prioritaria de todos los gobiernos de una mayor concientización pública sobre la trata de personas.

### **3. Reasentamiento**

La justicia penal está intrínsecamente asociada a la justicia social. Los programas de reasentamiento y de reintegración tienen como propósito que las víctimas de la trata alcancen su independencia socioeconómica, que ya no corran el riesgo de ser sometidas nuevamente a este flagelo, y que no tengan que recurrir a actividades ilegales, peligrosas o humillantes, pudiendo contribuir de manera positiva a la sociedad que los ha acogido.

- a) Establecimiento en los países de destino de procedimientos que permitan a las víctimas identificadas hacer una elección informada (permanecer o retornar), poniendo a su disposición una red de contactos a quienes acudir para obtener información confiable.
- b) Programas de asistencia y beneficios para las víctimas que no estén condicionados a su voluntad de cooperación con el sistema de justicia penal.
- c) Desarrollo de un plan de reasentamiento flexible y voluntario en todos los países de destino que incluya: atención médica, aprendizaje del idioma local, adquisición de aptitudes para la vida, capacitación laboral, alojamiento e integración social, aprovechando al máximo la colaboración ofrecida por las asociaciones de voluntariado.
- d) En el caso de las víctimas que permanezcan en el país donde fueron identificadas, otorgamiento de algún tipo de permiso de residencia que las autorice a acceder al mercado laboral.
- e) Esfuerzos conjuntos para reducir las demoras en el otorgamiento de derechos y beneficios, así como el acceso a asesoramiento jurídico, a las personas identificadas como víctimas de la trata. Distribución de guías impresas que proporcionen a las víctimas información clara y detallada sobre sus derechos y responsabilidades, tanto en lo inmediato como a largo plazo.

- f) Creación de centros de recursos en las embajadas nacionales ubicadas en los países de destino para brindar ayuda, en especial para obtener la documentación necesaria, a las personas sobrevivientes de la trata que elijan permanecer en esos territorios.
- g) Promoción de programas de acogida destinados a adultos a través de los grupos de voluntariado y de las comunidades religiosas.
- h) Animar a las víctimas que han recibido ayuda y que ya están establecidas en una localidad para que hagan su propio aporte a los programas de reasentamiento.
- i) Establecimiento de programas y de sistemas de apoyo acreditados en los países de origen donde una gran cantidad de víctimas elijan retornar. Las víctimas de la trata no deben ser automáticamente devueltas a su familia, sino que primero deberán manifestar de forma expresa su preferencia.

#### **4. Reducción de la demanda**

La criminalización se basa en una oferta determinada de víctimas de la trata que, en última instancia, está determinada por la demanda, lo que convierte a la trata de personas en una práctica rentable. Un enfoque complementario es trabajar para reducir la demanda, el lucro obtenido y, por consiguiente, la oferta.

- a) La trata de personas en situación marginal, como pobres, refugiados, minorías étnicas y prisioneros, para la extracción de sus órganos es una práctica basada en la explotación y, como tal, debería considerarse un delito penal grave y un delito contra la humanidad.
- b) Prohibición en todos los países de la compra, la venta, la intermediación onerosa, y el implante de órganos y de tejidos provenientes de víctimas de la trata.
- c) Sugerimos que todas las comunidades religiosas fomenten y promuevan la donación voluntaria de órganos, a través de la firma de la tarjeta del donante, en el caso de accidentes automovilísticos u otros incidentes que lleven a declarar la muerte cerebral de la persona.
- d) Solicitamos a la Iglesia Católica que bendiga y promueva activamente este último acto de bondad hacia el prójimo —al darle en gratuidad riñones o córneas— distribuyendo tarjetas de donante en todas las parroquias del mundo.

- e) Exhibición de un sello de certificación en los productos vendidos (p. ej., ropa y artículos eléctricos) que sea sometido a estrictas auditorías y que garantice que la cadena de suministro está libre de trabajo forzado, trabajo infantil o trata de personas.
- f) Coordinación de las asociaciones que promueven la transparencia en la cadena de suministro para organizar campañas de difusión a nivel nacional sobre la responsabilidad de cada consumidor para con las víctimas de la trata a la hora de elegir los productos que compra y los servicios que recibe.
- g) Incorporación del enjuiciamiento de los clientes de servicios sexuales como parte integral de la legislación contra la trata de personas en todos los estados.
- h) Énfasis normativo en las instituciones educativas para construir una cultura que estigmatice las actividades de producción y de consumo relacionadas con la trata de personas.
- i) Designación del día de la fiesta de Santa Josefina Bakhita (8 de febrero) como jornada nacional dedicada a aumentar la concientización sobre todas las formas de trata de personas y reforzar la oposición normativa.

# RACCOMANDAZIONI FINALI DELLA PONTIFICIA ACCADEMIA DELLE SCIENZE SOCIALI

*Dalla Sessione Plenaria del 17-21 aprile 2015 su  
“Tratta di esseri umani: questioni oltre la criminalizzazione”*

“La tratta di esseri umani, in termini di lavoro forzato, prostituzione, espianto di organi, servitù domestica e altre forme di schiavitù moderna, non tiene in alcuna considerazione il fatto che tutte le persone partecipano della stessa libertà e dignità umana e pertanto essa deve essere riconosciuta come un Crimine contro l’Umanità”, Dichiarazione congiunta dei leader religiosi contro la schiavitù moderna (dicembre 2014) L’efficace applicazione del diritto penale è una condizione necessaria per la sua abolizione ma non è sufficiente per porre rimedio alle conseguenze che le vittime della tratta e la società devono fronteggiare.

## **1. Prevenzione e criminalizzazione**

- a) Collaborazione internazionale per compiere passi decisivi verso la creazione di un’agenzia mondiale anti-tratta (WATA).
- b) A livello nazionale, si deve introdurre la figura del Commissario Indipendente anti-tratta e anti-schiavitù con il potere di valorizzare le buone pratiche nella prevenzione, detenzione, investigazione, azione penale e punizione dei trafficanti di esseri umani.
- c) Ogni nazione è incoraggiata a incrementare le risorse e la collaborazione con la polizia internazionale al fine di far accrescere il basso numero di azioni penali e aumentare le poche condanne comminate ai trafficanti di esseri umani.
- d) Tutte le nazioni che hanno ratificato la Convenzione ILO del 1957 e il Protocollo Contro il Traffico di Esseri Umani delle Nazioni Unite del 2000, devono rendere la tratta di esseri umani e il lavoro forzato un reato penale sanzionato da pene adeguate.
- e) Le pene commisurate alla gravità del reato, compresi i programmi di riforma, devono per legge essere applicate a tutti i trafficanti riconosciuti colpevoli, e adottate da tutti i firmatari del Protocollo di Palermo, in linea con la Convenzione ILO n. 29, 1930.
- f) I beni sequestrati ai trafficanti riconosciuti colpevoli devono essere de-



voluti alla riabilitazione delle vittime della tratta e all'istituzione di un fondo di compensazione per le vittime.

- g) L'interazione e il coinvolgimento delle vittime della tratta con il sistema di giustizia penale deve essere (ove possibile) incoraggiato e adeguatamente supportato.
- h) Sviluppo di criteri di valutazione a livello mondiale per il supporto delle vittime della tratta compresi: assistenza legale di ambito civilistico, protezione dei testimoni, assistenza medica e psicologica, supporto ai singoli da parte di agenzie di servizio sociale.
- i) Creazione di efficaci meccanismi di collaborazione da parte delle autorità governative e delle agenzie internazionali per garantire che la raccolta e la registrazione dei dati definiscano e distinguano le persone vittime della tratta dagli immigrati irregolari.
- j) Tutto il personale, qualunque mansione svolga, che lavora con le vittime della tratta deve essere adeguatamente formato per prendersi cura di queste persone con la dovuta dignità e rispetto.

## **2. No al rimpatrio involontario**

Il paese di destinazione deve sostenere il peso più rilevante per il reinsediamento delle vittime, inclusi i servizi di identificazione, di documentazione e quelli umanitari. Le persone vittime della tratta non devono essere confuse con gli immigranti irregolari che non sono oggetto di traffico.

- a) Il rimpatrio e il ritorno nel paese d'origine non deve mai essere la regola predefinita.
- b) Quando il rimpatrio volontario viene richiesto, è necessario assicurarsi che coloro che rientrano nei propri paesi godranno appieno dei loro diritti civili, negoziati attraverso accordi bilaterali governativi e non-governativi.
- c) Permessi di soggiorno temporanei devono essere emessi nel paese di destinazione per coloro che desiderano rimanervi, senza tener conto del loro status legale in quel determinato territorio nazionale. Tale permesso deve dare accesso a tutto il sostegno necessario, come ad esempio indennizzo, effettivo accesso alle autorità giudiziarie competenti, e fruizione dell'assistenza legale gratuita.
- d) Sempre e ovunque si devono promuovere collegamenti concertati con

le Associazioni di Volontariato e le organizzazioni intergovernative per favorire il reinsediamento.

- e) Deve essere una priorità di tutti i governi l'incremento della consapevolezza pubblica circa il traffico di esseri umani.

### **3. Reinsediamento**

Il sistema giudiziario penale è intrinsecamente collegato alla giustizia sociale. Per le vittime della tratta lo scopo del reinsediamento e della reintegrazione è quello di divenire economicamente e socialmente indipendenti, non essere più esposti al rischio della tratta o dover far ricorso ad attività illegali, rischiose o umilianti, e dare il proprio concreto contributo alle società ospitanti.

- a) Devono essere stabilite le procedure che nei paesi di destinazione promuovano la scelta informata (restare o tornare nel proprio paese) da parte delle vittime della tratta identificate attraverso fonti di informazione attendibili.
- b) Assistenza e benefici per le vittime della tratta non devono essere subordinati alla collaborazione con il sistema giuridico penale.
- c) Deve essere definito un piano volontario di reinsediamento flessibile da svilupparsi in ogni paese di destinazione e che copra: assistenza medica, apprendimento della lingua, competenze per la vita, accesso alla formazione professionale, alloggio, e integrazione comunitaria, facendo ampio ricorso all'aiuto delle Associazioni di Volontariato.
- d) Per le vittime della tratta che rimangono nei paesi in cui vengono identificati, deve essere emessa una forma di permesso di soggiorno che dia accesso al mondo del lavoro.
- e) Sforzi congiunti devono essere compiuti per ridurre i ritardi nel rilascio di diritti e indennità, e anche nell'accesso al supporto legale per coloro che vengono identificati come persone vittime della tratta. Devono essere fornite chiare guide cartacee contenenti una descrizione dettagliata circa i diritti e i doveri delle vittime della tratta, sia nell'immediato che nel lungo termine.
- f) Le Ambasciate nazionali nei paesi di destinazione devono sviluppare centri dedicati all'assistenza dei sopravvissuti che decidono di rimanere, specialmente nell'ottenimento della documentazione necessaria.

- g) Promozione di programmi per l'affidamento di adulti tramite Gruppi di Volontariato e comunità religiose.
- h) Incoraggiare coloro che sono stati aiutati a offrire volontariamente il loro aiuto nei Programmi di reinsediamento una volta che si siano stabiliti in una località.
- i) Istituire programmi accreditati e sistemi di supporto nei paesi di origine presso i quali numeri significativi di persone decidono di ritornare. Le vittime della tratta non devono essere automaticamente fatte rientrare presso le loro famiglie; la loro esplicita preferenza deve essere innanzitutto accertata.

#### **4. Ridurre la domanda**

La criminalizzazione funziona con un dato flusso di persone oggetto di tratta che in definitiva è determinato dalla domanda di tale tipologia di persone, ed è questo che rende il traffico di esseri umani redditizio. Un approccio complementare è lavorare sulla riduzione della domanda, del profitto e pertanto del flusso della tratta.

- a) La pratica del traffico di esseri umani per il procacciamento di organi da poveri, rifugiati, minoranze etniche, prigionieri e altri emarginati si basa sullo sfruttamento e deve essere considerato un grave reato penale e un crimine contro l'umanità.
- b) Comprare, vendere, fare da intermediario e impiantare organi e tessuti di vittime della tratta deve essere proibito in tutti i paesi.
- c) Sugeriamo che tutte le comunità religiose incoraggino e promuovano la donazione volontaria di organi attraverso l'apposizione della propria firma sulla Carta di Donatore di Organi nel caso in cui incidenti stradali o altri avvenimenti comportassero la morte cerebrale.
- d) Chiediamo che la Chiesa Cattolica benedica e promuova attivamente questo ultimo atto di generosità nei confronti del prossimo – siano reni o cornee – grazie alla distribuzione di Carte del Donatore di Organi in tutte le parrocchie del mondo.
- e) Un 'contrassegno' attentamente monitorato deve essere apposto su beni in vendita (p. es. abbigliamento e apparecchi elettrici) la cui documentata filiera di produzione sia scevra da lavoro forzato, minorile o di essere umani oggetto di tratta.

- f) Mettere in contatto associazioni che lavorano sulla trasparenza della filiera produttiva per lanciare campagne di informazione nazionali sulla responsabilità personale nei confronti delle vittime della tratta nel comportamento dei consumatori o nei ai servizi acquistati.
- g) In tutte le nazioni i procedimenti penali contro i clienti di servizi sessuali devono diventare parte integrale della legislazione contro la tratta di esseri umani.
- h) Risalto normativo nelle istituzioni educative che stigmatizzi la produzione e il consumo di attività che comportino la tratta di esseri umani.
- i) Istituire la Festa di Santa Giuseppina Bakhita (8 febbraio) quale giornata nazionale dedicata alla consapevolezza di tutte le forme di traffico di esseri umani al fine di rafforzare la resistenza normativa a questa criminale forma di sfruttamento della vita umana.

### **Signatories | Firmatarios | Firmatari**

Margaret S. Archer  
 + Marcelo Sánchez Sorondo  
 Fr. Mathew Abraham  
 Rocco Buttiglione  
 Pierpaolo Donati  
 Gérard-François Dumont  
 Gary Haugen  
 Allen D. Hertzke  
 Francis R. Hittinger  
 Vittorio Höslé  
 Hsin-Chi Kuan  
 Luca Luccitelli

Janne Haaland Matlary  
 + Roland Minnerath  
 Douglas Porpora, Ph.D.  
 Vittorio Possenti  
 José T. Raga  
 Mina Ramirez  
 Giovanni Paolo Ramonda  
 Herbert Schambeck  
 Sr. Marcia Sichol, SHCJ  
 Steinar Strøm  
 Stefano Zamagni



## ► APPENDIX



# MESSA IN SUFFRAGIO DEL PROF. MALINVAUD

*Venerdì 17 aprile*

*Santa Messa presso l'Altare della Tomba di S. Pietro*

“Le anime dei giusti – ci ha detto la prima lettura – sono nelle mani di Dio”.

Il Prof. Edmond Malinvaud, economista di fama mondiale, che per un decennio è stato Presidente della Pontificia Accademia delle Scienze Sociali”, si trova ora nelle mani di Dio. Il Signore lo ha chiamato a sé il 7 marzo scorso, all’età di 91 anni, dopo lunga malattia che egli ha affrontato con grande serenità e che lo ha visto pian piano declinare.

Il Prof. Malinvaud era profondamente convinto che tutti siamo stati creati per l’incontro con Dio. Nella sua lunga vita, egli si è sempre sentito responsabile davanti a Dio e sempre lo ha accompagnato la convinzione che un giorno avrebbe dovuto rendere conto a lui di tutto il suo operare. Egli sapeva bene che i nostri giorni su questa terra non sono una corsa verso il nulla; sapeva che per un cristiano la morte non è soltanto un fatto naturale al quale nessuno può sfuggire, ma è l’incontro più alto: l’incontro con Dio. Morire, per un cristiano, è entrare nella gioia di Dio.

Noi vogliamo in questa Messa ricordare il Prof. Malinvaud con profonda gratitudine specialmente per la competenza, la saggezza e la dedizione con cui ha svolto il compito di Presidente dell’Accademia della Scienze Sociali per 10 anni, proprio nel periodo in cui sono state impostate le basi di questa istituzione creata dal Papa Giovanni Paolo II, che ora il Prof. Malinvaud avrà incontrato di nuovo.

Egli è stato un economista apprezzato e ammirato. L’orizzonte dei suoi studi e della sua attività è stato molto vasto. Era considerato uno specialista delle teorie della crescita. Fin dagli studi universitari le sue ricerche furono orientate verso l’economia matematica e l’econometria, dando un valido contributo allo sviluppo della teoria economica positiva a partire dall’osservazione sistematica dei fenomeni.

Dal 1954 al 1970 le sue ricerche miravano a chiarire ed a unificare le basi delle metodologie statistiche impiegate in econometria. Orientò poi le



sue ricerche all'identificazione empirica dei fattori esplicativi della crescita francese.

Dal 1970 in poi i suoi studi furono organizzati attorno al tema unificante dell'occupazione: equilibri con prezzi rigidi per lo studio del breve o medio termine. Le sue ricerche applicate furono dirette verso la valutazione delle politiche economiche.

Come Professore della Scuola Nazionale Francese di statistica dell'amministrazione economica si distinse, ancora in giovane età, per la chiarezza e la profondità di analisi.

Dal 1974 al 1987, ha diretto l'Istituto Nazionale di statistica e di studi economici e contemporaneamente fu Professore al Collegio di Francia. I numerosi articoli e pubblicazioni di cui fu autore riscosero vivo apprezzamento soprattutto fra gli specialisti.

Dal 1994 al 2004 è stato primo Presidente della Pontificia Accademia delle Scienze Sociali e poi Accademico onorario.

Ai meriti scientifici che tutti gli riconoscevano, univa grandi qualità umane, che gli procurarono importanti amicizie. In lui fu apprezzata soprattutto la chiarezza intellettuale e l'onestà.

Egli ha vissuto un'esistenza straordinariamente attiva ed impegnata. Sono numerose le istituzioni alle quali ha dato il suo contributo. La sua è stata una vita connotata da studio, ricerche, lavoro, fatiche, progetti e speranze. Ma è stata anche una esistenza fatta di apertura a Dio, di vangelo, di preghiera, di Eucaristia, oltre che di attaccamento alla propria famiglia e di amore fraterno e solidarietà verso gli altri.

La fede gli è stata di luce, di sostegno e di conforto. Ha vissuto la sua religiosità in modo sereno e trasparente. Non l'ha mai nascosta, come non l'ha mai ostentata. Ha camminato sempre con i piedi ben fermi sui sentieri di questo mondo, attento alle problematiche del suo tempo, ma contemporaneamente sempre con lo sguardo rivolto al cielo. Nelle vicende liete e tristi seppe sempre guardare al cielo con incrollabile fiducia.

Il suo limpido stile di vita cristiana è la grande eredità che egli lascia insieme col contributo scientifico da lui dato. Le cose da lui realizzate sono

tante, ma direi che non è ciò che più conta. Quello che conta di più è il cuore di credente che ha avuto: mi riferisco al suo amore a Cristo, alla Chiesa, alla Santa Sede e al Papa, unito al suo generoso servizio all'umanità e all'Accademia di cui è stato Presidente.

Noi affidiamo ora il Prof. Malinvaud alla bontà e alla misericordia di Dio.

★ ★ ★

Le solenni parole che sono risuonate nel Vangelo: “io sono la risurrezione e la vita; chi crede in me anche se morto vivrà...” collocano l'evento della morte in una prospettiva di fede. E in questa luce il rimpianto per la sua perdita si fa motivo di ricordo e di impegno; e la nostra amicizia con lui si fa preghiera in suo suffragio. Facciamo nostre le invocazioni della liturgia: “Su venite santi di Dio, accorerete Angeli del Signore, prendete la sua anima e portatela al trono dell'Altissimo”.

**CARD. GIOVANNI BATTISTA RE**

# OMELIA

*Sabato 18 aprile*

*Santa Messa presso l'Altare della Tomba di S. Pietro*

La liturgia del Tempo Pasquale ci propone, come quotidiano spunto di meditazione, il testo degli Atti degli Apostoli, nel quale è descritta la vita delle primissime comunità cristiane e la concretizzazione nella vita quotidiana della novità portata dalla Resurrezione di Gesù. Si tratta innanzitutto di uno sguardo nuovo sul mondo, di un modo diverso di affrontare la realtà e le sue problematiche.

In questo senso le prime comunità sono un riferimento prezioso per noi oggi, in quanto erano composte da persone “normali”, che, dopo aver accolto la fede in Cristo, hanno iniziato a “trasformare” la loro vita alla luce di tale fede.

La lettura odierna sottolinea l'attenzione della comunità a una categoria speciale di “poveri”, le vedove, che all'epoca erano particolarmente esposte e bisognose di aiuto e sostegno. La comunità non resta indifferente di fronte ai bisogni anche delle vedove di lingua greca e, attraverso l'istituzione dei “sette”, provvede ad assisterle e a proteggerle, consapevole che nessuno deve essere escluso dalla condivisione dei beni, e che questi servono per il benessere di tutti e non per la ricchezza di alcuni.

Oggi la comunità ecclesiale è chiamata a operare il medesimo discernimento, individuando le varie categorie di poveri e di bisognosi, non sempre visibili o abbastanza considerate. Infatti, il benessere di varie regioni del mondo si regge sull'ineguale distribuzione delle ricchezze e dei beni e, di conseguenza, spesso anche su varie forme di sfruttamento delle persone sino a vere e proprie forme di “moderna schiavitù”, come ha ricordato Papa Francesco in occasione della “Cerimonia per la firma della dichiarazione contro la schiavitù da parte dei leaders religiosi” (2 dicembre 2014).

La forza del Vangelo ci spinge ad abbattere i muri dell'indifferenza, che induce anche tanti cristiani a non prendere in debita considerazione questi temi o, di fatto, a ritenere normale che esistano non solo ricchi e poveri, ma anche persone a cui non è riconosciuta la dignità umana. E questo non può essere tollerabile.

La “gioia del Vangelo” è per tutti, è il dono che la comunità cristiana ha ricevuto da Cristo, e che è chiamata a portare in ogni angolo del mondo, sin nelle più remote periferie, perché «è buono uscire da se stessi, alle periferie del mondo e dell’esistenza per portare Gesù!», secondo le note parole del Santo Padre (Omelia, 24 marzo 2013).

E portare Gesù significa anche portare dignità e libertà a chi ne è stato privato, curare le membra deboli e ferite dell’unico corpo che è il popolo di Dio. Le occasioni come la Sessione Plenaria, che questa Pontificia Accademia sta tenendo, sono veramente preziose per risvegliare la coscienza ecclesiale su temi assai dolorosi, come il traffico di esseri umani, che spesso non riguardano solo zone remote e “degradate” del mondo, ma sono insidiosamente presenti anche nei luoghi dove noi quotidianamente viviamo.

La vita di tante persone oggi è come la situazione dei discepoli nel Vangelo che abbiamo ascoltato: immersa in una notte tempestosa, in balia delle onde e della stanchezza, senza una speranza visibile. Occorre che la comunità cristiana esca dai suoi “recinti” e vada ad annunciare concretamente il Vangelo e a far incontrare Gesù a chi più ne ha bisogno.

La vita di ogni battezzato può diventare l’acqua su cui Gesù cammina e attraverso cui arriva vicino a chi soffre, e si sente smarrito e prigioniero di situazioni apparentemente irreparabili. Oltre ai corpi, cioè, è necessario liberare anche le menti e le coscienze di coloro che sono vittime di oppressione e sfruttamento, per restituire loro la dignità umana sottratta e la gioia del Vangelo, forse mai sperimentata.

L’immagine del Vangelo di un Gesù in cammino, anche attraverso il buio e la tempesta, per raggiungere chi è in difficoltà, ritengo che rappresenti efficacemente la missione perenne della Chiesa e di ogni battezzato, quella missione che Papa Francesco sta con vigore rilanciando e promuovendo con il suo esempio e con i suoi insegnamenti.

A ben pensarci, infatti, nella sua vita terrena, Gesù è stato in costante movimento, ha camminato sulle strade della Palestina, in messo alle persone; ha condiviso la loro vita e i loro disagi, si è fatto prossimo agli uomini ai quali annunciava il Regno di Dio. Tale missione è stata poi affidata dal Risorto alla Chiesa, quindi oggi anche a tutti noi.

La bellezza del Vangelo si enuncia e si descrive dal pulpito, ma diviene evidente e “contagiosa” solo quando si concretizza e prende forma in una vita coerente e impegnata.

Chiediamo al Signore che apra gli occhi e i cuori, soprattutto di coloro che hanno responsabilità civili e politiche, perché sappiano porsi al servizio degli uomini e creare sempre più le condizioni perché la dignità umana venga ovunque rispettata.

Affidiamo all’intercessione dell’apostolo Pietro anche il cammino della Chiesa e la sua azione al servizio dell’umanità intera, perché ogni uomo possa trovare nella comunità cristiana una casa accogliente e fratelli amorevoli, capaci di medicare le ferite di chi soffre e di rendere ovunque presente l’amore di Dio per l’umanità. Amen.

**CARD. BENIAMINO STELLA**





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Marcelo:

Creo que sería bueno tratar sobre trato de personas  
y esclavitud moderna.

La trato de dignos puede tratarse en conexión con  
el trato de personas.

Muchas gracias

Francisco

**Translation:**

Marcelo,

I think it would be good to examine human trafficking and modern slavery.

Organ trafficking could be examined in connection with human trafficking.

Many thanks, Francis

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