

CHILD TRAFFICKING THE RECENT EMERGENCE OF THE GLOBAL ISSUE

By

Puan Sri Datin Seri N. Saraswathy Devi
President, International Federation of Women Lawyers (FIDA)
Barrister-at-Law, Middle Temple, London
Advocate & Solicitor, Malaysia

INTRODUCTION

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organised Crime, defines Trafficking in Persons” as meaning the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) "Child" shall mean any person under eighteen years of age".

Although men are also victimized, the overwhelming majority of those trafficked are women and children. According to official estimates, between 1 and 2 million women and children are trafficked each year worldwide for forced labour, domestic servitude, or sexual exploitation. An estimated 50,000 persons are trafficked each year to the United States. Trafficking is now considered the third largest source of profits for organized crime, behind only drugs and guns, generating billions of dollars annually.

Child Trafficking¹ is an inhumane offence against defenceless and innocent children. Millions of children are forcibly trafficked or coerced across borders only to be sold in the sex trade, for illegal adoption, for criminal activities, for work as domestic servants, beggars, soldiers, or for other purposes. The urgency to combat trafficking in children is understandable considering the heinous nature of the phenomenon – it is an affront to principles of human dignity and morality and a severe violation of basic human rights. Principle 9 of the Geneva Declaration of Rights of the Child of 1924 states explicitly that the *“The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.”*

Despite being in existence for centuries, Child Trafficking has only in recent years emerged as an issue of global concern due to the worldwide consensus and co-operation to join hands in fighting this heinous crime; With the amplification of international and national legal apparatus, the trafficking of human beings is perceived to be more than a crime – it is a serious violation of human rights, children’s rights, labour rights and basic fundamental freedoms.²

Child Trafficking has become highly lucrative and increasingly worthwhile as women and children are considered commodities which can be “sold” several times over. With the permeable borders and the advancement of technology child trafficking has expanded around the Globe where the routes for trafficking children alter according to local conditions or supply and demand factors. It is no longer adequate to say that victims are trafficked from poor to the wealthier ones.

Violence is not the necessary mode for child trafficking, as has been often misconceived, as the victims are tricked, deceived, forced, sold by their parents or otherwise coerced into situations, which they later cannot escape from.

THE SEXUAL TRADE

Predominantly, women and children are trafficked in for the “sexual trade”.

The lack of employment in their native countries, force women and children into illegal migration, through migrant traffickers who offer “package deals”. Deceptive means such as false promises of careers in business,

¹ Van Bueren, “The International Law on the Rights of a Child,” Kluwer 1989 – “Trafficking” in children is defined as the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation..

² These rights will be discussed in detail herein below.

factories and households, are used to lure the women and children to being trafficked. They are inevitably then found imprisoned in brothels. In many cases, the women are lured to foreign countries in the hope of obtaining legitimate work, where they are then paid meagre salaries and the poverty eventually forces them to resort to prostitution or to prostitute themselves under duress.

The trafficking of children is usually by way of kidnapping or abduction, once abducted, threats and acts of violence are used to hold on to the victims. In Thailand for instance, brothel managers employ agents to collect photos of young girls as they go to school. The girls are then selected by the managers and upon selection the girls are ordered by them for the agents to kidnap.

Aside from the kidnapping or abduction, Asian Countries have also faced the poverty driven selling of “daughters” by the impoverished families to “agents” for sometimes as low as US\$200 a child, which children are then re-sold to traffickers. The sale of the girl child by her family, due to poverty, in turn places the financial burden of supporting her family on the girl child. Such trafficking is an example of non-violent trafficking of children. Also of large incidence is where the agents pose as “potential husbands” used to deceive the family of the girl child into believing the girl child and her “rich” husband will take over their financial burden, inevitably however, the girl child is then either sold to traffickers or forced into prostitution. However, one must remember that it benefits the traffickers to keep their victims in a foreign environment where not only are they vulnerable for having entered a country illegally, but are also disadvantaged because of their ignorance of the law, culture and language of that country.

THE WORLDWIDE SPREAD OF THE PROBLEM

As Reported by **Francis T. Miko, Specialist in International Relations**³ trafficking affects virtually every, country in the world. The largest numbers of victims come from Asia, with over 225,000 victims each year from Southeast Asia and over 150,000 from South Asia. The former Soviet Union is now believed to be the largest new source of trafficking for prostitution and the sex industry, with over 100,000 trafficked each year from that region. An additional 75,000 or more are trafficked from Eastern Europe. Over 100,000 come from Latin America and the Caribbean, and over 50,000 victims are from Africa. Most of the victims are sent to Asia, the Middle East, Western Europe and North America.

The increasing spread of the AIDS epidemic and the rise in the risk of being infected with sexually transmitted diseases, has contributed to the popular demand for “virgin” girls and boys who are sourced out from remote villages around the globe.

The trafficking of children is rampant in South East Asia namely, countries such as Malaysia, India, Nepal, Indonesia and Sri Lanka and an analysis of the statistics of child trafficking and the laws that purportedly guard against the offence in these countries to some extent exemplifies the magnitude of the issue and highlights the shortcomings of the penal law in combating it.

Malaysia

In 1997 4,200 Malaysian girls were reported missing and a significant fraction of these girls were estimated to have been victims of trafficking. In 1998, 2, 250 prostitutes trafficked in from foreign countries were arrested by the Malaysian Police. Also estimated were 4000 boy children trafficked into from Thailand to beg and engage in the sexual trade. The Malaysian Penal Code which was drafted in accordance with the Indian Penal Code, like India has prohibited the inducement of girls under the age of 18 years to go some place or to be removed from her guardian or to perform any act with intent or knowing that it is likely that the girl will be seduced or forced to sexual intercourse. Such provisions are provided for under the provisions relating to the kidnapping of minors and statutory rape. Malaysia faces the problem of being a prime location both for the trafficking in and trafficking out of women in children, as well being used in transit for the trafficking of women and children from Countries such as Indonesia, Thailand, Singapore, Taiwan, Sri Lanka, India, Pakistan, Bangladesh, Philippines, Cambodia, China and Russia. In 2002, newspapers reported the arrest of 3, 607 foreign prostitutes, mainly from Russia and its neighbouring countries. Those arrested are sent to detention centres and are eventually deported after being subjected to imprisonment or detention for 6 months or more. The sad truth is that the punishment is faced by the victims and not the traffickers, pimps and procurers who profit from the trade, as to the victims, they are nameless and their whereabouts are unknown.

India

³ Congressional Research Service Report 98-649 C Trafficking in Women and Children: The U.S. and International Response

Legislation relating to trafficking is found in the Indian Penal Code, and in the Immoral Trafficking Act. The Penal Code prohibits the buying, selling, letting to hire or otherwise disposal of or to obtain possession of a minor (a person under 18 years of age) with intent or knowing that it is likely that the minor will be used for the purpose of prostitution or any other immoral and unlawful purpose. The provisions apply to both male and female children. It is also an offence to induce a girl under the age of 18 years to go some place or perform any act with intent or knowing that it is likely that the girl will be seduced or forced to sexual intercourse. If the girl is “imported” to India from abroad the age limit is raised to 21 years. Offences of such nature carry a penalty of up to 10 years imprisonment and a fine. A Conspiracy to commit such an offence under the Penal Code is generally also punishable.

For women and girls additional protection is provided in the *Immoral Traffic Prevention Act*. This act was amended in 1986 to provide for more severe penalties for offences involving children and minors. Under this act anyone who detains a woman or girl in a brothel or on any other premise with the intent that the female person shall have sexual intercourse with other persons is liable to punishment. To facilitate prosecution, certain circumstances are presumed to constitute illegal detainment. Thus if someone is found with a child in a brothel or a child that has been sexually assaulted is found in a brothel it is presumed that the child is illegally detained. Offenders are liable to a prison term from 7 years to life. These strict liability provisions allow for a higher possibility of curbing the offence, which would otherwise not be possible without the reversal of the burden of proof as has often happened in drug-related offences.

Nepal

Nepal faces the catastrophic issue of child prostitution with 5,000 to 7,000 children being trafficked out of Nepal every year. Current statistics reveal up to 200,000 Nepalese have been trafficked out into neighbouring countries, 60,000 of whom are children ranging from the age of 8 years to 15 years old. The children are subjected to violence, beaten up and starved to ensure compliance with the orders of brothel operators. The children are mistreated to the extent of being given opium to ease the pain endured in the first weeks of intercourse.

Indonesia

In Indonesia, Article 297 of the Indonesian Penal Code prohibits trafficking. It is applicable to females regardless of age and to males under 18 years of age. It is also illegal to take a minor from the legal custody of another person or to hide a minor that has been taken away. The use of violence, threat of violence or deceit or if the victim is under 12 years of age are listed as aggravating circumstances. The maximum penalty is then 9 years imprisonment instead of 7 years.

Additional protection is awarded by making it a criminal offence for legal guardians to hand over or submit their child to other persons knowing that the child will be subject to work that is harmful or affects the child's health. This provision applies to children under 12 years of age.

Under the Indonesian Code, victims who are under 12, only then is the crime it prohibits sufficiently aggravating. The code does not provide a definition of trafficking in the legal text and no examples are given.

This is a glaring inadequacy of the code to afford protection to children who are victims of trafficking and even prostitution (which the provisions are mainly concerned with). In contrast the legislation in India has the age limit at 18 years and in situations where girls are trafficked or “imported” (as stated in the provision) into India from another country, the age limit is raised to 21 years. A provision of this nature seemingly takes into account the seriousness of the offence of trafficking in children. The Indonesian Code in this regard provides negligible protection against the violation against children.

The provision is inconsistent with the definition of a “child” stated in Article 1 Convention on the Rights of the Child⁴ (hereinafter referred to as “CRC”) as “*every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.*” While the second part of the Article may be interpreted as a proviso to the age of majority being 18 years, the spirit of the convention vis a vis the protection of children against abuse of basic human rights must be appreciated. The Convention sets out the yardstick against which governments, as custodians of fundamental freedoms and human rights, ought to measure to attain and realize the rights for children set out therein globally. It is a universally recognized and most internationally ratified international instrument pertaining to the rights of children. It has placed the child at the nucleus of the universal call and pledge for human rights.

Sri Lanka

⁴ relevant provisions in the Convention pertaining to the topic discussed will be expounded below.

In Sri Lanka, Penal Code⁵ was amended in 1995⁶ which introduced two new offences of sexual exploitation (Section 360B of the Amendment to the Penal Code) of children and trafficking (Article 360C of the Amendment to the Penal Code) of children. Under Article 360C (2) and 360B (2) a “child” is defined as “*a person under eighteen (18) years of age*”. Where the offence of “trafficking” is committed in respect of children the offender, if found guilty, will be punished with imprisonment for a term not less than five years and not exceeding 20 years and may also be punished with a fine.

CONCLUSION

Essential to combating trafficking of children is the co-operation between the legal systems, the government bodies and the non-government bodies around the globe. The passing of deterrent laws for the trafficker, as opposed to the victim is a step towards reducing the occurrence of trafficking in children, however one must bear in mind that the criminal mind will always find its ways to circumvent the laws passed.

Most societies are plagued by the malady of child trafficking, making it today a “global phenomenon” yet it remains somewhat “unknown”. The exact magnitude of the offence is not represented in terms of data and statistics and the exact modes of perpetration are still oblivion. There is lack of awareness amongst citizens – possibly due to the chauvinism of state authorities to disclose ills that affect national dignity and recklessness.

Co-operation amongst countries need to be fostered to counter this phenomenon, for instance by uniformity in penal provisions between countries which would be a welcome consideration to reciprocal enforcement of protection and prevention in trafficking which is mainly a “cross-border” crime. This uniformity can be achieved through ratification of international instruments and national implementation of these international humanitarian instruments relating to trafficking of children.

⁵ enacted as Ordinance N^o2 of 1883. It has been amended 30 times since the independence of Sri Lanka in 1948.

⁶ The Penal Code (Amendment) Bill was passed in Parliament on 19th September 1995.