

# COMBATING HUMAN TRAFFICKING: INTERNATIONAL LEGAL FRAMEWORK

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## INTRODUCTION

The illicit trade of people for uses including forced labor, sexual exploitation, or enslavement is known as human trafficking. The practice of obtaining organs or tissues, particularly for surrogacy and ova retrieval, as well as the practice of assigning a spouse in forced marriages, may fall under this category. Domestic and international human trafficking are both possible. Because it exploits victims for profit and violates their right to freedom of movement via coercion, human trafficking is considered a crime against individuals. Human trafficking can occur regardless of whether or not an individual is physically relocated. The exploitation of vulnerable people, especially children and women, for commercial gain is known as human trafficking.<sup>1</sup>

Human trafficking is defined as the recruitment, transportation, transfer, harboring, or receipt of individuals through means such as force, fraud, abduction, or abuse of power, for purposes of exploitation. The Trafficking Protocol has 117 signatory states and is still in force as of November 2018. Sexual practices performed for financial gain, forced labor, slavery, and the removal or implantation of organs are examples of forms of exploitation. (b) In any of the following cases, a victim of human trafficking's consent to the proposed exploitation described in sub-paragraph (a) of this article will not matter: People who are ensnared in human trafficking are confined against their will and subjected to coercion in order to work or provide services for the trafficker or others. Commercial sexual exploitation and bonded or forced labour are among the many possible forms of labour. Set up as a work contract, the compensation might be low, non-existent, or subject to extremely exploitative terms. In certain cases, the arrangement is structured as debt bondage, suggesting that the victim lacks the ability or permission to repay the debt.<sup>2</sup>

People who are directly affected by human trafficking are under-represented in the existing literature, which mainly represents the views of those who are fighting for the criminalisation and punishment of the crime. Because of this, there is a lack of information regarding human trafficking in the literature, which leads to misunderstandings regarding the scope and character of the issue. Contrary to popular assumption, human trafficking is not exclusive to wealthy countries or the sex trade, nor is it exclusive to areas devastated by

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<sup>1</sup> Kara Abramson, "From Consent to Protection: Upholding Human Rights in Implementing the UN Trafficking Protocol", *Harvard International Law Journal* 44 (2):473 502. 2003.

<sup>2</sup> Amnesty International –People smuggling. Amnesty.org.au. 23 March 2009.  
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conflict. Human trafficking is more common in nations with low or medium incomes than in wealthier nations. It is not only located in areas prone to violence. In any region where workers are in high demand, human trafficking can take place.

For a variety of reasons, including the desire to sexually exploit others, these people engage in the illegal activity of human trafficking. Included are the following items:

- The main goal of trafficking boys is to take advantage of their labour. This is especially relevant in situations where workers are obligated to operate machinery, deal with chemicals and pesticides, or operate on plantations or mines, all of which are considered hazardous environments. They fear retaliation from authorities in their home countries and are hesitant to speak out about the abusive working conditions they endure.
- Household Labour: About 80 million children in Africa, or 41% of the total, work as household labourers. These kids range in age from five to fourteen, and most of them are girls. Most of these people depend heavily on their exploiters for protection, food, and housing while they endure horrible working conditions. The lack of identification prevents them from attempting to flee.
- Forcible Marriage: Families use this practice to secure their own continuation by taking a girl child and marrying her off.
- Illicit Adoption: Baby and toddler trafficking has ramped up as the demand for adoption has skyrocketed. It is not uncommon for parents in developing countries to be informed that their stillborn child was abducted or that a mother has sold her infant or young child.<sup>5</sup> The use of trafficked individuals to commit multiple crimes within a country is an example of organised crime. This includes transnational drug trafficking, terrorism, banditry, and other criminal activities.

## CAUSES OF HUMAN TRAFFICKING

Human trafficking is an extremely disturbing and pervasive issue. It is not some abstract, disjointed idea that forty million people find hard to wrap their heads around; rather, it is a requirement of daily life. Understanding the causes of modern slavery and the harm it does to its victims is crucial for making a difference in the fight to end this practice. It is imperative that this occurs before we can launch strategic initiatives to end human trafficking and really help individuals in need.

Traffickers' acts, which take advantage of their victims' vulnerabilities, unlucky situations, and ignorance, are mostly to blame for human trafficking. Human traffickers learn to identify susceptible victims and use

sophisticated manipulation techniques to keep them under their thumb. Upon identifying a market void, they suggest filling it.<sup>3</sup>

Drug traffickers take advantage of people's weaknesses to make a profit. When people are down and out, they may become desperate, which leaves them open to harm. Although the following groups do not in and of themselves make human trafficking easier, they do create an environment where victims are more likely to be vulnerable, which traffickers can then take advantage of. Numerous causes, such as economic hardship, lack of employment, relocation, inadequate education or training, or broken families, can contribute to this precarious situation. People who engage in human trafficking take advantage of those who are homeless or living in poverty. These people take advantage of people when they are weak and vulnerable.<sup>4</sup>

## **INTERNATIONAL LEGAL FRAMEWORK ON HUMAN TRAFFICKING**

The United Nations has acknowledged that human trafficking, whether it takes place on a regional, national, or international level, has dire ramifications for the entire world. This is clearly stated in the Palermo Protocol or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, an international accord that was established on 25 December 2003 under the United Nations Convention against Transnational Organised Crime (CTOC). There are three protocols that supplement the CTOC, and this one is one of them. Human trafficking has been defined, prevented, and prosecuted in accordance with these most recent and highly regarded instruments of international law. After more than half a century, the world has finally come together to address human trafficking through the Trafficking Protocol. This historic document is unique in that it defines trafficking in persons in a way that all parties can agree upon. International cooperation in the detection and punishment of trafficking is one of the goals of this group. Another goal is to provide victims of human trafficking with protection and assistance while simultaneously making sure that their rights, as stated in the Universal Declaration of Human Rights, are fully respected.<sup>5</sup>

After slavery was abolished, numerous measures were taken to combat human trafficking. These requirements are met by provisions in both the Slavery Convention (1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), the International Covenants on Civil and Political Rights (1966), the

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<sup>3</sup> Malcolm Anderson, "Police and Justice Cooperation at the New European Borders" , The Hague: Kluwer Law International. 2002

<sup>4</sup> E. Hopper, "Invisible Chains: The Psychological Coercion of Human Trafficking Victims", Intercultural Human Rights Law, 1, 185–209, 2006.

<sup>5</sup> Martti Lehti, Trafficking for Sexual Exploitation, Crime and Justice 34:133-221. 2006.

Convention on the Elimination of all Forms of Discrimination Against Women (1979), and the Universal Declaration of Human Rights (1948) are additional instruments of international law that address human trafficking. These documents established the groundwork for modern conventions and campaigns aimed at ending trafficking.

## **UNITED LEGAL INSTRUMENT**

United Legal Instrument defines trafficking consistently around the world and sets international standards, this Protocol is crucial.

Human trafficking is defined as the use of force, deception, kidnapping, or abuse of authority to enlist, transport, harbor, or exploit people for reasons like forced labor or sexual exploitation under Article 3(a) of the Palermo Protocol. Prostitution and other types of sexual exploitation, as well as forced labour or services, slavery and similar practices, servitude, and organ removal, are considered forms of exploitation.

There has been a lot of back and forth over how the Palermo Protocol should be defined, with some seeing prostitution as a type of trafficking and others seeing it as a kind of labour, with the sex industry being recognised as a domain where trafficking takes place.

To allow for an interpretation in line with the United Nations Human Rights Protocol on Trafficking in Persons, the Palermo Protocol defines trafficking as a compromise between two opposing viewpoints. As a result, different people have different ideas about what it takes to determine if an employment relationship is exploitative and, if so, whether someone was brought in “for the purpose of exploitation.”

In contrast to the United Nations Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), which treats all types of prostitution as trafficking, the Palermo Protocol distinguishes between exploitation and other forms of prostitution. Abuse, violence, and exploitation, not crossing a border, are the essential elements of the crime. The word "trafficking" encompasses any kind of enslavement or other type of forced labour. Human trafficking is defined as the use of force, deception, kidnapping, or abuse of authority to enlist, transport, harbour, or exploit people for reasons like forced labor or sexual exploitation under Article 3(a) of the Palermo Protocol.

## **UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) RESPONSES ON HUMAN TRAFFICKING**

The UNODC helps nations fight human trafficking by subsidizing the execution of anti-trafficking legislation and policies and promoting their creation. With the help of specialised assistance, states will be

able to strengthen their international cooperation in investigations and prosecutions. This will involve developing local capacity and expertise and providing practical resources.<sup>6</sup>

The adoption of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, by the United Nations General Assembly in 2000 marked a watershed moment in the worldwide fight to eradicate human trafficking. As the Protocol's custodian, the United Nations Office on Drugs and Crime (UNODC) fulfils its duty by combating human trafficking through its Global Programme against Trafficking in Persons. Despite the fact that the majority of states have signed and ratified the Protocol, there are still obstacles to overcome during implementation. Only a small fraction of perpetrators faces legal consequences, and most victims receive little to no assistance or recognition.

### **CURRENT INTERNATIONAL TREATIES**

Supplementary Convention on the Abolition of Slavery, enacted in 1957, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, particularly Women and Children. Protocol on the Smuggling of Migrants by Land, Sea, and Air, and Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.

### **OTHER INTERNATIONAL LEGAL FRAMEWORK INCLUDE:**

The following is a recitation of an article from the UNCRC: "States Parties commit to safeguarding the child from all forms of sexual exploitation and sexual abuse. "The European Union's policy on the commercial sexual exploitation of minors is outlined in Directive 2011/92/EU, which was adopted on December 13, 2011. The January 13, 2011, order was given.

Child trafficking, child laundering, and other forms of abuse connected to international adoption are the goals of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

By outlawing the use of coercion, including by guerilla forces, the Optional Protocol on the Involvement of Children in Armed Conflict hopes to prevent the recruitment of minors into armed conflicts.

In 1930, the International Labour Organisation adopted the Forced Labour Convention, which is known as Convention No. 29. In 1957, Convention 105, which sought to abolish forced labour, was adopted by the International Labour Organisation. The International Labour Organisation ratified the Minimum Age Convention (138) in 1973. Convention 182, which addresses the most severe forms of child labour, was adopted by the International Labour Organisation in 1999.

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<sup>6</sup> Louise Shelley. Human Trafficking: A Global Perspective. Cambridge University Press. p. 2.2010  
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## CRIMINAL LIABILITIES ON HUMAN TRAFFICKING

Human trafficking may subject an individual or organization to criminal culpability. Although traffickers are frequently charged, state enforcement of corporate fines is hampered by a number of issues. These include inadequate criminal procedures for prosecuting corporations, a lack of effort to identify and punish the most responsible individuals, and a failure to adequately account for the true cost of restitution and compensation for victims of human trafficking.

It is not uncommon for victims of human trafficking to be given the opportunity to testify against their captors once they have been released. Because they are afraid their traffickers will retaliate, some victims choose not to testify. Human trafficking victims, according to Vanderberg, often find the prospect of criminal prosecution of their traffickers to be terrifying. Because they are afraid for their safety, victims of human trafficking often worry about how the traffickers will affect their loved ones. A large number of vulnerable populations, such as children and undocumented immigrants, are disproportionately affected by modern human trafficking, which frequently involves the exploitation of sexual services.

Federal rules imposing up to 20 years in jail and huge fines for enslavement inflict severe punishment on people traffickers. For offences involving death, abduction, sexual abuse, or other aggravating factors, the maximum sentence is enhanced to life in prison without the possibility of parole.<sup>7</sup>

When sexually exploiting children is done through fraud, coercion, or force, the punishments are harsher. These offences carry mandatory minimum sentences of ten years in prison and, depending on the victim and the specifics of the crime, a maximum of life in prison without the possibility of parole. Attempts and conspiracies involving human trafficking are also illegal and punishable by law. In addition to confiscating the assets used in the illegal activity, any gains made from the violation must also be relinquished. According to the law, the victim must be compensated for all of their losses, as determined by the court. The whole sum of this compensation needs to be sent back.<sup>8</sup>

Human trafficking-related criminal offences are already outlawed under the state's current legislation. State law defines human trafficking as (1) the intentional infringement of another person's liberty for the commission of a specific criminal offence, like prostitution, or (2) the acquisition of forced labour or services. Human trafficking carries a maximum prison term of five years according to state law, with an additional eight years imposed for victims under the age of eighteen. Anyone found guilty of human trafficking crimes that cause serious physical harm to the victim faces a maximum of six years in prison.

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<sup>7</sup> Martina E Vandenberg, "Giving Back: Combating Human Trafficking". GPSolo. 29 (5) 2012

<sup>8</sup> Martti Lehti, Trafficking for Sexual Exploitation, Crime and Justice 34:133-221. 2006.

As a result of harsher criminal penalties for human trafficking, the maximum prison term for crimes involving labour trafficking is now twelve years, and for crimes involving adult sex trafficking it is twenty years. A life sentence could be in store for the perpetrator if the trafficking of minors was accompanied by deceit or coercion.

According to the measure, a person will face a five-year prison term for every prior conviction if they have a history of human trafficking convictions. As a result of this measure, those found guilty of human trafficking that causes serious physical harm to the victim may be sentenced to ten years more in prison. Additionally, the bill grants criminal courts the authority to fine human trafficking-related offences up to \$1.5 million.

Four Italians and three Romanians were found guilty of human trafficking in Italian courts. Their sentences ranged from three to twelve years in prison. Their crimes included the exploitation and forced prostitution of 200 Roma children from 2004 to 2006. The event took place in April 2007. Eight more individuals were brought to justice in June 2007 for their roles in the sexual exploitation of children, which involved pressuring them to engage in sexual acts in exchange for small gifts.

The Spanish Criminal and Penal Code, specifically Article 318, makes it illegal to engage in any kind of human trafficking. The maximum sentence for sex trafficking is fifteen years in prison, while the maximum sentence for labour trafficking is four to twelve years. The measures are sufficiently severe, and sex trafficking carries penalties that are on par with rape. If found to be a member of a criminal organisation, the new trafficking penalties imposed by the government in 2007 can range from two to six years in prison. In addition, Spanish courts can now hear cases of trafficking that happen outside of Spain thanks to additional laws passed in 2007.

Enacted in 2003 and revised in 2005 to enhance punishments for trafficking offenders, the Trafficking in Persons Law Enforcement and Administration Act outlaws any type of human trafficking in Nigeria. A maximum of six hundred seventy dollars in fines and/or five years in prison are the legal consequences for engaging in labour trafficking. Penalties for sex trafficking can range from ten years to life in prison, while penalties for child trafficking involving forced begging or hawking are ten years in prison. Consistent with other serious crimes, such as rape, these punishments are extremely harsh.

Nigeria passed a law outlawing the trafficking of children in 2003 known as the Child Rights Act. Still, out of the 36 states and the DC, only 23 have put this law into effect. To be fully implemented, the Child Rights Act must be ratified by the legislatures of all the states in Nigeria. This is because, according to the constitution, it is the responsibility of the state legislatures to pass laws protecting the rights of children. Under the terms of the Trafficking in Persons Act of 2003, the National Anti-Trafficking and Crime

Prevention Program (NAPTIP) recorded 149 investigations, 26 prosecutions, and 25 convictions for trafficking offences throughout the reporting period. Sentences ranged from two months to ten years, with an average of 2.66 years. The option to pay a fine instead of going to jail was only given to two convicted offenders.

## CONCLUSION

Human trafficking, a complex issue, profoundly affects a nation's security and development. Victims of human trafficking may be subjected to severe abuses of their basic rights or used as tools by criminal organisations. At the international and national levels, human trafficking is a crime. To combat this worldwide issue and guarantee victims' access to justice, international legal instruments have been established and are being enforced. International law, based on the UN Universal Declaration of Human Rights, requires all states to protect victims of human trafficking, even those that have not ratified the UN Convention against Transnational Organised Crime and its two protocols. The convention makes this requirement clear. International cooperation is necessary to combat this crime, which can make it difficult to ensure compliance and enforcement of anti-trafficking laws; however, these challenges are not insurmountable. Since trafficking is a global crime, regional initiatives have a great deal of promise. A concerted effort is necessary to successfully locate trafficking origins and bring those responsible to justice. Since human trafficking has a negative impact on millions of people every year and poses a serious danger to development and security, states and nations must honestly acknowledge their duty to fight this worldwide epidemic. Human trafficking should be considered a worldwide issue on par with pollution. To end human trafficking, we must rise up in opposition, just as the world rose up against slavery.

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