

# SLAVERY TODAY JOURNAL

*A Multidisciplinary Journal of Human Trafficking Solutions*

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February 2014

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by **Kevin Bales, PhD**, Professor of Contemporary Slavery at the Wilberforce Institute for the Study of Slavery and Emancipation, co-founder of Free the Slaves

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## Introduction to the Inaugural Issue

by **Jodi Henderson**  
*Slavery Today Journal* Editor

"The subject of your letter of April 20, is one on which I do not permit myself to express an opinion, but when time, place, and occasion may give it some favorable effect. A good cause is often injured more by ill-timed efforts of its friends than by the arguments of its enemies. Persuasion, perseverance, and patience are the best advocates on questions depending on the will of others. The revolution in public opinion which this cause requires is not to be expected in a day or perhaps in an age; but time, which outlives all things, will outlive this evil also. My sentiments have been forty years before the public... Although I shall not live to see them consummated, they will not die with me; but living or dying, they will ever be in my most fervent prayer."

Thomas Jefferson, Letter to James Heaton 1826 May 20.<sup>1</sup>

The purpose of this journal is to end the enslavement of people. Not to mollify or ameliorate the conditions of slavery, but to end the enslavement of people. This is how we begin, by continuing the work of those who were engaged in this struggle before us and by supporting the work of those who are engaged in this struggle today. We are not intending to influence public opinion. This cause no longer requires a "revolution in public opinion." This cause does require dialogue, and it is our intent to enter into dialogue and to drive the dialogue.

The Underground Railroad was a Nineteenth Century escape route to freedom for fugitive slaves in the United States. Contemporary enslavement is often subtle and, either of necessity or by one blind eye of indifference and another of quiescence, it lives underground. We are resolved to take the battle to the underground again, to expose the reality of modern slavery and to provide a platform for those willing to combat the trafficking of humans.

*Slavery Today: A Multidisciplinary Journal of Human Trafficking Solutions.* The title speaks volumes. This is a professional journal. It is not strictly an academic journal. The dialogue must include the disparate voices of those confronting the reality of human trafficking. The journal follows double-blind peer-review process to maintain professional and academic standards. Our first issue is spearheaded by an opening invocation, a call to scientific research and the

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<sup>1</sup> Text from Jefferson Quotations Monticello.org [http://www.monticello.org/site/jefferson/quotations-slavery-and-emancipation](http://www.monticello.org/site/jefferson/quotations-slavery-and-<u>emancipation</u>) Letter to James Heaton 1826 May 20 source referenced as Peterson, Jefferson Writings = Peterson, Merrill, ed. Thomas Jefferson Writings. New York: Literary Classics of the U.S., 1984 p.1516 (last accessed 27 February, 2014)

coherent, structured study of slavery. The papers which follow are globally diverse and feature the analysis, research, scholarship and opinions of academics and professionals alike. This first issue is, by design, heavily weighted in the history of slavery and human trafficking. The historical foundation supports the bridgework to other fields including social anthropology, law, law enforcement, economics, governance and policy. There are no global solutions to the scourge of slavery, but there are pieces of solutions offered within. Implementation begins with dialogue and we offer this journal as a precursor to the process that will return trafficked humans to the dignity of their birthright.

### **The Birthright**

I toured Monticello, the home of Thomas Jefferson, once twenty-five years ago and once again last summer. During the living history tour there were people working the property doing the things that they would have done at Monticello when it was an active home and plantation. It was its own village. At that time, 25 years ago, the tour guides did talk a little bit about slaves, about how slaves lived and how slaves were treated.

The visit during the summer of 2013 was quite a different experience. The tour guides at Monticello were still confronted with the disparity between Jefferson's grand words and his private life; with his ideas of equality that were limited by gender and especially by race. The tour guides, mostly historians, had to deal with those contradictions and the questions that necessarily arose from them, even if never asked directly. What was interesting was that the staff did not use the word "slave."

The staff used the words "enslaved people." It did not feel like an attempt at political correctness for its own sake and it was not stilted. Obviously they had made this transition some time ago and it was just a part of the conversation. Instead of calling this group of non-free Africans who had been sold or born into slavery in this country "slaves" they called them "enslaved peoples."

The difference was monumental. Throughout the history of the United States of America a slave had been a commodity, chattel. "Slave" had been a word used to classify and disparage a group that was perceived to be sub-human. To take that and make it "enslaved people" in a small way recognized their humanity - recognized in that phrase that something had been done to people, their freedom had been taken away, they were enslaved human beings. Rather than becoming lost in the victim narrative, the phrase accentuates their humanity, the "people." "Enslaved people" were not sub-human or property but people who were living and breathing and birthing and dying, with all of the celebrations and trials and tribulations that speak of the human experience.

This is not to diminish the abhorrence of slavery during Jefferson's time, nor to romanticize slavery in any period. It is to suggest a starting point in doing this work. Start with the people.

## Inauguration of *Slavery Today* Unlocking the Science of Slavery

by Kevin Bales, PhD

After the Battle of Britain, in late 1942, Winston Churchill famously said, "Now this is not the end. It is not even the beginning of the end, but it is, perhaps, the end of the beginning." In the world of anti-slavery research and campaigning it can be argued that we are now approaching the "end of the beginning" of this the fourth great anti-slavery movement<sup>1</sup> in human history. From a simplistic, emotive, disparate, and disorganized minority cause, slavery is quickly becoming an issue of global concern, and is now generating global responses. This has occurred for a number of reasons: increased awareness, a recognition of the possibility of eradication, and a growing understanding of the economic and social cost of slavery are just a few of those reasons. There is history to be written of the opening stages of this anti-slavery movement, but as we clamber over this tipping point it is time to think hard about the future.

It is time to consider where we are going. To understand how we as scholars and activists make the transition from a simplistic, emotive, disparate, and disorganized global anti-slavery movement, to one that is **complex, logical, unified and organized**. It is clear that achieving that change requires scholarship and knowledge, "joined-up thinking" as the phrase goes. This new journal in reporting research, and creative anti-slavery actions and policies, is part of moving toward not just "the end of the beginning" but ultimately *the beginning of the end*.

There are clear gaps in both our understanding and practice as we bring the field of slavery studies into maturity. Not surprisingly, these gaps tend to appear in precisely those stages that reflect scientific processes, steps that all fields must take in order to achieve a foundation of conceptualization as well as application. All scientific disciplines, for example, operate within a conceptual paradigm that sets out the boundary of their field of inquiry. Rarely discussed and equally rarely altered, the dominant paradigm of a discipline states what is and what is not part of the field of study.

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<sup>1</sup> The first anti-slavery movement began in 1787 in Great Britain, it was the first human rights campaign, and originated what we now call "NGOs". The second was the American anti-slavery movement of the first half of the 19<sup>th</sup> century. The third was the Congo Reform Movement that began in the late 1890s and culminated with the annexation of the Congo Free State by Belgium in 1908. All three achieved international support and became social movements.

So, what is the paradigm of the field of slavery studies?<sup>2</sup> On one hand this is perfectly clear – it is the relationship between two people that is marked by an extreme power differential, a very high likelihood of violence, and significant control of one person by the other, leading to a diminution in agency and freedom of movement, and exploitation, normally economic but often sexual as well. On the other hand, this relationship can be mediated by culture, gender, politics, religion, family ties, (and many other social filters) and through that mediation it is given very different sets of meanings. Consequently, agreement as to what, exactly, constitutes slavery is currently under debate.

It is worth noting that in most scientific disciplines paradigmatic and operational definitions tend toward clarity and precision over time, but the reverse has occurred with the study of slavery. From the time of the earliest human records slavery has been discussed and analysed, yet the definition of slavery was very rarely questioned. Indeed, most works concerned with slavery, including laws and treaties, from the dawn of writing right up to the early 20<sup>th</sup> century, do not offer a definition of slavery. Slavery was simply a fact of life so pervasive, so obvious, and so self-explanatory, that no definition was considered necessary. Like “death” it needed no further definition.

Today, as we reach a point in history when the eradication of slavery is possible, confusion has erupted as to what constitutes enslavement. On some levels agreement to disagree is possible, but in terms of operationally defining slavery, such disagreement leads to a field of study in chaos. As with all sciences, without an agreed definition of the object of study we are unable to achieve comparable findings and interpretations, doomed to forever argue the nuances of apples versus oranges.

One of the reasons for this confusion is the fact that slavery is both a social activity and a relationship, and so it exists: 1) as a state of being (what it means to the slave to be a slave); 2) as a form of human interaction (the nature of the unequal and normally violent relationship between slave and slaveholder); and 3) as the outcome of slavery as part of society at large (through, for example, the economic output of slaves). Each of these dimensions provides necessary and essential criteria for determining whether a particular activity or relationship is, or is not, slavery.<sup>3</sup>

Virtually all human activity, and certainly slavery, occurs in each of these three dimensions. For example, there are very few things any person might do that

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<sup>2</sup> A good place to start in understanding social science paradigms is George Ritzer’s *Sociology: A Multiple Paradigm Science*, Allyn & Bacon, 1974.

<sup>3</sup> These categories are developed more fully in: “The Paradox of Women, Children, and Slavery” in *Trafficking in Slavery’s Wake: Law and the Experience of Women and Children in Africa*, Benjamin N. Lawrence and Richard L. Roberts (eds), Ohio University Press, 2012, pp 241-253, with Jody Sarich.



occur in complete isolation or solitude, and yet we live within our own minds and are ultimately individuals and discrete organisms. One cannot understand any part of humanity or our history without reference to the individual. At the same time, all of us are also products of, and constantly involved in, interaction with others. We learn and are shaped by these relationships, and our lives, jobs, families, and so on, are the sum of these interactions with others. Furthermore, we all live within larger societies and currents and patterns in these societies shape us as well – gender, ethnicity, politics, economics, and on and on. Slavery exists at all these levels, in the lived experience of the slave, in the relationship of slave and slaveholder and the community where they live, and within the sweeping patterns of societies and economies.

There is a great deal more that might be said about the nature of enslavement, but the key point in terms of bringing the study of slavery into a state of intellectual and scientific readiness is that a generally accepted ***operational definition*** of slavery must be achieved before meaningful, comparable, research can be accomplished. One of the barriers to achieving this is an attempt to resolve this lack of a common operational definition by adopting one of the many existing ***legal definitions*** to guide research and analysis. For the most part such an attempt cannot but fail. The law is a relatively closed logical system using specific vocabulary in order to standardize the understanding and control of actions and outcomes within a framework of norms, governance, and control. That vocabulary and system are important, but they do not necessarily reflect the complexities and dynamic qualities of the social reality. For that reason international conventions or national laws make poor operational definitions – they are simply designed to meet a different conceptual need. Most importantly, a field's operational definition should be derived from the measurable reality of the object of study, not from the needs of legislators, litigators, or adjudicators (or the special interest groups that influence them).

How then do we find the measurable reality of slavery on which to build an operational definition? The first step is to strip away the social, cultural, and ideological packaging in which the fact of slavery is often wrapped. For example, no matter whether it is called “sex trafficking”, forced marriage, debt bondage, or child soldiers, our operational definition should be able to encompass any activity that demonstrates the key criteria that mark slavery. This is likely to lead to debates based on ideological or traditional views about slavery. Some groups have invested heavily, for example, in the premise that organ trafficking or most forms of child labour are slavery. But the term “slavery” must not be a catch-all, absorbing all exploitative activities, it must stand as a precise set of criteria which allows discrimination between potential objects of study.

I will not offer an operational definition here since operational definitions

should be constructed within the framework of specific research questions. I will, however, point to the Bellagio-Harvard Guidelines written by the Members of the Research Network on the Legal Parameters of Slavery in 2012 (a network of 20 scholars of international law, anti-slavery leaders and leading scholars of slavery), which use the legal definition of slavery found at Article 1(1) of the 1926 Slavery Convention. The 1926 definition reads: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” This definition is reproduced in substance in Article 7(a) of the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, as well as in the Article 7(2)(c) of the 1998 Statute of the International Criminal Court.

As legal ownership rights are no longer asserted by slaveholders, the Bellagio–Harvard Guidelines state that today, the exercise of “the powers attaching to the right of ownership” should be understood as possession: “**control over a person by another such as a person might control a thing.**” Therefore, “slavery” may be defined as “controlling a person in such a way as to significantly deprive that person of individual liberty, with the intent of exploitation through the use, management, purchase, sale, profit, transfer or disposal of that person.” The exercise of any or all of these powers attaching to the right of ownership should provide evidence of slavery, insofar as they demonstrate control over a person tantamount to possession. This definition provides the type of legal certainty that is fundamental to any prosecution of contemporary slavery.<sup>4</sup>

Once an agreed definition has been achieved, and accepting that it may evolve over time, it can be used to generate the comparable information that makes the next steps of scientific endeavor possible. The first of these steps is *description*. Whether the object of study is new species of insect or the complex nature of human relationships, basic descriptive information is needed. Slavery is slavery, but every manifestation of slavery differs slightly from the next. Those differences are crucial to understanding the processes of enslavement as well as the potential points and forms of intervention. Certainly, a common challenge when

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<sup>4</sup> For the full Bellagio–Harvard Guidelines, see Jean Allain (ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press, 2012), 375-380, also available here: [www.qub.ac.uk/schools/SchoolofLaw/Research/HumanRightsCentre/Resources/Bellagio-HarvardGuidelinesontheLegalParametersofSlavery/](http://www.qub.ac.uk/schools/SchoolofLaw/Research/HumanRightsCentre/Resources/Bellagio-HarvardGuidelinesontheLegalParametersofSlavery/). The Bellagio–Harvard Guidelines are similar to the definition put forward in the *Joint UN Commentary on the EU Directive* of 2011. Observing the 1926 definition (“the status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised”) the UN Commentary adds: “The definition in the Slavery Convention may cause difficulties today, as there could be no rights of ownership for one person over another. In order to solve this difficulty, an alternative definition would be ‘the status or condition of a person over whom control is exercised to the extent that the person is treated like property,’ or ‘reducing a person to a status or condition in which any or all of the powers attaching to the right of property are exercised.’” See *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach* (2011), 103. For further discussion of the definition of slavery, see most recently Jean Allain and Kevin Bales, “Slavery and Its Definition,” *Global Dialogue* 14.2 (2012): 1-15.

communicating information about slavery to a wider audience, even information that has been carefully gathered following the best social scientific practices, is a cultural insistence that slavery takes only a single form, and anything that deviates from that form is debatable and dubious. In North America, the cultural “norm” for slavery is the antebellum African slavery of the Deep South of the United States. That is considered “real” slavery. Other groups have invested heavily in the concept of “human trafficking” and seek to make (as in the legal definition in the Palermo Protocol<sup>5</sup>) “slavery” a sub-set of “trafficking.” Our challenge is to provide description that is as objective as possible, reached through a common operational definition. Only in that way can the breadth of slavery be recognized for what it is.

The field of archeology is famously divided into “splitters” and “lumpers” - those who interpret each new bone or pottery fragment as a new category of human or culture, and those who see commonality and continuity and assign new finds to existing categories. This is understandable when the objects under study are rare, are fragmentary, and are far removed in time from their original context. Those factors leave plenty of space for debate. Slavery, however, is far from rare, and we have millions of potential subjects of study. Nor are these slaves fragmentary records of people, they are complete human beings with the capacity to interpret their own lives. And they are embedded in the context of their enslavement, with immediate and recordable pasts. The science of slavery has no excuse to be ‘splitting’ and ‘lumping,’ it can derive a grounded operational definition from the reality of slavery. And once applied, it can begin the description of the variety that exists within that defined group.

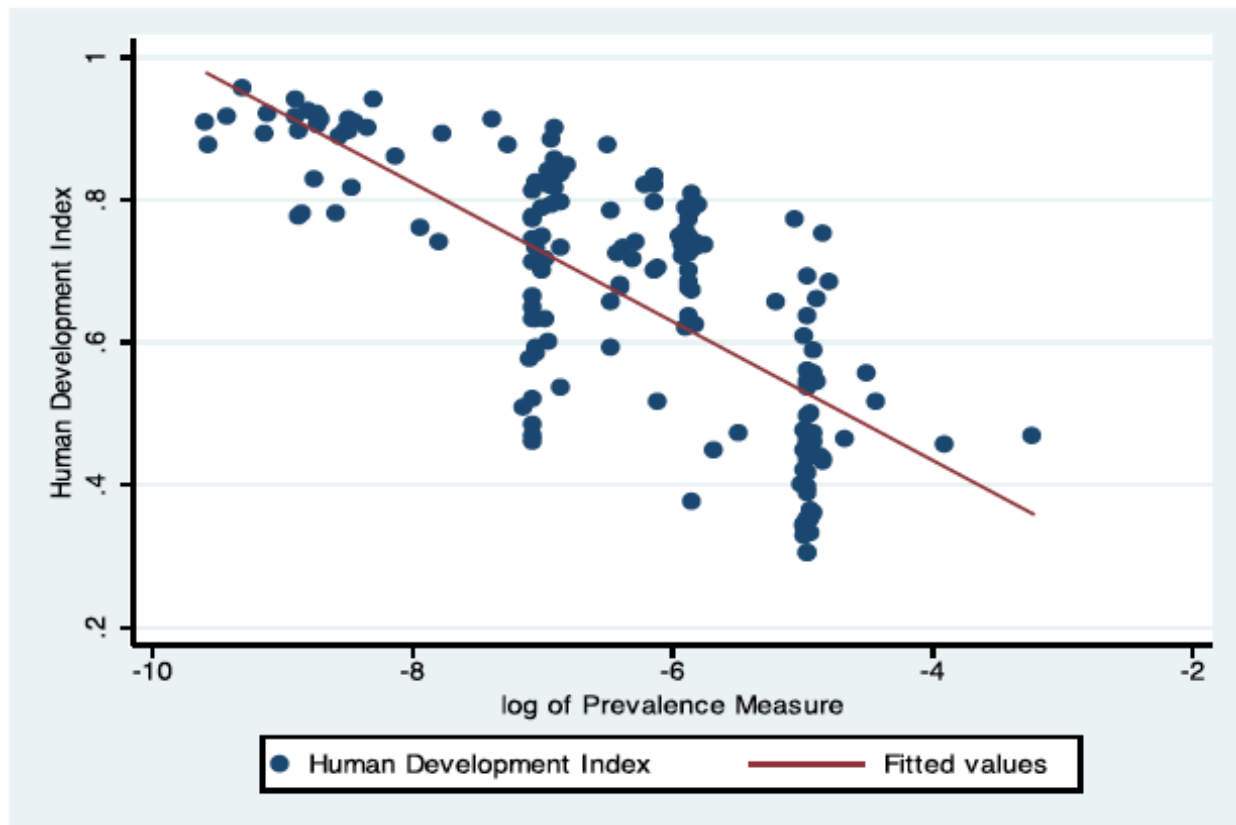
This description might take many forms. Fundamental information such as: the prevalence (number enslaved) in a certain type of slavery, the nature of the mechanism leading to their enslavement (debt, kidnap, fraud), and the type of work required, all need careful compilation. Today we actually know little about our subject, to use a taxonomic analogy, we tend to agree that slavery falls within the *Order* of human exploitation, that there is a *Family* of behaviors that involve extreme levels of control and violence as a basis for that exploitation, that there is a *Genus* made up of categories such as “human trafficking,” debt bondage, and slavery, and there are a large number of specific *Species* of slavery that are expressed in ways that reflect local “ecosystems” of culture, economics, discrimination, and so forth. What is also very clear is that we are nowhere near an

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<sup>5</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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the UN Convention against Transnational Organized Crime.)

exhaustive description of the variant *Species* of contemporary slavery around the world.

Fundamental description is only a first step, necessary but not nearly as useful as exploring the relationships between slavery and factors that might drive, support, or act to extinguish it. In a context of limited resources questions of *correlation* are important. It is a commonplace that slavery is linked to poverty, corruption, discrimination, and conflict. The question becomes which of these factors is more important in supporting slavery in different situations. For example, the following graph<sup>6</sup> shows the correlation between slavery (the “log of prevalence measure”) and the UN Human Development Index (the HDI measures the availability of education, life expectancy, and standard of living) for 162 countries.

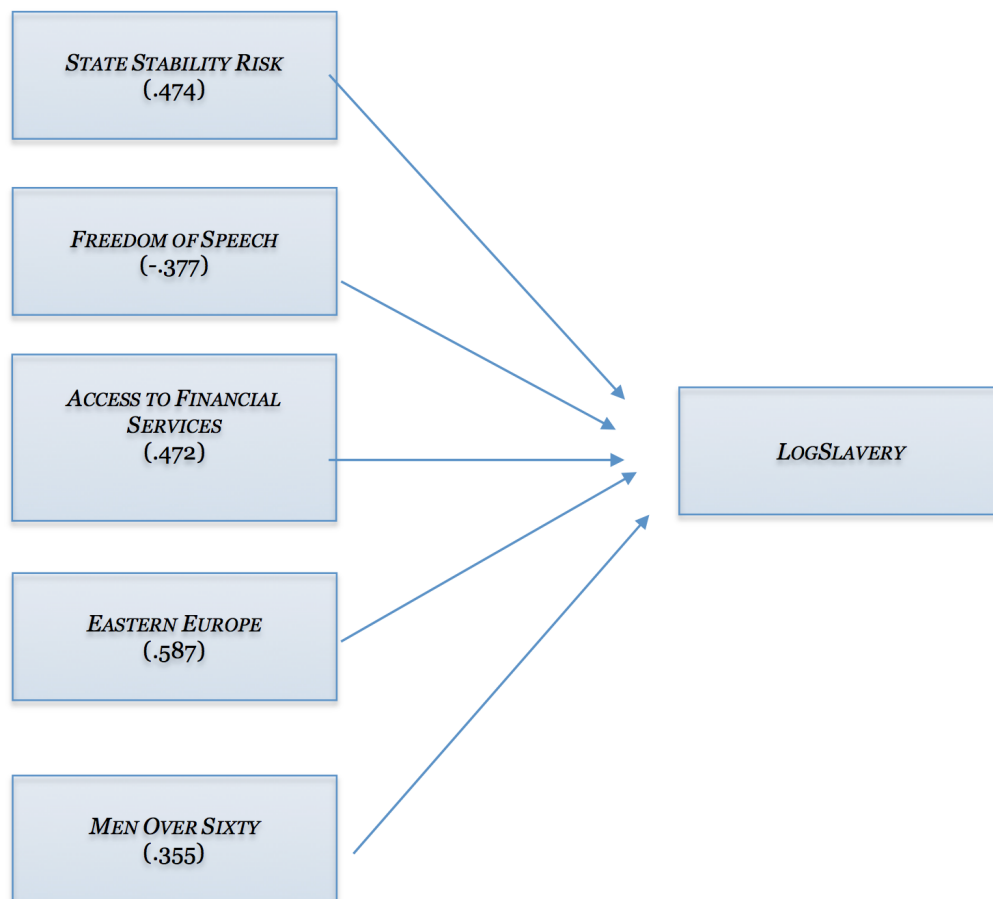


As the scatterplot suggests, and the statistics confirm, there is a significant (.001 level) and reasonably strong ( $R^2 = 0.55$ ) relationship between the Human Development Index score and the prevalence of slavery in a country. Exploring relationships like this gives us a measured and more precise estimation of our

<sup>6</sup> Drawn from the 2013 *Global Slavery Index*, Walk Free Foundation.

“common knowledge” – that globally slavery is related to human development and that when education, health, and the standard of living is low, slavery is more prevalent. But how far does that actually take us? As we take the first steps in bringing precision and scientific analysis to slavery, we will pile up a large amount of exactly such measured relationships. They will need to be sifted and tested and compared. They are not the “answer”. They are the ballast that allows further exploration, the foundation upon which more detailed research will be constructed.

That further research takes us into the third level of scientific explanation, beyond relationships and into *causation*. When we are able to measure over time, and to separate out the independent impact of one variable on another, we enter the realm of prediction. We are able to predict that changes in one measured variable will have a certain effect on another. When we reach that stage smarter and more efficient interventions against slavery become possible. At present, a lack of data on the extent and types of slavery makes this very difficult, but an example shows the way forward. The following diagram shows the independent effect of five variables in predicting the extent of slavery in 37 European countries.



The relationship between each of these variables and the prevalence of slavery in these countries is statistically significant, and the strength of that relationship, independent of the other variables, is measured and given in the standardized Beta Coefficients shown in parentheses. Clearly, the countries of the former Soviet Union and Soviet Block suffer from governmental instability, curtailments on basic human rights (like the freedom of speech), and a lack of credit that makes building up new enterprise very difficult, and as a result their citizens are more likely to take risky decisions about moving to areas of greater opportunity, and thus sometimes are drawn into slavery. Citizens of richer countries also have greater longevity, and this is reflected in the variable that measures the proportion of the population over aged 60. This variable reflects a demographic that tends to higher levels of demand for foreign workers, and potentially demand for enslaved workers as well.<sup>7</sup>

Again, there is a certain amount of information in this diagram that is no surprise, but taken together it might point to interventions that were not immediately envisaged. The strong and predictive relationship between access to financial services and slavery, for example, suggests corruption-free microcredit projects in Eastern Europe might help to stem the flow of trafficked people. Further research can go deeper, and field testing such findings can determine if the predicted influence can be translated into real change.

There are tough questions to answer about modern slavery and real methodological challenges along the way. Criminals are keen to conceal their crimes, and those in slavery are hard to find. But find them we must, both in order to count and measure, since many countries are in denial about the extent of the problem, and to open the door to liberation and reintegration.

One of the outcomes of building a social science of slavery is that greater specialism will occur. At present most practitioners are generalists, which is not unusual when only general knowledge is available. But as we move forward, as resources and the number of people involved in the field increase, we will have the opportunity to delve more deeply into the sub-sets and sub-categories of slavery. There is, for example, no basic work on the relationship between slavery and religion, or on women and slavery. The interaction between “low intensity” conflicts and the eruption of slavery is also relatively unexamined. This list could go on into specific areas such as trauma, needful curricula for public facing workers, computation of demand curves for different types of enslaved labor, and on and on.

The fact that these issues are being addressed, that these questions are being asked, indicates progress in our understanding. For my part I am very glad to be at

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<sup>7</sup> See also: Monti Narayan Datta and Kevin Bales “Slavery in Europe: Part 2, Testing a Predictive Model,” *Human Rights Quarterly*, (May 2014).

the “end of the beginning”. For too long we have been both a movement and a proto-science enfeebled by being simplistic, emotive, disparate, and disorganized. Our internal conflicts have wasted our strength, and our unsophisticated analyses have done little toward our true goal – the end of slavery. That has to be our mindset now. It is time to put aside notions that slavery is a vast, incomprehensible, and unstoppable crime. Now is the time to imagine and then construct *the beginning of the end of slavery*.

# **Adopting an Anti-human Trafficking Law in the DR Congo: A Significant Step in the Process of Combating Trafficking**

**By Roger-Claude Liwanga<sup>1</sup>**

## **Abstract**

This paper highlights the necessity of adopting a comprehensive anti-human trafficking law in the Democratic Republic of Congo (DRC). The DRC ratified a number of international instruments prohibiting human trafficking, such as the Palermo Protocol, which recommend it to take legislative measures against human trafficking domestically. But so far, the DRC has not yet adopted a comprehensive anti-human trafficking law. With the increasing prevalence of human trafficking, the existing fragmented provisions on trafficking in the DRC (catalogued within the Law 06/018 amending the Penal Code, the Labor Code and the Law 09/001 on the Protection of the Child) are not sufficient to address the scourge, given the limited scope of their regulation of human trafficking. Countless victims of trafficking, particularly adults who are subjected to bonded labor, are unprotected by the law. Following the example of comprehensive anti-human trafficking legislations in the United States, Italy, Burkina Faso, Kenya or South Africa, the DRC should also adopt its own version of comprehensive anti-human trafficking law to increase its likelihood of effectively protecting trafficking victims, investigating trafficking offences, prosecuting trafficking offenders, and deterring potential traffickers. This paper recommends a sketch of a holistic anti-human trafficking law which is adapted to the DRC's context.

## **Introduction**

Human trafficking is one of the worst forms of human rights violations. It harms the human dignity and fundamental freedoms of victims<sup>2</sup> by considering them as products to be bought and sold, and forced into labor and sex exploitation.<sup>3</sup> The most recent report of International Labour Organization (ILO) estimates that 20.9 million people are victims of forced labor globally,<sup>4</sup> including victims of trafficking in persons.

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<sup>1</sup> LL.M. in human rights law (University of Cape Town); Licence en Droit (Université Protestante au Congo); Fellow with the Harvard University's FXB Center Program on Human Trafficking and Forced Labor; Executive director of Promote Congo, Inc. The author would like to thank Charlie Clements, Julie Dahlstrom, and Casandra Turner for their comments on an earlier version of this article.

<sup>2</sup> *Rantsev v. Cyprus and Russia*, App. No. 25965/04, Eur. Ct. H.R. (2010) at 282, available at: <<http://www.bailii.org/eu/cases/ECHR/2010/22.html>> (last accessed 19 May 2012).

<sup>3</sup> *Id.*, at 281.

<sup>4</sup> "ILO 2012 Global estimate of forced labor", available at: <[http://www.oitbrasil.org.br/sites/default/files/topic/gender/doc/relatoriote2012\\_846.pdf](http://www.oitbrasil.org.br/sites/default/files/topic/gender/doc/relatoriote2012_846.pdf)> (last accessed 8 June 2012)



The Democratic Republic of Congo (DRC) is one of the countries affected by the scourge of human trafficking, where men, women, and children are subjected to forced labor and sex trafficking.<sup>5</sup> Even though there is no official data concerning the number of trafficking victims in the country, reports from international organizations, such as UNICEF indicated that several thousand children are subjected to forced labor in the DRC's artisanal mines.<sup>6</sup> Furthermore, the U.S. State Department reported that:

“Congolese artisanal miners are exploited in situations of debt bondage by businessmen and supply dealers from whom they acquire cash advances, tools, food, and other provisions at inflated prices, and to whom they must sell the mined minerals at prices below the market value. The miners are forced to continue to work to repay constantly accumulating debts that are virtually impossible to repay.”<sup>7</sup>

Sex trafficking is also common. Girls, in particular, are forced into prostitution in markets and mining areas by organized networks, gangs, and brothel operators.<sup>8</sup> Many Congolese women and children (especially girls) are also reportedly trafficked into neighboring countries, such as Angola, Congo-Brazzaville, and South Africa, for sexual exploitation.<sup>9</sup>

The DRC ratified without reservation a number of international and regional instruments against human trafficking, including the UN Convention against Transnational Organized Crime and its Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children,<sup>10</sup> the UN Convention against the Worst forms of Child Labor,<sup>11</sup> and the UN Convention on the Minimum Age for Admission to Employment. In ratifying those

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<sup>5</sup> US Department of State, “Trafficking in Persons Report 2011-Country Narratives,” available at: <<http://www.state.gov/j/tip/rls/tiprpt/2011/164231.html>> (last accessed 5 March 2012)

<sup>6</sup> According to UNICEF more than 43,000 children were subjected to (forced) mining labor in artisanal mines in the DRC's province of Katanga in 2010 alone. UNICEF quoted by Amnesty International, “The 2010 Annual Report for Congo (Dem. Rep. of),” available at: <http://www.amnestyusa.org/annualreport.php?id=ar&yr=2010&c=COD>.

<sup>7</sup> Ibid.

<sup>8</sup> U.S Department of State, “Trafficking in Persons Report”, above at 5.

<sup>9</sup> *Trafficking in Persons Report 2007*, p.89, available at: < <http://www.state.gov/documents/organization/82902.pdf>> (last accessed 10 August 2012). See also: U.S Department of State, “Trafficking in Persons Report”, above at 8.

<sup>10</sup> UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, available at: < <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> > (last accessed 11 June 2012). Ratified by the DRC on October 28, 2005.

<sup>11</sup> UN Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, Jun. 17, 1999, available at: < <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> > (last accessed 11 June 2012). Ratified by the DRC on June 20, 2001.

instruments, specifically the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons [hereinafter Palermo Protocol], the DRC government, among other things, committed to adopt comprehensive criminal legislation to combat human trafficking.<sup>12</sup>

Despite these lofty aspirations, the DRC has yet to pass a comprehensive anti-trafficking law to cover all the forms of human trafficking. Instead, it currently has provisions scattered throughout its different codes, which only condemn certain aspects of trafficking. For example, the Penal Code does not have provisions criminalizing labor trafficking of both adults and children. Yet, Law 06/018 amended the Penal Code (also known as the Law on Sexual Violence)<sup>13</sup>, to punish pimping,<sup>14</sup> forced prostitution,<sup>15</sup> child prostitution,<sup>16</sup> and sex slavery<sup>17</sup> by up to twenty years of imprisonment and a maximum fine of \$200. Law 09/001 on the Protection of the Child<sup>18</sup> also prohibits pimping of children<sup>19</sup> and sex slavery.<sup>20</sup> In addition to those offenses, Law 09/001 penalizes the sale and trafficking of children,<sup>21</sup> the worst forms of child labor,<sup>22</sup> and economic<sup>23</sup> and commercial sexual exploitation of children.<sup>24</sup>

Because the Penal Code is silent on trafficking for economic exploitation, and the scope of coverage of Law 09/001 on the Protection of the Child is restricted to children, it is clear that adult victims of bonded labor are not protected by the country's laws.

The Congolese anti-human trafficking provisions are fragmented by nature, and some of the practical implications of such legal fragmentation include the difficulty of enforcement owing to the limited operational scope of the laws, the

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<sup>12</sup> Art 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children [hereinafter the Palermo Protocol].

<sup>13</sup> Loi N° 06/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais [Law 06/018 of July 20, 2006 amending and completing the Decree of January 30, 1940 on the Congolese Penal Code].

<sup>14</sup> Id., art 174(b).

<sup>15</sup> Id., art 174(c).

<sup>16</sup> Id., art 174(n).

<sup>17</sup> Id., art 174(e).

<sup>18</sup> Loi No 09/001 du 10 Janvier 2009 portant Protection de l'Enfant [Law 09/001 of January 10, 2009 on the Protection of the Child].

<sup>19</sup> Id., art 182.

<sup>20</sup> Id., art 183.

<sup>21</sup> Id., art 162.

<sup>22</sup> Id., articles 53 and 187.

<sup>23</sup> Id., art 58.

<sup>24</sup> Id., art 179.

uneven enforcement of the laws due to the lack of harmony of different provisions, and the difficulty of keeping statistical data on the extent of the scourge.<sup>25</sup>

With the increasing prevalence of human trafficking in the DRC that is partially caused by the lack of an efficient anti-trafficking law, the question posed is: instead of scattering provisions on trafficking throughout different laws, why not the DRC enact a comprehensive law to cover all the forms of human trafficking and provide extensive protection to all trafficking victims? For this purpose, the paper aims to underline the necessity of adopting a comprehensive anti-human trafficking law as a significant step in the process of combating trafficking in the DRC.

This paper is structured as follows: (1) understanding the concept of “human trafficking” under the DRC context, (2) analysis of the DRC’s laws against human trafficking, (3) comparative assessment of the DRC’s laws on trafficking in relation to international standards, (4) analysis of gaps within the DRC’s legal framework on trafficking, and (5) recommendations for a comprehensive anti-human law in the DRC.

## **(1) Understanding the concept of “human trafficking” under the Congolese context**

### **(A) Background**

As previously mentioned, human trafficking is prevalent in the DRC where men, women, and children are subjected to forced labor, bonded labor, forced sexual exploitation, and forced recruitment to serve in military groups.<sup>26</sup> In the DRC, trafficking is largely an internal phenomenon, occurring within the country’s borders. It is most common in the artisanal mining areas,<sup>27</sup> which are located in the northeastern and eastern parts of the country.<sup>28</sup>

Like in most developing countries affected by the scourge of trafficking, the underlying causes are almost the same. In the DRC, the causes of trafficking include poverty, cultural factors, armed conflicts, lack of information and awareness, and impunity. First, because of poverty and unemployment, some parents allow their children to work in artisanal mines as a principal source of

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<sup>25</sup> “New law to tackle human trafficking,” available at: < <http://www.southafrica.info/services/rights/trafficking-160310.htm> > (last accessed 8 August 2012).

<sup>26</sup> US Department of State, “Trafficking in Persons Report,” above at 8.

<sup>27</sup> Artisanal mining is small-scale mining activities that use rudimentary methods to extract and process minerals. It is also called informal mining industry, and it is characterized by poor level of mechanization and lack of minimum standard of health and security.

<sup>28</sup> US Department of State, “Trafficking in Persons Report,” above at 26.

income. Numerous young boys and girls are also condemned to work in the mines because of the lack of schools in most mining areas and the inability of parents to afford education fees where schools do exist. Second, some children engage in mining-related labor because it is culturally acceptable for them to work and supplement the household income. Society considers children as a source of assistance to contribute to the family's revenue.<sup>29</sup> Third, the persistent armed conflicts in the eastern the DRC has also encouraged trafficking to flourish as armed groups forcibly recruit men, women, and children to serve as combatants, laborers, porters, domestics, and sex slaves for members of armed groups.<sup>30</sup> Fourth, most people living in the remote mining regions are not aware of health related risks posed by child mining labor and sexual exploitation. They are oblivious to the illegality and dangerousness of labor trafficking because they are usually uneducated and do not have access to this type of information. Finally, the impunity of traffickers fuels the industry. Almost no investigation has been carried on against trafficking offenders.<sup>31</sup>

The fate of human trafficking in the DRC is disastrous for the victims. Because artisanal child-miners are in constant contact with radioactive minerals (such as coltan, cobalt, copper, uranium, mercury, and zinc) without safety and protection, many get infected with lung disease and pneumonia. Others, especially women and girls, get infected with HIV and AIDS because of being forced into prostitution.

Not surprisingly, within a country like the DRC, where there is no comprehensive and harmonized legislation to prevent trafficking, most victims of trafficking have little protection under the law, while traffickers continue to benefit with impunity.

## **(B) Definition of human trafficking**

### **(B.1) Under the International law**

Article 3(a) of the Palermo Protocol defines “human trafficking” as:

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<sup>29</sup> In some territories of the eastern DRC, a child-boy who contributes to the household income is referred by his community as *mwana-umé* (a Swahili expression meaning a “brave man”) by opposition to *wabulé* (meaning derogatively a weak or coward person). In order to avoid being derogatively described as *wabulé*, some children get involved in mining labor so that they can prove their braveness. See also: Kishore K. Chhtri, “Child Labour in Bhutan: The Challenges of Implementing Child Rights in Bhutan” (2011), Thesis in Human Rights Practice, University of Gothenburg, available at: < <http://hdl.handle.net/10037/3501> > (last accessed 4 February 2014).

<sup>30</sup> US Department of State, “Trafficking in Persons Report,” above at 28.

<sup>31</sup> Ibid.

“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. 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.”

The components of an act of human trafficking include: acquisition, movement, lack of consent, and exploitation.

Acquisition of victims is either done through recruitment, abdication or sale.

The movement consists of moving the victim from his/her country of origin (through transit country) to destination country.<sup>32</sup> Trafficking can also be internal, occurring only within national borders. In this context, the same country will be considered as the country of origin, transit, and destination.<sup>33</sup>

The consent of the victim to acts of exploitation is irrelevant if any of the following means was employed against him/her: coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, etc. It should also be noted that the presence of the victim's consent is not an absolute defense for the trafficker, even in the absence of any means of coercion.<sup>34</sup> This is because the actual consent of the victim can be nullified by the after-the-fact coercion by the trafficker.<sup>35</sup> This is the case where “a person who agreed to migrate and engage in sex work, but is held by force and coerced to perform sex work for long hours and not paid as promised.”<sup>36</sup> In this example, the use of force and coercion by the trafficker has invalidated the initial consent of the victim to engage in sex work. Thus, it amounts to human trafficking.<sup>37</sup>

Additionally, if the victim is a child, the Palermo Protocol presumes that the child has been trafficked even if none of the means enumerated were employed against the victim because a child is considered to be incapable of giving consent.<sup>38</sup>

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<sup>32</sup> S Kara, “Designing More Effective Laws Against Human Trafficking” (2011), Vol.9, Num. 2, *Northwestern Journal of International Human Rights*, p.10.

<sup>33</sup> Ibid.

<sup>34</sup> D Hamat and J Tribbett “A Comparative Analysis of Human Trafficking Legislation and Case Law: Suggestions for Best Practices in Creating Laws Against Human Trafficking”(2009), R76 Project UNODC, p.8.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Palermo Protocol, art3(c).

Acts of exploitation consist of sexual, economic and other forms of illicit exploitation. The list of those acts is not exhaustive and may include: forced prostitution or other sexual exploitation, forced labor or services, domestic servitude, debt bondage, slavery, removal of organs, use of children in armed conflicts, and other illicit acts.

## **(B.2) Under the Congolese law**

There is no single definition of “human trafficking” under the Congolese law.

The Congolese Constitution<sup>39</sup> does not mention the word “human trafficking,” but states that no one should be subjected to slavery or forced labor.<sup>40</sup> The Penal Code does not define trafficking. Instead, it defines “sex slavery” to have the attributes of trafficking for sexual exploitation. Article 174 (e) of the Penal Code stipulates that:

“Sex slavery is the fact of exercising the power(s) attached to the ownership of a person, including detaining or imposing a similar deprivation of liberty or buying, selling, lending, trading that person for sexual purposes, and will constraint that person to perform one or more sexual acts.”

Yet, Law 09/001 on the Protection of the Child does define “trafficking,” but the scope of its definition is strictly limited to children (persons aged less than 18 years). Article 162(1)(1) of the Law states that:

“Child trafficking shall mean the recruitment, transportation, transfer, harboring or receipt of children, 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 the child for the purpose of exploitation.”

This definition of child trafficking given by the Law 09/001 is a mere replication of the description of trafficking in persons provided by the Palermo Protocol. Unlike the Palermo Protocol, Law 09/001’s definition of trafficking is not

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<sup>39</sup> Constitution de la République Démocratique du Congo du 18 février 2006 telle que modifiée par la loi du 20 janvier 2011 [Constitution of the Democratic Republic of Congo of February 18, 2006 as modified by the Law of January 20, 2011].

<sup>40</sup> Id., art 16.

holistic to the extent that it does not cover adult persons, nor does it list the constitutive elements of the acts of exploitation.

Some may argue that the absence of a comprehensive definition of human trafficking at the national level does not really constitute a problem in the DRC because the country has adopted a monist legal system,<sup>41</sup> and that the provisions of the Palermo Protocol (which the DRC ratified) are part of the domestic law and can be applied by the courts without further formalities. Even though such a statement is relevant, the practice on the ground shows that the Congolese judicial actors do not always apply international instruments duly ratified by the country in their decisions. Instead, they often apply domestic laws even if it appears contrary to international law or international instruments offer greater protection to the victims. Also, many judges are not well-informed about international instruments and ill-equipped to implement its tenets.<sup>42</sup> Thus, there is a significant gap between the aspirations of DRC in adopting the Palermo Protocol and the day-to-day activities of the courts.

## **(2) The DRC's laws against human trafficking**

As earlier mentioned, the DRC has not yet adopted a comprehensive anti-human trafficking law, but it has provisions within its laws that condemn certain aspects of trafficking. This section will analyze the existing laws addressing human trafficking issues.

### **(A) Trafficking for sexual forms of exploitation**

In July 2006, the DRC passed Law 06/018 amending the Penal Code (also known as the Law on sexual violence).<sup>43</sup> This Law criminalizes pimping,<sup>44</sup> forced prostitution,<sup>45</sup> child prostitution,<sup>46</sup> and sexual slavery.<sup>47</sup> Even though the Law does not explicitly mention the word “sex trafficking,” its definition of sex slavery is

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<sup>41</sup> A monist state is a country where the international treaty duly ratified is immediately incorporated into national law without further procedural formalities.

<sup>42</sup> The author of the paper designed a training module to train the Congolese magistrates on the protection of children against trafficking for economic exploitation in mines in the DRC's province of Katanga. During the preliminary discussion with magistrates (judges and public prosecutors) in March 2011, he noted that many participants were not aware about the provisions of the Palermo Protocol. And some participants confessed to him that they did not know that the DRC ratified the Protocol.

<sup>43</sup> Law 06/018, above at 13.

<sup>44</sup> Id., art 174(b)

<sup>45</sup> Id., art 174(c)

<sup>46</sup> Id., art 174(n).

<sup>47</sup> Id., art 174(e).

broad so that it contains the attributes of trafficking for sexual exploitation.<sup>48</sup> This was novel at the time, as the previous provisions<sup>49</sup> had failed to establish sex slavery as a crime. In contrast, Article 174(e) of the Law on Sexual Violence punishes sex slavery from five to twenty (20) years of imprisonment and a fine not exceeding \$200.

Like in Belgium<sup>50</sup> and France,<sup>51</sup> prostitution is not penalized<sup>52</sup> in the DRC. However, pursuant to the Law on Sexual Violence forced prostitution and child prostitution are criminalized. Article 174(c) of the Law on Sexual Violence stipulates that forced prostitution refers to any situation in which:

“Anyone to constraint any person(s) to perform act(s) of sexual nature by using force, threat of force or coercion or taking advantage of the inability of those person(s) to freely give their consent in order to obtain a financial advantage or other advantages...”

Article of 174(n) of the same Law also emphasizes that child prostitution occurs when a person “uses a child aged less than eighteen years for sexual activities in return for payment or other advantages”

Before the adoption of the Law on Sexual Violence, the Penal Code of 1940 was only punishing pimping and pimping- related offences. Then-Article of 174(bis) of the Penal Code stipulated:

“Shall be punished by imprisonment from three months to five years and a fine from 50 to 1000 Zaires:

1. Anyone who, in order to satisfy the passions of other persons, hires, abducts or entices a person aged or apparently aged of 21 years to engage in debauchery or prostitution, even with her consent...
2. Anyone who holds a brothel.

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<sup>48</sup> Ibid.

<sup>49</sup> Décret du 30 janvier 1940 portant Code pénal congolais [Decree of January 30, 1940 on the Congolese Penal Code].

<sup>50</sup> Loi du 21 Aout 1948 supprimant la réglementation officielle de la prostitution [Law of August 21, 1948 removing the government's regulation on prostitution]. See also : Van Haecht, « La prostituée : Statut et image », Ed. Université de Bruxelles, p.69, available at : <[http://digistore.bib.ulb.ac.be/2008/DL2277602\\_000\\_f.pdf](http://digistore.bib.ulb.ac.be/2008/DL2277602_000_f.pdf)> (last accessed 8 June 2012)

<sup>51</sup> See: “Les politiques publiques et la prostitution. Rapport d'information sur l'activité de la délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes pour l'année 2000” [Public policy and prostitution. Report of Information on the activity of the delegation of women's rights and equal opportunities between men and women for 2000], available at: <<http://www.senat.fr/rap/r00-209/r00-2097.html>> (last accessed 8 June 2012)

<sup>52</sup> Prostitution is not a crime under the Congolese law so that a prostituted person as well as a sex buyer cannot be convicted.



3. The pimp. The pimp is a person who lives in whole or in part, at the expense of another person who he exploits the prostitution.
4. Anyone who habitually exploits the debauchery or prostitution of other persons in any other ways.”

Even though the difference is not apparent, the Congolese legislator distinguishes a “*proxénète*” (pander) from a “*souteneur*” (pimp). The difference is that the *proxénète* is a person who encourages or persuades another person to engage in prostitution/debauchery (e.g.: detaining a brothel or liaising the sex-worker with the client) whereas the *souteneur* (pimp) is a person who exploits someone’s prostitution (e.g.: collecting of sex-worker’s pay).<sup>53</sup> But, both *proxénète* and *souteneur* are acting for the purpose of getting financial profit or other advantages from the prostitution of others.<sup>54</sup>

Nevertheless, the question posed is: why would the Congolese legislator name forced prostitution and child prostitution as a crime when pimping (including pimping-related acts) was already a crime? By acting so, it appears that the intention of the legislator was to discourage those who were profiting from someone’s prostitution by means of coercion or abusing victims’ vulnerability due to his/her young age. In other words, from the Congolese legislator’s perception, prostitution should be tolerated when it is performed with the “uncorrupted willingness” of the “sex worker” and “sex buyer” rather than executed with the complicity of, or under coercion from a third person. This is why, when compared to the pimping offence, which is punished by up to five years in prison, adults<sup>55</sup> who exploit child prostitution are punished by up to twenty years in prison.<sup>56</sup>

Unlike in the US where pimping is usually synonymous with violence and coercion,<sup>57</sup> under the Congolese Law 06/018, pimping seems to describe the act of a person who organizes women or men to work “willingly;” whereas sex trafficking seems to describe the sexual exploitation of women or men who are

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<sup>53</sup> Akele Adau, et al, “Droit Pénal Spécial” [Special Criminal Law], Université Protestante au Congo [Protestante University in Congo], 2003-2004, p.174.

<sup>54</sup> Ibid. The scope of the definition of pimping is very broad under the Congolese law. Anyone who accepts a gift coming from the gains of prostitution is considered to have committed an act of pimping if the recipient is aware of the immoral and illegal origin of the funds that provided the gift. For instance, the brother of a female sex-worker can be charged for pimping if he receives a gift of money from his sister knowing that the gift is a product of his sister’s prostitution.

<sup>55</sup> Unlike the US’s provisions on Sex trafficking of children (18 U.S.C. § 1591) where a minor person may be prosecuted for exploiting the prostitution of another minor; in the DRC, child prostitution offence can only be committed by an adult person (aged from 18 years to above). Children are presumed to be criminally irresponsible for any criminal conducts they commit, including sexual violence offences. See articles 94-101 of the Law 09/001 on the Protection of the Child.

<sup>56</sup> Law 06/018 amending the Penal Code, art 174(n).

<sup>57</sup> J Raymond et al, “Sex Trafficking of Women in the United States,” p.48. Available at: < [http://www.heart-intl.net/HEART/081004/sex\\_traff\\_us.pdf](http://www.heart-intl.net/HEART/081004/sex_traff_us.pdf)> (last accessed 9 August 2012).

working under the threat of force or coercion. It is in this context that Article 174(c) of the Law 06/018 addresses the issue of sex trafficking.

In 2009, the DRC's president promulgated Law 09/001 on the Protection of the Child. Like the Law on Sexual Violence, Law 09/001 also has provisions that punish pimping<sup>58</sup> and sex slavery<sup>59</sup> committed against children by up to twenty years of imprisonment. It also increases the minimum punishment for those crimes by ten years.<sup>60</sup> The minimum sentence for adults who pimp children is five years, but when the person pimping the child has parental or legal authority over the child the minimum sentence is increased to ten years in prison,<sup>61</sup> meaning that the offender will be punished from ten to twenty years in prison.

### **(B) Trafficking for non-sexual forms of exploitation**

Trafficking for non-sexual forms of exploitation is also punishable under the Congolese law. The Labor Code of 2002<sup>62</sup> proscribes forced or compulsory labor (committed against adults/children) and punishes the perpetrator by six months of imprisonment and a fine equivalent to \$30.<sup>63</sup> Even though forced labor is forbidden by the Labor Code, the Penal Code of 1940 (which still applies) authorizes the sentence of forced (hard) labor for some convicted criminals.<sup>64</sup>

In addition, Law 09/001 prohibits child trafficking for the purpose of economic exploitation.<sup>65</sup> Article 162 of this Law proscribes child trafficking and sale of children and punishes the offender up to twenty years of imprisonment. This provision indistinctly imposes the same punishment for non-sexual and sexual forms of child exploitation.

Article 53 of the Law 09/001 particularly forbids the worst forms of child labor, including debt bondage, forced labor, forced recruitment of children for use in armed conflict, and work that is harmful to the health, safety and morals of children because of its nature and the circumstances in which is carried out. This

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<sup>58</sup> Law 09/001 on the Protection of the Child, art 182.

<sup>59</sup> Id., art 183

<sup>60</sup> Id., art 182 and 183

<sup>61</sup> Ibid.

<sup>62</sup> Loi n° 015-2002 du 16 octobre 2002 Portant Code du Travail [Law 015-2002 of October 16, 2002 on the Code of Labor].

<sup>63</sup> Id., articles 2(2) and 326.

<sup>64</sup> Penal Code, art 5. It should be noted that, even though the court can pronounce the sentence of forced (hard) labor against a criminal; but in practice, that sentence is often replaced by a term of imprisonment.

<sup>65</sup> Law 09/001, art 162.

last category of the worst forms of child labor addresses child labor in artisanal mines that is prevalent in the DRC.

It should be noted that even though the minimum age for employment in the DRC is 16 years,<sup>66</sup> children aged 16 to 18 can only perform “light and healthy” work as opposed to “dangerous and unhealthy work”.<sup>67</sup> A Ministerial Order<sup>68</sup> issued in 2008 by the Congolese Minister of Labor lists mining labor in the category of dangerous and unhealthy work which cannot be performed by children aged less than 18 years.<sup>69</sup> According to Article 187 (1) of the Law 09/001, those violate the provisions on the worst forms of child labor (Article 53) will be punished by one to three years of imprisonment and a fine equivalent to \$100 to \$200. Article 187(2) of the same law emphasizes that the recruitment of children aged less than 18 years for use in the armed groups and the police will be punished by ten to twenty years of imprisonment.

In the DRC, trafficking of children for the purpose of adoption is regulated by the Family Code of 1987.<sup>70</sup> Article 658 of the Code prohibits the fact of giving or promising financial advantages or other advantages in order to get the adoption of a child. Although the prohibition exists, the Family Code did not set any punishments against those who violate the dispositions of its article 658.<sup>71</sup>

From the above, it appears that the maximum term of imprisonment for acts of trafficking for economic exploitation (except when committed against children) is less than the minimum prison term for trafficking for sexual exploitation. Most importantly, the economic penalties against “labor traffickers” are very insignificant compared to the high profit that they are gaining from exploiting the victims. For instance, the maximal fine for the worst forms of child labor offence is equivalent to \$ 200,<sup>72</sup> \$ 1,000 for trafficking and sale of children,<sup>73</sup> and \$30 for forced or compulsory labor.<sup>74</sup>

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<sup>66</sup> Labor Code of 2002, art 6(2), and Law 09/001, art 54(1).

<sup>67</sup> Law 09/001, art 54(1).

<sup>68</sup> Arrêté ministériel N° 12/CAB.MIN/TPSI/045 /08 du 08 août 2008 fixant les conditions de travail des enfants [Ministerial Order 12/CAB.MIN/TPSI/045/08 of August 8, 2008 on the conditions of work of children].

<sup>69</sup> Id., art 13.

<sup>70</sup> Loi N° 87/010 du 1<sup>er</sup> Aout 1987 portant Code de la Famille [Law 87/010 of August 1, 1987 on the Code of Family].

<sup>71</sup> In the DRC, the Family Code is a set of provisions regulating the rights of persons and family relations, particularly issues of nationality, marriage, adoption and inheritance. Notwithstanding its civil nature, the Family Code also includes some criminal sanctions for those who violate its provisions. For instance, Article 336 of the Code punishes by one to three months of imprisonment anyone who forces a person to get married against her/his will or who prevents the celebration of a marriage that meets all legal requirements.

<sup>72</sup> Law 09/001, art 87(1).

<sup>73</sup> Id., art 162.

<sup>74</sup> Labor Code, art 326.

Some may argue that the average economic penalties for these trafficking-related offences are not really too little in the context of the DRC because the country's daily wage is set at \$ 1.83 per day;<sup>75</sup> further, a disproportionate fine exceeding the offender's financial revenues could make the enforceability of the sanction less likely. This point is pertinent, but it should be noted that "labor traffickers" usually make large profits from subjecting victims to forced or bonded labor in artisanal mines. The International Labour Organization (ILO) revealed that the total profits generated by trafficked forced laborers are estimated to be about \$32 billion per year.<sup>76</sup> In light of this illicit high profit, it is likely that insignificant monetary punishments would be unable to produce any deterrent effects against potential traffickers. For that reason, in a country like France where the monthly minimum wage is fixed at € 1398.37 (almost \$ 1,894.12),<sup>77</sup> the fine for a human trafficking offence is €150,000 (\$ 187,500).<sup>78</sup> Further, when trafficking is committed against a child, a vulnerable person, or committed by a person who has parental or legal authority over the victim, the fine is increased to €1,500,000 (\$ 1,875,000).<sup>79</sup> And the amount of the fine increases to €3,000,000 (\$3,750,300) if the trafficking offender is a member of an organized criminal group.<sup>80</sup>

### **(C) Proceedings for human trafficking related offences**

In the DRC, most acts of human trafficking follow under jurisdiction of the Tribunal of Grande Instance (High Court). In July 2006, Congolese Parliament also passed the Law 06/019 amending the Code of Criminal Procedure<sup>81</sup> that introduced important innovations relating to sexual violence offences (including rape, sexual assault, sex slavery, forced prostitution, and pimping). Article 7(bis) of this Law set a maximum period of four months to adjudicate cases relating to sexual violence

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<sup>75</sup> Ordonnance N° 08/040 du 30 avril 2008 portant fixation du salaire minimum interprofessionnel garanti, des allocations familiales minima et de la contre-valeur du logement [Ordonnance No. 08/040 of 30 April 2008 fixing the minimal inter-professional wage, family allowances, and housing value], art 2.

<sup>76</sup> International Labor Organisation, "A Global Alliance against Forced Labor" (2005), p.55.

<sup>77</sup> Eurostat, "Minimum wages" Available at; <<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=0&language=en&pcode=tps00155>> (last accessed 21 January 2014).

<sup>78</sup> Code Pénal Français tel que modifié parla Loi n°2007-1631 du 20 novembre 2007 [French Penal Code as modified by the Law 2007-1631 of November 20, 2007], available at :< [http://www.legifrance.gouv.fr/affichCode.do?jsessionid=66DB84EE2B773D75A055243909BDB722.tpdjo05v\\_2?idSectionTA=LEGISCTA000006165299&cidTexte=LEGITEXT000006070719&dateTexte=20120612](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=66DB84EE2B773D75A055243909BDB722.tpdjo05v_2?idSectionTA=LEGISCTA000006165299&cidTexte=LEGITEXT000006070719&dateTexte=20120612)> (last accessed 11 June 2012). See: Article 225-4-1 of the French Penal Code.

<sup>79</sup> Id., art 225-4-2.

<sup>80</sup> Id., art 225-4-3.

<sup>81</sup> Loi N° 06/019 du 20 juillet 2006 modifiant et complétant le Décret du 06 août 1959 portant Code de Procédure Pénale Congolais [Law 06/019 of July 20, 2006 amending and completing the Decree of August 6, 1959 on the Congolese Code of the Criminal Procedure].

offences, from the initial investigation to the final judgment of the court. The rationale is to ensure a prompt response to sexual violence offences and provision of legal assistance to the victims of those acts.<sup>82</sup> This is because, prior to the adoption of that disposition, sexual violence cases were not commonly adjudicated in a timely manner, unless defined as “flagrant crimes”. A flagrant crime exists when the criminal has been caught in the act of committing a crime or caught after he/she has just committed a crime.<sup>83</sup>

In addition, Article 9 (bis) of the Law 06/019 abolishes the payment of a transactional fine (*amende transactionnelle*) for sexual offences.<sup>84</sup> The Congolese Code of Criminal Procedure permits an officer of the judicial police (*officier de la police judiciaire*) or Public Prosecutor (*officier du ministère public*) who is investigating a crime to drop an offender’s charges in return for the offender’s payment of a transactional fine to the treasury.<sup>85</sup> In allowing offenders to pay the transactional fine, the Congolese legislator initially wanted to prevent courts and tribunals from having lengthy criminal trials for “petty crimes”, especially wherein the outcome would generally be economic in nature, include a fine or asset forfeiture.<sup>86</sup> Today’s practice, however, is, that officers of the judicial police or public prosecutors accept transactional fines even for serious crimes. By abolishing the payment of a transactional fine for sexual violence offences, Congolese legislator would end the spectrum of impunity for sexual violence offences. Even though the abolition of transactional fine for sexual violence offences is important to discourage sexual offenders in the country that has the highest rate of sexual abuse,<sup>87</sup> the narrow scope of the provisions of Article 9 (bis) of the Law 06/019 seems, however, not being a solution to the problem of impunity in the DRC in the way that perpetrators of non-sexual offences can still pay their way to get out of prosecution. In order to avoid double standard in treating perpetrators of different

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<sup>82</sup> Id., Preamble of the Law.

<sup>83</sup> Id., art 7. See also: Ordonnance-Loi 78-001 du 24 février 1978, relative à la répression des infractions flagrantes [Ordinance-Law 78/001 of February 24, 1978 on the repression of flagrant crimes], art 2. The particularity of the procedure regarding flagrant crimes is that a police officer is not required to inform his/her superior before arresting the alleged offender and investigating the case. See: Code of Criminal Procedure, art 10.

<sup>84</sup> Id., art 9(bis): “L’amende transactionnelle ne s’applique pas aux infractions aux violences sexuelles.” [Transactional fine should not apply for sexual violence offences.]

<sup>85</sup> Code of the Criminal Procedure, art 9.

<sup>86</sup> M Molibenga, “Principe de l’opportunité des poursuites vecteur des abus en droit judiciaire congolais” [Principle of the opportunity of prosecution vector of abuses under the Congolese judicial law] (2007), Thesis in Law, Université de Kinshasa, available at: <[http://www.memoireonline.com/04/10/3337/m\\_Principe-de-lopportunites-des-poursuites-vecteur-des-abus-en-droit-judiciaire-congolais9.html](http://www.memoireonline.com/04/10/3337/m_Principe-de-lopportunites-des-poursuites-vecteur-des-abus-en-droit-judiciaire-congolais9.html)> (last accessed 3 June 2012). See also: Code of the Criminal Procedure, art 9.

<sup>87</sup> According to the UN Report, the eastern part of the DR Congo is considered the “rape capital of the world,” with an estimated 48 women raped every hour. See: F Lloyd-Davies, “Why eastern DR Congo is ‘rape capital of the world’ (25 November 2011) CNN, available at: <<http://www.cnn.com/2011/11/24/world/africa/democratic-congo-rape/index.html>> (last accessed 9 August 2012).

serious crimes, the Congolese legislation should consider abolishing explicitly the payment of transactional fine for any serious crimes, including those punishable at least one day of imprisonment.

On the prosecutorial scheme, sexual exploitation cases have received substantial more legislative interest in the DRC than labor-related trafficking. For instance, unlike cases of sex slavery or forced prostitution, there is no a compulsion to expedite proceeding. In this context, cases may take years before the delivery of the final judgment. Also, a perpetrator of acts of bonded labor can pay a transactional fine, resulting in all charges being dropped against him/her.

### **(D) Protection of trafficking victims**

The protection of human trafficking victims is regulating by the Code of Criminal Procedure and the Law 09/001 on the Protection of the Child. The protection of trafficking victims includes a panoply of safeguards, namely:

#### **D.1. Judicial and administrative protection**

Article 74(bis) of the Code of Criminal Procedure guarantees judicial support to trafficking victims by requiring public prosecutors and judges to take appropriate measures to safeguard the security, physical and psychological well-being, dignity, and respect of privacy of the victims of sexual violence offences (including the removal of particular spectators and/or media during the court hearings). Victims of sexual violence/exploitation are also entitled to be assisted by counsel during all the stages of the proceedings.<sup>88</sup> Beyond the judicial protection, Articles 62-65 of the Law 09/001 grants child- victims of economic exploitation or enlistment in armed groups with special /exceptional protection, including foster care, reeducation, and social reinsertion.<sup>89</sup>

Unlike the Law 09/001, the Code of Criminal Procedure is not clear on whether or not adult victims of sex/economic trafficking should also be granted material assistance, appropriate housing, educational and training opportunities. This ambiguity may create a hierarchy of protection among trafficking victims based on the crimes committed against them or based on their age.<sup>90</sup>

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<sup>88</sup> Code of Criminal Procedure, art 7(bis)(4).

<sup>89</sup> **Law 09/001, articles 62-65.**

<sup>90</sup> UNODC, “Model Law against Trafficking in Persons”, p.43, available at: <[http://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)> (last accessed 12 June 2012).

## **D.2. Right to claim compensation**

In terms of the Code of Civil Procedure, (adult) victims of trafficking also have legal standing to initiate civil action against their traffickers<sup>91</sup> to request for appropriate compensation for physical, psychological and other harm.<sup>92</sup>

However, it is problematic for child-victims of trafficking to initiate civil action against their traffickers, particularly for children who are economically/sexually exploited by their parents or legal guardians. This is because children are legally considered incapable under the Congolese law,<sup>93</sup> and thereby lack legal standing to approach the court. Only their parents or legal guardians can act on their behalf. In the case of a child exploited by his/her own parents, clearly his or her parents would not approach the court against themselves. Therefore, the trafficked child has to wait until his/her adulthood to approach the court to get a legal remedy. This state of affairs is disadvantageous to some categories of trafficking victims, and prevents them from getting their legal remedies timely.

Nevertheless, there is a possibility for child-victims of trafficking to overcome the legal capacity barrier by using the “adhesive procedure”,<sup>94</sup> through which victims of criminal offences can file civil claims during criminal proceedings rather than pursuing damages in separate civil actions.<sup>95</sup> But this option would require that the public prosecutor first initiate criminal proceedings for a child trafficking offense. According to the Code of Organization and Judicial Competence,<sup>96</sup> a public prosecutor can start a criminal investigation either by receiving a complaint/denunciation or by his/her own initiative for child trafficking offense without having received a complaint/denunciation from the victim or an individual who is aware about the crime.<sup>97</sup>

## **D.3. Legal status and repatriation of foreign victims of trafficking**

The DRC’s Law on Immigration (*Ordonnance-loi n° 1983-033 du 12 septembre 1983 relative à la police des étrangers*) is silent on whether foreign victims of trafficking can be given residence permits to remain in the country temporarily or permanently. With is this silence of the law, it would not be

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<sup>91</sup> Code of Civil Procedure, art 1.

<sup>92</sup> Civil Code Book III (Code Civil Livre III of 1888), art 258.

<sup>93</sup> Code of Family, art 215(1).

<sup>94</sup> Code of Criminal Procedure, art 69.

<sup>95</sup> Ibid.

<sup>96</sup> Ordonnance-Loi 82-020 du 31 mars 1982 portant Code de l'organisation et de la compétence judiciaires [Ordonance-Law 82-020 of March 31, 1982 on the Code of Organization and Judicial Competence].

<sup>97</sup> Id., art 7.

surprising that a non-national trafficking victim, who was illegally brought into the DRC, to be expelled from the country regardless of his/her judicial actions against his/her traffickers.

The inconsistency of the DRC's immigration law creates a danger for the safety of the trafficking victims as long as immigrations authorities may expel undocumented trafficking victims without examining if or not they would be safe upon their return to their home countries. As a result, trafficking victims may be re-trafficked upon their return to places from where they were trafficked.

### **(3) Brief comparative assessment of the DRC's laws on trafficking in relation to international standards**

The DRC ratified a number of international instruments prohibiting human trafficking, including the UN Convention against Transnational Organized Crime and its Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children,<sup>98</sup> the UN Convention against the Worst forms of Child Labor,<sup>99</sup> and the UN Convention No 138. At the regional level, the DRC also signed several anti-human trafficking Action Plans, such as the Ouagadougou Action Plan,<sup>100</sup> the SADC Action Plan,<sup>101</sup> and the bi-regional ECOWAS and ECCAS Action Plan.<sup>102</sup> In ratifying those instruments, specifically the Palermo Protocol, the DRC has shown a commitment to establishing comprehensive policies, programs and other measures to prevent and combat trafficking, punish the traffickers, and protect the victims of trafficking.<sup>103</sup> This section aims to determine the compliance of the DRC's anti-trafficking laws with international instruments, to identify the gaps into domestic laws, and to recommend comprehensive policies eventually.

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<sup>98</sup> UN Convention against Transnational Organized Crime, above at 10.

<sup>99</sup> UN Convention against the Worst Forms of Child Labor, above at 11.

<sup>100</sup> Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, adopted by African Union governments in November 2006, available at: < [http://ec.europa.eu/anti-trafficking/download.action?nodeId=2e8b2503-6b83-498d-95f0-3acc85f9449f&fileName=Ouagadougou+Action+Plan+to+combat+trafficking\\_en.pdf&fileType=pdf](http://ec.europa.eu/anti-trafficking/download.action?nodeId=2e8b2503-6b83-498d-95f0-3acc85f9449f&fileName=Ouagadougou+Action+Plan+to+combat+trafficking_en.pdf&fileType=pdf) > (last accessed 11 June 2012).

<sup>101</sup> SADC Plan of Action on Combating Trafficking in Persons, especially Women and Children, adopted SADC Ministers on May 28, 2009, available at: < <http://www.sadc.int/index/browse/page/531> > (last accessed 11 June 2012).

Joint ECCAS/ECOWAS Plan of Action against Trafficking in Persons, especially women and children in West and Central Africa. (2006-2008), adopted on July 6, 2006

<sup>102</sup> Art 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children [hereinafter the Palermo Protocol].

<sup>103</sup> Palermo Protocol, art 9.



International and regional instruments	Congolese laws/Government policies and other measures
<p><b><i>Definition of human trafficking</i></b>            Art 3 of the Palermo Protocol            Art 1 of Art 10(c) of ECOWAS and ECCAS bi-regional Action Plan</p>	<p>There is no a comprehensive definition of human trafficking at the national level.            Only child trafficking is defined [Art162(1)(1) Law 09/001]</p>

<p><b><i>Penalization of trafficking offences</i></b>  Art 5 of the Palermo Protocol  Section III of the Ouagadougou Action Plan  Art 10(c) of ECOWAS and ECCAS bi-regional Action Plan</p>	<p>Several acts of trafficking related offences are criminalized in the DRC, namely by Law on Sexual Violence (Law No 06/018) or Law on the Protection of Rights of Child (Law 09/001):</p> <ul style="list-style-type: none"> <li>• Sex slavery[Art 174(e) of Law 06/018 and art 183 of Law 09/001]</li> <li>• Forced prostitution [Art 174(c) of Law 06/ 018]</li> <li>• Child prostitution [Art 174(n) of Law 06/ 018]</li> <li>• Child pornography [Art 179 of Law 09/001 and Art 174(m) of Law 06/018]</li> <li>• Pimping [Art 174(b) of Law 06/ 018 and Art 182 of Law 09/001]</li> <li>• Giving or promising money for getting adoption [Art 658 of Code of Family]</li> <li>• Forced or compulsory labor (Articles 2(2) and 326 of Code of Labor)</li> <li>• Child trafficking for any forms of exploitation [Art 162(1) of Law 09/001]</li> <li>• Sale of child [Art 162(2) of Law 09/001]</li> <li>• Economic exploitation of children (Art58 of Law 09/001]</li> <li>• Worst forms of child labor [Art 53 of Law 09/001, and Art 3 of Code of Labor]</li> <li>• Forcing children to beg[Art 194 of Law 09/001]</li> <li>• Recruitment of children for use in armed conflicts [Art 53 of Law 09/001, and Art 3 of Code of Labor]</li> </ul>
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<p><b><i>Judicial and administrative support to trafficking victims</i></b></p> <p>Art 6 of the Palermo Protocol Section II of the Ouagadougou Action Plan Articles 4-7 of the ECOWAS and ECCAS bi-regional Action Plan</p>	<p>The Code of Criminal Procedure [art 74(bis)] compels the public prosecutors and judges to take appropriate measures to safeguard the security, physical and psychological well-being, dignity, and respect of privacy of the victims of sexual violence offences. Victims of sexual violence should also be assisted by a counsel. [Art 7(bis)(4) of Code of Criminal Procedure]</p> <p>Child- victims of sexual or economic exploitation or enlistment in armed groups should receive a special/exceptional protection, including foster care, reeducation, and social reinsertion [Articles 62-65 of Law 09/001].</p>
<p><b><i>Status of trafficking victims in the receiving country</i></b></p> <p>Art 7 of the Palermo Protocol</p>	<p>The DRC is a source and destination country. The status of victims is not a problem since most trafficking victims are Congolese citizens and do not need a permit allowing them to remain in the country. The DRC's law on immigration is, however, "silent" concerning the issuing of permit to non-nationals, who are victims of trafficking, to remain in the country temporarily or permanently.</p>

<p><b><i>Repatriation of trafficking victims</i></b>  Art 8 of the Palermo Protocol  Articles 11 and 12 of the ECOWAS and ECCAS bi-regional Action Plan</p>	<p>The DRC acts as origin, transit and destination because trafficking is mostly internal. The Congolese government established a Program of Disarming, Demobilization and Reinsertion of children victims of forced recruitment in armed groups in order to facilitate their return in their family and community. For the last decade, several thousand children have demobilized and returned to their family and community. However, because of the persistence of insecurity in the eastern part of the DRC, some ex-children soldiers (who were demobilized) are sometime re-recruited by armed groups.</p>
<p><b><i>Prevention of human trafficking and awareness raising</i></b>  Art 9 of the Palermo Protocol  Section I of the Ouagadougou Action Plan  Art 9 of the ECOWAS and ECCAS bi-regional Action Plan</p>	<p>The DRC is making no significant efforts to prevent human trafficking. Even though the Law 09/001 established a National Committee against the Worst Forms of Child Labor, however actions that the Committee has taken for eradicating child forced labor are unknown on the ground.</p> <p>A presidential decree created the SAESSCAM to serve as a technical service to enforce the provisions of the Mining Code in the artisanal mines, including those prohibiting of child labor. So far, SAESSCAM is not yet effective in the field because of lack of resources.</p>
<p><b><i>State co-operation against trafficking, border measures, and security and control of travel documents</i></b>  Art 10 of the Palermo Protocol  Section IV of the Ouagadougou Action Plan  Articles 10(g), 14 and 15 of the ECOWAS and ECCAS bi-regional Action Plan</p>	<p>The DRC's Directorate General of Migration (DGM) is now subjecting all minor travelers (accompanied or not by an adult traveler) to obtain from its office an exit permit before crossing the borders of the State. Due to the fact that the DRC shares with nine countries the very long borders where there are not always the DMG agents, it is very difficult to prevent cross borders movement of children.</p>

#### **(4) Gaps in the legal framework on trafficking in the DRC**

The gaps within the Congolese legal framework will be analyzed in regards to the prevention of trafficking, prosecution of traffickers, and protection of victims.

##### **(A) Gaps in the context of preventing trafficking**

The DRC does not have holistic legislation addressing all forms of human trafficking, nor does it have a comprehensive definition of human trafficking. Law 09/001 on the Protection of the Child does not give an inclusive definition of trafficking, and limits the scope of its definition to children (persons aged less than 18 years).

Even though a National Committee against the Worst Forms of Child Labor was established, there are insufficient awareness campaigns to inform the parents and communities about the danger of child sexual exploitation and forced labor for the future of their children and their community at large. The Ministry of Labor, which is responsible for inspecting worksites for child labor, has neither conducted any forced child labor investigations nor identified any cases of forced child labor in mining areas.<sup>104</sup>

In addition, law enforcement officers are not regularly trained, and they lack the resources to carry out their work.

##### **(B) Gaps in the context of prosecuting traffickers**

The lack of anti-human trafficking legislation and a comprehensive definition of human trafficking make the prosecution of trafficking very difficult. The Law 06/018 amending the Penal Code only deals with sexual aspects of trafficking, while the Law 09/001 on the Protection of the Child simply covers acts of trafficking committed against children. Therefore, it appears that there are no provisions that protect adult persons against their economic exploitation. As a result, those who exploit adult forced labor will escape criminal responsibility for their actions.

Overall, there are insignificant prosecutions against perpetrators of acts of trafficking for economic or sexual exploitation.<sup>105</sup> Of the 43,000 cases of child (forced) labor in artisanal mines in 2010 in the DRC's province of Katanga<sup>106</sup> no

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<sup>104</sup> US Department of State, "Trafficking in Persons Report," above at note 28.

<sup>105</sup> US Department of State, "Trafficking in Persons Report," above at note 101.

<sup>106</sup> See above, at 6.

case was brought before the court. It should also be noted that, the defective anti-trafficking provisions are not the only principal reason explaining the lack of prosecution of traffickers in the DRC. Some other major reasons for the lack of prosecution include:

1. Shortage of law enforcement officers in the areas where trafficking is prevalent.<sup>107</sup> In numerous remote mining areas around DRC (including in the mining rich provinces of Katanga, North and South Kivu, and Oriental and Occidental Kasai) there is either an inexistence of judicial structures (e.g.: tribunals/offices of public prosecutor) or insufficiency of law enforcement officers where tribunals exist. For example, the United Nations–sponsored radio revealed that there were only ten (10) judges and prosecutors per two million populations in some territories of the DRC,<sup>108</sup> resulting in the situation of heavy per-judgeship caseload, unresolved cases, or influence of customary/tribal courts in the remote areas. One may also suggest that the shortage of law enforcement officers to prosecute trafficking cases is not really a problem in the DRC given the role of customary courts traditionally. The Congolese Code of Judicial Organization and Competence<sup>109</sup> recognizes the cohabitation of two legal systems: the written law (set down by a legislature) and the unwritten law (based on local customs),<sup>110</sup> and that the local customary courts could adjudicate cases in the areas where the ordinary courts of law are not established yet. While this is the law, it is also important to note that the competence of local customary courts is limited to the issues of personal status rights (marriage and divorce) and property rights (inheritance and land tenure).<sup>111</sup> In other words, local customary courts are not competent to prosecute and try criminal acts (including trafficking offences), which fall under the sole jurisdiction of ordinary courts of law.

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<sup>107</sup> Ibid.

<sup>108</sup> Radio Okapi, «Carence des magistrats en RDC: que faire?» Available at: <<http://radiookapi.net/actualite/2010/03/21/carence-des-magistrats-en-rdc-que-faire/>> (last accessed 5 February 2014)

<sup>109</sup> Ordonnance-Loi 82-020 du 31 mars 1982 portant Code de l'Organisation et de la Compétence Judiciaires [Ordinance-Law 82-020 of March 31, 1982 on the Organization and Judicial Competence.

<sup>110</sup> The cohabitation of the two legal systems in the DRC (written and unwritten law) is mostly justified in the way that over 60% of the DRC's population lives in the remote rural areas. So, in the territories where the ordinary courts of law are not established yet, the local customary courts should be competent to adjudicate conflicts between litigants. However, the written law has authority over the customary law that is unwritten. See also Article 163 of Ordinance-Law on the Organization and Judicial Competence: "...Customary courts are maintained until the installation of the Courts of Peace."

<sup>111</sup> Dunia Zongwe, et al, "The Legal System and Research of the Democratic Republic of Congo (DRC): An Overview." Available at: <[http://www.nyulawglobal.org/globalex/democratic\\_republic\\_congo1.htm](http://www.nyulawglobal.org/globalex/democratic_republic_congo1.htm)> (last accessed 13 January 2014)

2. Lack of adequate training and resources for conducting investigations.<sup>112</sup> Some judicial operators in the DRC are not well equipped to detect, investigate and prosecute cases of human trafficking, including child labor exploitation in the mines. Judges and prosecutors lack access to the international and domestic legal documents prohibiting, for example, sex or labor exploitation.<sup>113</sup> In the case of (child) labor exploitation in the mines, law enforcement officers do not often have the means of transport to go to the remote mining areas where children's rights are being violated in order to investigate these cases.
3. Corruption and interference of the government in the administration of justice. The poor working conditions combined with unpaid modest salaries expose law enforcement officers to the potential risk of corruption and related offences.<sup>114</sup> Some judges and prosecutors usually receive bribes in order not to bring charges against those who exploit children in the mines. In addition to the corruption within the justice system, there are also situations where judicial actors, particularly the prosecutors<sup>115</sup> are pressured by government members (e.g., the justice minister) to stop or refrain from bringing charges against their protégés.

The rare trials relating to trafficking of Congolese children for their use in armed conflict were those organized by international institutions, particularly the International Criminal Court with cases such as *Prosecutor v. Thomas Lubanga* case,<sup>116</sup> *Prosecutor v. Germain Katanga and Mathieu Ngudjolo* case,<sup>117</sup> and *Prosecutor v. Bosco Ntaganda* case.<sup>118</sup> Thomas Lubanga was convicted and sentenced to 14 years of imprisonment for war crimes which consist of enlisting and conscripting children under the age of 15 years in armed groups and using

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<sup>112</sup> US Department of State, "Trafficking in Persons Report 2013, pp. 134-136.

<sup>113</sup> Ibid.

<sup>114</sup> R-C Liwanga, "Judicial Independence in the Democratic Republic of Congo: Myth or Reality?" (2012), Vol.56, Num.2, *Journal of African Law*, p. 213.

<sup>115</sup> Id., p. 198. Unlike the judge, the public prosecutor has a hybrid nature under the Congolese Law. He or she is considered to be a 'judicial officer' and a 'functionary' of the State. So he or she is under the direction and supervision of his hierarchical superiors and the minister of justice who may compel him/her to initiate or dismiss any investigation. See also: Article 12(2) of the Code of Organization and Judicial Competence.

<sup>116</sup> *Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06-2901 10-07-2012 1/52 RH T, available at : <http://www.icc-cpi.int/iccdocs/doc/doc1438370.pdf> > (last accessed 14 August 2012)

<sup>117</sup> *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* ICC-01/04-01/07, available at: <<http://www.icc-cpi.int/iccdocs/doc/doc1417444.pdf>> (last accessed 12 June 2012).

<sup>118</sup> *Prosecutor v. Bosco Ntaganda* ICC-01/04-02/06, available at: < [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200206/court%20records/chambers/ptc-II/Pages/36.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200206/court%20records/chambers/ptc-II/Pages/36.aspx)> (last accessed 21 January 2014).

them to participate actively in armed conflicts in the DRC.<sup>119</sup> Germain Katanga, Mathieu Ngudjolo and Bosco Ntaganda are also facing trials for similar charges.

### **(C) Gaps in the terms of protecting victims**

The lack of a common definition of and the narrow scope of the description of trafficking imply that some trafficking victims are not legally protected, especially adult victims of trafficking for economic exploitation.

The DRC's laws seem primarily focusing on acts of sex trafficking related offences. This situation implies that punishment for acts of trafficking for labor do not have the same weight as those for sex trafficking. Victims of trafficking for labor are involved in long proceedings before getting legal remedies.

There is no program for protecting witnesses and those who report cases of trafficking. Provisions of the Code of Criminal Procedure only list obligations that witnesses are subjecting to, and sanctions that they may face in the case of failure to testify.<sup>120</sup>

Additionally, the national government does not provide any shelters or psychological, medical and other services to child victims of forced enlistment in armed groups, even though it contributes to identification and demobilization of child soldiers.<sup>121</sup> Most of these types of services are provided by nonprofit organizations.<sup>122</sup>

## **5. Recommendation for a comprehensive anti-human trafficking legislation in the DRC**

Considering the lack of a comprehensive anti-human trafficking law in the DRC, and the gaps in the existing laws in terms of combating trafficking, there is a necessity of adopting a holistic anti-trafficking law that would advance the prosecution, protection and prevention of trafficking in the DRC. In this regard, the Congolese anti-human trafficking law should:

- *Broaden the definition of acts of human trafficking.* In addition to the recruitment, transportation, transfer, harboring or receipt as defined in the Palermo Protocol, “acts of trafficking” should also include “legal” child

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<sup>119</sup> Prosecutor v. Thomas Lubanga Dyilo ICC-01/04-01/06-2901 10-07-2012 1/52 RH T at 97-99, available at : <http://www.icc-cpi.int/iccdocs/doc/doc1438370.pdf> > (last accessed 14 August 2012).

<sup>120</sup> Code of Criminal Procedure, articles 17- 21 and 78.

<sup>121</sup> US Department of State, “Trafficking in Persons Report” above at note 105.

<sup>122</sup> Ibid.



adoption (for purposes of exploitation), sale, purchase, lending, and hiring of persons within or outside of national borders.

- *Expand the scope of acts of exploitation to also cover cases of adult bonded/forced labor.* Acts of exploitation should include, but not be limited to sex slavery or all forms of slavery or practices similar to slavery, forced marriage, sexual exploitation, forced prostitution, child prostitution, exploitative domestic labor, adult bonded/forced labor, child hazardous or dangerous labor, false adoption, child begging, child used in armed conflicts, and removal of body parts. The rationale of broadening the scope of exploitation without making the list exhaustive is to provide to judges with more liberty when interpreting the Statute so that a wide range of unlisted exploitive activities can also fall under the definition of trafficking.
- *Consecrate the irrelevancy of the consent of trafficking victims in the case of extorted consent.* The consent of the victims to acts of exploitation should be irrelevant if any of the following means was employed against them: coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, etc. In the case of child-victims, the exploited children must be considered as victims of trafficking even if a means of coercion is not used.
- *Elevate all human trafficking offences to the level of flagrant crimes.* The rationale behind listing all acts of human trafficking in the category of flagrant crime is motivated by the need to harmonize the Congolese criminal laws, and to avoid a double standard in treating acts of trafficking. As mentioned earlier, the Law 06/019 amending the Code of Criminal Procedure only lists sexual violence offences (including sex slavery, forced prostitution or pimping) as flagrant crimes<sup>123</sup> for which the legal obligation imposed to police officers to inform their hierarchical superior before arresting the alleged offender and investigating the case is not required.<sup>124</sup> The elevation of human trafficking to a flagrant crime would also imply that victims of all forms of trafficking will receive legal remedies in a timely manner since an expedited proceeding will be required.
- *Consecrate the extraterritorial competence of the Congolese courts over trafficking offences.* The country's courts should have jurisdiction over human trafficking offence regardless of whether or not that wrongdoing

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<sup>123</sup> Code of Criminal Procedure, art 7(bis).

<sup>124</sup> Id., art 10.

constitutes an offence at the place of its commission, if the perpetrator is: (1) a Congolese citizen, (2) a juristic person (or a partnership) registered in the DRC, (3) a foreign national who acted against a Congolese citizen, (4) a foreign national whose home country has no extradition treaty with the DRC or (5) a foreign national who cannot be extradited by the DRC for any reason. As matters stand, the Congolese Courts only have jurisdiction over infringements committed within the national borders,<sup>125</sup> unless the reprehensible act committed abroad constitutes an infringement both at the place of its commission and in the DRC.<sup>126</sup> This means that the Congolese courts would not have jurisdiction over trafficking offences committed abroad if those acts were not punishable at their place of commission. The rationale of the extension of jurisdictional competence of the DRC's courts is to discourage transnational criminals, and increase the scope of protection of trafficking victims so that any Congolese nationals who are victims of trafficking or any person who is victim of trafficking committed by a Congolese citizen should be entitled to legal remedies no matter the place of the commission of the wrongdoing and the wrongdoer's nationality. Kenya's Counter Trafficking in Persons Bill, for example, has similar provisions that extend the jurisdictional competence of its courts over human trafficking offences.<sup>127</sup>

- *Establish a uniform punishment for all acts of trafficking, including sex and non-sex trafficking.* This will correct the existing legal gap where non-sex traffickers are less severely punished. The law should also determine a minimum custodial term, i.e. a minimum sentence. Concerning the economic penalties, the law must increase fines for human trafficking offences, especially for trafficking for sexual and economic exploitation. As Siddharth Kara noted: “economic penalties for human trafficking offences must be elevated to a level that effectively inverts the high profit, low risk business profile that fuels demand among offenders to acquire and exploit trafficked slaves.”<sup>128</sup>
- *Set a maximum duration for all criminal proceedings involving human trafficking offences.* For the purpose of “legal harmonization”, the anti-human trafficking law could replicate Article 7 (*bis*) of the Law 06/019

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<sup>125</sup> Penal Code, art 2.

<sup>126</sup> *Id.*, art 3(1).

<sup>127</sup> Counter Trafficking in Persons Bill of 2010, sec. 25.

<sup>128</sup> S Kara, “Designing More Effective Laws Against Human Trafficking”, above at note 117, p.123.

which fixes a maximum period of four months for the adjudication of sexual violence cases.

- *Allow foreign victims of trafficking to temporarily remain in the country for their recovery regardless of their legal status in the country.* Like in Italy, the Congolese anti-trafficking law should consider granting temporary permit to trafficking victims regardless their willingness or reluctance to cooperate with judicial authorities by filing complaints against trafficking offenders.<sup>129</sup> Similarly in Kenya,<sup>130</sup> the temporary permit must enable trafficking victims to work for gain for the duration of their presence in the DRC or permit them to bring their children in DRC. It should be noted that the issuance of temporary permits to foreign trafficking victims presents several advantages such as: (1) permitting victims to testify against their traffickers and (2) allowing law enforcement officers to have accurate information about the high number of trafficking cases.<sup>131</sup>
- *Prevent explicitly the Ministry of Interior or the Directorate General of Migration (DGM) from repatriating trafficking victims to places from where they were trafficked without considering the safety of the victims during the process of repatriation, and their wellbeing in places to which they will be returned in order to prevent further harm or re-trafficking.*<sup>132</sup> In the case of internal trafficking or external trafficking of Congolese citizens, the Congolese Ministry of Interior or DGM should assess the safety risks for trafficking victims when they return to the country or their provinces of origin.

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<sup>129</sup>D Hamat and J Tribbett “A Comparative Analysis of Human Trafficking Legislation and Case Law,” above at note 37, p.13.

<sup>130</sup> Counter Trafficking in Persons Bill of 2010, sec. 15(3).

<sup>131</sup> D Hamat and J Tribbett “A Comparative Analysis of Human Trafficking Legislation and Case Law,” above at note 129, p.13.

<sup>132</sup> In *Nigeria v. Secretary of State for the Home Department* case, the UK Appeal Court emphasized the necessity of examining all parameters before repatriating trafficking victims to places from where they were trafficked because they were at risk of being re-trafficked upon their return. The Court held that: “A very careful examination of the circumstances in which the victim was first trafficked must be undertaken and careful findings made. If a victim has been told that she is required to earn a particular sum of money (“target earnings”) for the trafficker or gang, before being free of any obligation to the trafficker or gang, then, if the victim should escape before earning the target sums, there may well be a risk to the victim that on return to Nigeria she may be re-trafficked if found. The extent of the risk of the trafficking will very much depend on the circumstances in which the victim was originally trafficked.” See: *Nigeria v. Secretary of State for the Home Department* [2011] EWCA Civ. 132 Case No: C5/2010/0768, available at: [http://ec.europa.eu/anti-trafficking/download.action?nodeId=999bcfe9-9607-4dc8-9f7a-cea1248c2b47&fileName=PO+%28Nigeria%29+v+Secretary+of+State+for+the+Home+Department+\[2011\]+EWCA+Civ+132+%2822+February+2011%29.pdf](http://ec.europa.eu/anti-trafficking/download.action?nodeId=999bcfe9-9607-4dc8-9f7a-cea1248c2b47&fileName=PO+%28Nigeria%29+v+Secretary+of+State+for+the+Home+Department+[2011]+EWCA+Civ+132+%2822+February+2011%29.pdf) (last accessed 31 May 2012)

- *Have a stipulation granting all trafficking victims not only legal counseling and information, but also appropriate housing, psycho-medical and material assistance, employment, and educational and training opportunities.* The extension of these services to all trafficking victims would avoid creating a hierarchy of victims based on the crime committed against them or based on their age.<sup>133</sup>
- *Have a stipulation compelling the judges to adopt measures that allow victims or witnesses of trafficking to testify without fear and in a manner that ensures their safety.* As for criminal proceedings involving children or sexual violence offences,<sup>134</sup> those measures may include: removal of defendants, removal of particular spectators and/or media, limiting disclosure of witnesses' personal and identifying information, shielding the witness from the defendant and/or from spectators, disguising the face and/or distorting the voice of the witness, and allowing testimony via video-conferencing or other communication technology.<sup>135</sup>
- *Extend the list of persons who may have legal standing to initiate civil actions for human trafficking offences committed against children.* As earlier mentioned, children are legally incapable and lack legal standing to approach the court under the Congolese law,<sup>136</sup> and only their parent or legal guardian can act on their behalf. This state of affairs is problematic, particularly for a child who is trafficked by his/her parents or legal guardian. So, in addition to the parents or legal guardian, the anti-human trafficking law should allow the child her/himself (whether or not with the assistance of an advocate) or the public prosecutor to initiate civil action against a child trafficker. This would be a major innovation in terms of protecting trafficking victims in the DRC, but it would not be the first time where a legal provision exceptionally recognizes legal standing to children (for a specific matter). Indeed, the UN Convention on the Rights of the Child, which the DRC has ratified<sup>137</sup>, guarantees children legal standing for any judicial and administrative proceedings concerning them either directly or indirectly.<sup>138</sup> Even though the

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<sup>133</sup> UNODC, "Model Law against Trafficking in Persons", p.43, available at: <[http://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)> (last accessed 12 June 2012).

<sup>134</sup> Code of Criminal Procedure, art 74(bis)(1).

<sup>135</sup> UNODC, "Model Law against Trafficking in Persons", above at note 159, art 23, p.49.

<sup>136</sup> Code of Family, above at note 100, art 215(1).

<sup>137</sup> UN Convention on the Rights of the Child, Nov. 20, 1989, available at: <<http://www2.ohchr.org/english/law/crc.htm>> (last accessed 12 June 2012). Ratified by the DRC on September 27, 1990.

<sup>138</sup> Id., art 12(2).

child is also legally incapable in France, however Article 375 of the French Civil Code exceptionally recognizes a legal standing to the child for issues affecting his/her educational assistance.<sup>139</sup>

- *Oblige the courts to order the convicted traffickers to pay appropriate compensation<sup>140</sup> to trafficking victims, and to determine the method of and the time within which the payment should be made.*
- *Create an Inter-sectoral Committee to prevent and confront human trafficking, which may include representatives of ministries of justice, interior, labor and social affairs, police, national intelligence agencies, and non-governmental agencies.* Like the U.S. Trafficking Victims Protection Act of 2000<sup>141</sup>, the role of that Inter-sectoral Committee would be to develop and implement various public awareness programs or other measures in order to prevent and combat human trafficking, which may consist of informing parents and communities about the danger of child sexual exploitation and forced labor for the future of their children and their community. It should also sensitize employers not to include victims of trafficking or forced labor in their supply chains, whether through subcontracting or directly in their production.<sup>142</sup>
- *Have a stipulation that compels the leaders of the ministry of justice or other government departments to regularly organize training programs to reinforce the capacities of judicial actors (judges and public prosecutors) and other law enforcement officers in prosecuting human traffickers.* The training of law enforcement officers is also necessary, especially if they will be called to investigate and prosecute domestic and international human trafficking offences.

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<sup>139</sup> Code Civil Français tel que modifié par Loi n°2007-293 du 5 mars 2007[French Civil Code as modified by the Law 2007-293 of March 5, 2007], art 375. Available at: < <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070721&idArticle=LEGIARTI000006426776&dateTexte=20110513>> (last accessed 12 June 2012).

<sup>140</sup> Like the South African Prevention and Combating of Trafficking in Persons Act (sec. 29), the compensation to trafficking victims relates to damage, loss, destruction of property, physical, psychological or other injury, being infected with a life-threatening disease, and loss of income as a result of the commission of trafficking offences.

<sup>141</sup> Trafficking Victims Protection Act of 2000, sec.105.

<sup>142</sup> UNODC, “Model Law against Trafficking in Persons”, above at note 161, art 35, p.67.

## Conclusion

The purpose of this paper was to analyze the necessity of adopting a comprehensive anti-human trafficking law in the DRC. Several thousands of women, men and children are subjected to various forms of human trafficking in the DRC. The absence of a comprehensive law against trafficking implies that victims of trafficking are not sufficiently protected and perpetrators of trafficking are not efficiently punished. By enacting a domestic anti-human trafficking law that covers all aspects of trafficking and establishes appropriate penalties against these acts, the DRC would increase its likelihood of effectively protecting trafficking victims, investigating trafficking offences, prosecuting trafficking offenders, and deterring potential traffickers.

Passing the law is also an international obligation that the DRC should comply with because of its ratification of the Palermo Protocol.<sup>143</sup> The failure of the DRC to adopt holistic legislation that addresses all aspects of human trafficking may be considered as a violation of its international obligations. In *Siliadin v. France*,<sup>144</sup> the European Court of Human Rights held that France violated its obligations under the European Convention on Human Rights by failing to take adequate legal, judicial, and administrative measures against human trafficking.<sup>145</sup> From this ruling, it should be understood that the adoption of an anti-trafficking law is not the finality in the fight against trafficking, but should be accompanied by other measures and programs to ensure effectiveness.

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<sup>143</sup> Palermo Protocol, art 9.

<sup>144</sup> *Siliadin v. France*, App. No. 73316/01, Eur. Ct. H.R. (2010), available at: <[http://www.coe.int/t/dghl/monitoring/trafficking/docs/echr/SILIADIN\\_v\\_FR.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/docs/echr/SILIADIN_v_FR.pdf)> (last accessed 12 June 2012).

<sup>145</sup> *Id.*, at 67-68.

# **Who's Watching the Watchdog?: Are the Names of Corporations Mandated to Disclose under the California Transparency in Supply Chain Act Subject to a Public Records Request?**

**Benjamin Thomas Greer\***

## **ABSTRACT**

Trafficking is a highly dynamic and fluid criminal phenomenon. Determined traffickers react remarkably well to consumer demand and under-regulated economic sectors and easily adapt to legislative weaknesses. Corporate globalization of manufacturing and storefronts is contributing to human trafficking; aiding in forced labor in becoming the fastest growing and the third most widespread criminal enterprise in the world. As technology advances, allowing greater and easier access to goods from more remote countries, vulnerable populations become easier targets for traffickers to exploit. Understanding U.S. markets are key destinations for goods, enlightened states are looking to bolster their anti-trafficking criminal codes by requiring businesses to better clarify their efforts to discourage human trafficking/forced labor within their supply chains. The California State Legislature has begun an aggressive approach aimed at fostering greater public awareness of slave labor by requiring certain businesses to clearly articulate their anti-trafficking/anti-forced labor policies. California was the first government – local, state or federal - to codify mandatory policy disclosures. The California Transparency in Supply Chains Act of 2010 requires businesses domiciled in California and earning more than \$100 million to conspicuously disclose on their publically accessed webpage, what policies, if any, they have implemented to detect and fight slave labor. The legislature intended to equip the common consumer with the needed information to effectively hold businesses accountable for human rights abuses. In order for the public to properly hold businesses accountable for their labor practices, it is essential the names of business subject to the disclosure be made public. The California Public Records Act should be a tool for concerned consumers and advocates to obtain the statutory list of affected companies.

- I. Introduction
- II. Corporate Globalization and Human Trafficking in the United States
  - a. Human Trafficking is Modern Day Slavery
  - b. The Diffuse Nature of Corporate Globalization Has Increased the Marketplace for Slave Made Goods
- III. Application of California's Public Records Request to the CSCTA
  - a. California's General Rule to Public Disclosures
  - b. Exceptions to Disclosure
- IV. Conclusion

## I. Introduction

Trafficking is a highly dynamic and fluid criminal phenomenon. Determined traffickers react remarkably well to consumer demand and under-regulated economic sectors and easily adapt to legislative weaknesses.<sup>1</sup> The California State Legislature has begun an aggressive approach aimed at fostering greater public awareness of slave labor by requiring certain businesses to clearly articulate their anti-trafficking/anti-forced labor policies within their supply chains.

Corporate globalization of manufacturing and storefronts is contributing to human trafficking; aiding in human trafficking becoming the fastest growing<sup>2</sup> and the third most widespread criminal enterprise in the world.<sup>3</sup> According to the State Department's 2012 *Trafficking in Persons Report*, there may be as many 27 million adults and children in forced labor, bonded labor, and forced prostitution worldwide.<sup>4</sup> An estimated 2.5 million people worldwide are compelled into forced labor at any given moment.<sup>5</sup>

As technology advances, which allows for greater and easier access to goods from more remote countries, vulnerable populations become easier targets for

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<sup>1</sup> United States Department of State, *Trafficking in Persons Report* (United States Department of State: 2010), 4, available at <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm#rpt> (last visited January 31, 2011).

<sup>2</sup> Nidhi Kumar, "Reinforcing Thirteenth and Fourteenth Amendment Principles in the Twenty-first Century: How to Punish Today's Masters and Compensate Their Immigrant Slaves," *Rutgers Law Review* 58, (2006): 303, 306-07 (quoting Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley, CA: University of California Press, 2004) 6, 232 identifying three factors that he believes have led to the resurgence of slavery "The first is the population explosion that flooded the world's labor markets with millions of poor and vulnerable people. The second is the revolution of economic globalization and modernized agriculture which has dispossessed poor farmers and made them vulnerable to enslavement. In the new world economy capital flies wherever labor is cheapest, and the financial links of slavery can stretch around the world. The third factor is the chaos of greed, violence, and corruption created by this economic change in many developing countries, change that is destroying the social rules and traditional bonds of responsibility that might have protected potential slaves").

<sup>3</sup> Luz Estella Nagle, "Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude," *Wisconsin International Law Journal* 26, (2008): 131, 137.

<sup>4</sup> United States Department of State, *Trafficking in Persons Report* (United States Department of State: 2012), 7, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

<sup>5</sup> International Labour Organization, *Forced Labor Statistics Factsheet* (2007)



traffickers to exploit.<sup>6</sup> Traffickers are reaping enormous financial gain from the emerging “global culture.” Global profits derived from forced labor are estimated to be in excess of \$31.6 billion, annually.<sup>7</sup> Understanding U.S. markets are key destinations for goods, enlightened states are looking to bolster their anti-trafficking criminal codes by requiring businesses to better clarify their efforts to discourage human trafficking/forced labor within their supply chains.

The California legislature was the first government – local, state or federal – to codify mandatory anti-trafficking policy disclosures. The *California Transparency in Supply Chains Act of 2010* requires businesses domiciled in California and earning more than \$100 million to conspicuously disclose on their publically accessed webpage, what policies, if any, they have implemented to detect and fight slave labor. The legislature intended to equip the common consumer with the needed information to effectively hold businesses accountable for human rights abuses. In order for the public to properly hold businesses accountable for their labor practices, it is essential the business subject to the disclosure be made public. The California Public Records Act should be a tool for concerned consumers and advocates to obtain the statutory list of affected companies.

## **II. Corporate Globalization and Human Trafficking in the United States**

### **a. Human Trafficking is Modern Day Slavery**

Human trafficking and sexual exploitation are unspeakable atrocities that ravage the lives of its victims and is commonly organized into three chief categories: (1) Commercial Sexual Exploitation or CSE;<sup>8</sup> (2) Forced Labor;<sup>9</sup> and

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<sup>6</sup> Luz Estella Nagle, “Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude,” *Wisconsin International Law Journal* 26, (2008): 131, 138; Dr. Raneen Khooshie Lal Panjabi, “Born Free Yet Everywhere in Chains: Global Slavery in the Twenty-First Century,” *Denver Journal of International Law and Policy* 37, no. 1 (2008): 1, 3.

<sup>7</sup> Patrick Besler, *Forced Labour and Human Trafficking: Estimating the Profits*, working paper (Geneva, International Labour Office, 2005) [\$15 billion - 49% is generated in industrialized economies, \$9.7 billion - 30.6% is generated in Asia and the Pacific, \$1.3 billion - 4.1% is generated in Latin America and the Caribbean, \$1.6 billion - 5% is generated in sub-Saharan Africa, and \$1.5 billion - 4.7% is generated in the Middle East and North Africa.].

<sup>8</sup> See Generally, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While*, Cornell University ILR School, International Labour Office [Commercial Sexual Exploitation (CSE) is a special sub-class of forced labor. Because of its particularly heinous nature is commonly separated and listed as an enumerated “form” of trafficking].

<sup>9</sup> See Generally, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While*, Cornell University ILR School, International Labour Office [“forced labor” is a term that could encompass most all actions, traditionally in relation to human trafficking forced labor refers to: hotel/hospitality, peddling, restaurant work, sweatshop/garment, child/elderly care, and construction].

(3) Domestic Servitude.<sup>10</sup> Federal and state statutory definitions vary; however they contain common elemental threads. Trafficking is generally defined as the recruitment, transportation, or harboring of a person against their will through the use of force, coercion, fraud, or deception, to be exploited for sex or forced labor purposes. Traffickers are rapacious and treat victims' bodies as renewable resources. Too often victims sustain horrific physical and psychological abuse from traffickers and exploitative consumers.<sup>11</sup>

Traditionally, law enforcement has employed a myopic view of human trafficking, focusing primarily on the sexual exploitation trade (i.e. prostitution).<sup>12</sup> Strongly influenced by advocacy groups, federal and state governments have begun to re-conceptualize their understanding of human trafficking to include compelled and forced labor. In its June 2010 *Trafficking in Persons Report*, the United States Department of State reported, "More people are trafficked for forced labor than commercial sex."<sup>13</sup> The State Department also highlighted the International Labour Organization's estimates that there is nine times the amount of trafficked victims subjugated into forced labor than the sex trade.<sup>14</sup> Textile manufacturing, domestic labor providers, construction sites, and agricultural employment roles<sup>15</sup> are garnering renewed societal and regulatory scrutiny for their sources of labor. Unwitting consumers will often support these industries with their purchase of forced labor-made goods.

The largest concentrations of trafficked victims within the United States are located in California, Oklahoma, Texas and New York.<sup>16</sup> With the state's extensive

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<sup>10</sup> See Generally, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While*, Cornell University ILR School, International Labour Office [While domestic servitude is a form of forced labor, it has traditionally been separated from other forms of forced labor such as mining and agricultural work].

<sup>11</sup> See NAT'L COAL. AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING FACTS 1 (2012), available at <http://www.ncadv.org/files/HumanTrafficking.pdf> (reporting that female victims of sex trafficking sustain serious physical injuries, have an increased risk of contracting HIV, and other sexually transmitted diseases, and meet the clinical criteria for post traumatic stress disorder).

<sup>12</sup> *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, Kim, Kathleen and Chang, Grace; Legal Studies Paper No. 2007-47 December 2007 p1.

<sup>13</sup> United States Department of State, *Trafficking in Person Report* (United States Department of State: 2010), 4. available at <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm#rpt> (last visited January 31, 2011).

<sup>14</sup> Ibid., 7.

<sup>15</sup> See generally, *The War on Human Trafficking: U.S. Policy Assessed*, Anthony M. DeStefano Rutgers University Press (2008).

<sup>16</sup> U.S. Dep't of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003* (2004) [In Fiscal Year 2002, the Office of Refugee Resettlement issued letters to benefit offices in fourteen states, of which the largest concentrations were to Texas (31 percent), Florida (nineteen percent), and California (14 percent). Note that these concentrations reflect where victims were living after victimization and do not necessarily reflect where they were victimized.] (available at <http://www.justice.gov/archive/ag/annualreports/tr2003/050104agreporttocongresstvprav10.pdf>) (last visited January 31, 2011).

borders, major shipping ports, and powerful economy, California is an enticing and fertile terminal for traffickers to sell victims and exploit their victim's labor.<sup>17</sup> Recognizing its critical role as a market destination,<sup>18</sup> California has aggressively updated its criminal and civil codes.

In 2012, the California Attorney General formed a new Human Trafficking Work Group. The workgroup was comprised of a comprehensive multidisciplinary cross-section of local law enforcement anti-trafficking task forces, human trafficking victim services organizations, domestic violence and sexual assault service providers, immigrant rights groups, legal services providers, academia, and technology companies. The workgroup discussed pressing issues such as: how to collect and organize data on the nature and extent of trafficking in California, law enforcement investigation and prosecution challenges, victim services challenges, further legislative efforts, and law enforcement and community training advancement and how technology can be utilized to prevent and detect victims. The meetings culminated in an updated statewide report. The 2012 report contained these findings:

- From mid-2010 to mid-2012, California's nine regional human trafficking task forces identified 1,277 victims, initiated 2,552 investigations, and arrested 1,798 individuals.
- In the same two-year period, California's task forces provided training to 25,591 law enforcement personnel, prosecutors, victim service providers, and other first responders. Several non-governmental organizations have also trained judicial officers, airport personnel, social service providers, pro bono attorneys, and retail businesses, among others. The variety of individuals who have been trained underscores the pervasiveness of human trafficking and the important role that governmental and non-governmental actors play in detecting trafficking and assisting victims.
- 72% of human trafficking victims whose country of origin was identified by California's task forces are American. The public perception is that human trafficking victims are from other countries, but data from California's task forces indicate that the vast majority are Americans.

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<sup>17</sup> *Human Trafficking in California: Final Report of the California Alliance to Combat Trafficking and Slavery Task Force*. (available at [http://www.ag.ca.gov/publications/Human\\_Trafficking\\_Final\\_Report.pdf](http://www.ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf)) (last visited January 31, 2011).

<sup>18</sup> Human Rights Center. (2005) *Freedom Denied: Forced Labor in California*, University of California, Berkley, (available at <http://www.hrcberkeley.org/download/freedomdenied.pdf>) (last visited February 2, 2011.).

- Labor trafficking is under-reported and under-investigated compared to sex trafficking. 56% of victims who received services through California's task forces were sex trafficking victims. Yet, data from other sources indicate that labor trafficking is 3.5 times as prevalent as sex trafficking worldwide.
- Transnational gangs are increasingly trafficking in human beings because it is a low penal risk and high monetary reward, and a renewable profit source. It is critical for federal, state, and local law enforcement and labor regulators to collaborate across jurisdictions to disrupt and dismantle these increasingly sophisticated, organized criminal networks.
- A vertical prosecution model run outside routine vice operations can help law enforcement better protect victims and improve prosecutions. Fostering expertise about human trafficking within a law enforcement agency and handling these cases outside routine vice operations can prevent erroneously viewing trafficking victims as perpetrators.
- Early and frequent collaboration between law enforcement and victim service providers helps victims and prosecutors. Victims who receive immediate and comprehensive assistance are more likely to help bring their traffickers to justice.
- Traffickers are reaching more victims and customers by recruiting and advertising online. Traffickers use online advertising and Internet-enabled cell phones to access a larger client base and create a greater sense of anonymity. Law enforcement needs the training and tools to investigate trafficking online.
- Technology is available to better identify, reach, and serve victims. Tools like search-term-triggered messages, website widgets, and text short codes enable groups to find victims online, connect them with services, and encourage the general public to report human trafficking.
- Alert consumers need more tools to leverage their purchasing power to reduce the demand for trafficking. Public and private organizations are just beginning to create web-based and mobile tools to increase public awareness and educate consumers about how to help combat human trafficking.

California is a key battleground in the fight against human trafficking. California contains several major points of entry into the United States from

Central/South America and the Pacific Rim. The agricultural economy and manufacturing and powerful customer base also provide the “pull” factors many traffickers seek.<sup>19</sup> Understanding its role as a major market destination for traffickers,<sup>20</sup> the California Legislature has attempted to systematically and holistically amend its governing codes to give victims legal protections ensuring comprehensive penal redress and are attempting to foster greater awareness of the origin of products.

A deeper understanding of human trafficking requires a critical analysis of not only the criminal acts and intent, but also understanding the economics of how slave made products affect the local marketplace. By illuminating tainted supply chains, governments can begin to effectively reduce consumer demand, hopefully reducing forced labor. The California Transparency in Supply Chains Act of 2010 (CTSCA) clearly states its target and purpose:

It is the policy of this state to ensure large retailers and manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains, to educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of slavery and human trafficking.<sup>21</sup>

The California Legislature, in requiring specific businesses<sup>22</sup> to provide anti-trafficking policy information on their websites, is attempting to arm the consumer with crucial information they would not otherwise have access to. This forced disclosure is made with the hopes that businesses will begin to implement and/or maintain effective anti-human trafficking policies based on potential public scorn and reputational harm.

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<sup>19</sup> CAL. DEP'T OF JUSTICE, OFFICE OF THE ATT'Y GEN., THE STATE OF HUMAN TRAFFICKING IN CALIFORNIA 2012 (2012) available at <http://oag.ca.gov/human-trafficking/2012> (last visited December 21, 2012); *Human Trafficking in California: Final Report of the California Alliance to Combat Trafficking and Slavery Task Force*, (available at [http://www.ag.ca.gov/publications/Human\\_Trafficking\\_Final\\_Report.pdf](http://www.ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf)) (last visited January 31, 2011).

<sup>20</sup> Human Rights Center. (2005) *Freedom Denied: Forced Labor in California*, University of California, Berkley, (available at <http://www.hrcberkeley.org/download/freedomdenied.pdf>) (last visited February 2, 2011.).

<sup>21</sup> SB 657

<sup>22</sup> See SB 657 (stating that this Act applies to retail sellers and manufacturers who do business in California and have \$100,000,000 in gross-receipts world-wide each year).

## **b. The Diffuse Nature of Corporate Globalization Has Increased the Marketplace for Slave Made Goods**

The globalization of the marketplace has led to more opaque and complex supply chains.<sup>23</sup> Across the world there are hundreds of thousands of trafficked victims forced to work in controlled environments where the worker is effectively isolated and easily dominated: remote farms, mineral quarries, raw material mines, off-shore fishing platforms, or industrial sweatshops. While a majority of multinational corporations do not publicly condone human trafficking, they do, however, share a common goal – maximizing profits. Lower labor costs permit companies to produce cheaper commodities and in-turn increases their market share and profit margins. This is often irresistible, allowing otherwise honorable companies to become lax in the supply chain investigations or seek out increasingly less reputable suppliers in hopes of reducing their costs.

A 2011 U.S. Department of Labor study found 130 products from 71 countries were made by forced and child labor – mostly originating in Asia, Africa and South America.<sup>24</sup> With California's economy being a sought after destination, the California State Legislature wanted to provide consumer awareness and informational disclosures upon which societal pressures could be leveraged upon retail sellers. Many anti-slavery groups argued that the CSCTA “would create an opportunity for California companies to demonstrate leadership in eradicating slavery and human trafficking from their supply chains and empower consumers to reward companies that proactively engage in such efforts.”<sup>25</sup> Many large companies and retail sellers already impose internal standards and procedures to

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<sup>23</sup> United States Department of State, *Trafficking in Persons Report* (United States Department of State: 2012), 26. available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

<sup>24</sup> *U.S. Department of Labor's List of Goods Produce by Child Labor of Forced Labor*, U.S. Department Office of Labor Bureau Of International Labor Affairs Office of Child Labor, Forced Labor, and Human Trafficking, p. 27 available at [www.dol.gov/ilab/programs/ocft/PDF/2011TVpra.pdf](http://www.dol.gov/ilab/programs/ocft/PDF/2011TVpra.pdf).

<sup>25</sup> Gebauer, Susanne, *Complying with The California Transparency in Supply Chains Act 2010*, Society of Corporate Compliance and Ethics, August 2011.

ensure the environmental and ethical treatment of their employees and that the sources of their raw materials were not obtained through human rights abuses.<sup>26</sup>

However, where industry has demonstrated a reluctance to ensure societal responsible activities, methods that utilize market forces to pressure companies into the legitimate, non-illicit economy ought to be aggressively advanced. Market forces have been affected by “[t]he corporate social responsibility movement [which] seeks to influence directly or indirectly or control corporate behavior through a combination of (1) marketplace activism (influence over or via capital structure and sales of the corporation), (2) internal self-regulation (codes of conduct), and (3) shareholder activism.”<sup>27</sup> Marketplace activism is an attempt to apply external pressure against a wrong-doing corporation; such pressure can include boycotts by consumers, and shaming those consumers who do not honor the boycott. Publicly naming corporations who fail to abide by basic human rights in their factories has proven an effective method.<sup>28</sup>

Slave labor supports an abundance of industries. From the more traditional fashion, agricultural, and mining industries;<sup>29</sup> slave labor has spread to support the emerging industrial base of technology manufacturing. A majority of companies want to be good corporate citizens. Proper supply chain disclosure could provide an opportunity to burnish a company's brand. As California Attorney General Harris, herself, has stated in her book *Smart on Crime*, “Those who know they have a lot to lose are more likely to engage in a cost-benefit analysis of the consequences of a crime.”<sup>30</sup> In order for effective marketplace activism, consumers and anti-trafficking groups wishing to hold companies accountable for their supply chain practices, it is crucial the public have access to which companies are subject to the CSCTA.

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<sup>26</sup> See Miguel Marcos, *Are you sure that your shirt is slavery-free?: The California Transparency in Supply Chains Act of 2010*, p.3 available at <http://www1.umn.edu/humanrts/links/CaliforniaTrafficking2011.pdf> [Citing Steve New, “The Transparent Supply Chain: Let your consumers know everything about where your products come from – before they discover it first,” *Harvard Business Review* 76, (2010) (commenting that “consumers, governments, and companies are demanding details about the systems and sources that deliver the goods. They worry about quality, safety, ethics, and environmental impact. Farsighted organizations are directly addressing new threats and opportunities in answering the question where does this stuff come from? But many companies are already making a strong case for provenance of their products.” *Id.* at 77.). See also Paul Tyrrel, *Buyers unravel the ethics behind the label*, Sept. 15, 2010, THE FINANCIAL TIMES LIMITED (commenting that the Global Reporting Initiative, a network of 20,000 organizations developing a framework for corporate sustainability reporting, published, “The Transparent Economy”, a report that identified traceability as a key challenge in corporate reporting over the next decade). The Transparent Economy is available at Global Reporting Initiative, <http://www.globalreporting.org/LearningAndSupport/GRIPublications/LearningPublications/Explorations/>.]

<sup>27</sup> Eric Engle, “Corporate Social Responsibility (CSR): Market-Based Remedies for International Human Rights Violations?,” *Willamette Law Review* 40, (2004): 106.

<sup>28</sup> Diane L. Fahey, “Can Tax Policy Stop Human Trafficking?,” *Georgetown Journal of International Law* 40, (2009): 378-379.

<sup>29</sup> *Labor Trafficking in Supply Chain*, Global Freedom Center, p. 1, available at <http://t.co/NpRuUxiK>.

<sup>30</sup> Kamala D. Harris, *Smart on Crime* (San Francisco: Chronicle Books, 2009), 96.

### **III. Application of California's Public Records Request to the CSCTA**

The CSCTA requires retail sellers and manufactures doing business in California, with worldwide gross receipts in excess of \$100 million, to disclose to the public their efforts to ensure their supply chains are free of forced labor. The CSCTA's intent was unquestionably to provide information for concerned consumers.<sup>31</sup> To effectuate this disclosure, the California Franchise Tax Board (FTB) is charged with compiling a list of entities falling within liability status and to provide the list to the California Attorney General's Office by November 30<sup>th</sup> of each associated year.<sup>32</sup> At the time of passage of the bill there were an estimated 3,200 companies with a sufficient presence triggering disclosure.<sup>33</sup> To date, approximately 600 companies have California Supply Chain titled policy pages.<sup>34</sup> While a company falling under CSCTA's jurisdiction is not legally required to affirmatively engage in eradication methods or procedures, they are required to publicly state what, if any, methods they do employ. The presumed pressure in disclosure of non-activity would provide the anti-trafficking advocacy community substantive material for a "name and shame" public campaign.<sup>35</sup> The CSCTA was designed illuminate a product's manufacturing stream, leveraging societal pressures and market incentives to encourage good corporate citizenship and best practices. As concerned consumers and anti-trafficking groups wish to ensure proper corporate compliance, the list compiled by the FTB may be the subject of a public records request.

#### **a. California's Rule to Public Disclosures**

The Public Records Act was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies.<sup>36</sup> California Government Code Section 6250 states: "... [A]ccess to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state"<sup>37</sup> and a public record "includes any writing containing information relating to the conduct of the public's

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<sup>31</sup> S.B. 657, 2010 Leg., Reg. Sess. (Cal. 2010) (enacted).

<sup>32</sup> See Cal. Rev. & Tax Code Sec. 19547.5.

<sup>33</sup> AP – *Salve Labor Targeted in Calif. Law, Social Media*, available at <http://abcnews.go.com/US/wireStory/slave-labor-targeted-calif-law-social-media-15260774>, visited January 3, 2012.

<sup>34</sup> On file with Author

<sup>35</sup> Ibid.

<sup>36</sup> Consolidated Irr. Dist. v. Superior Court, 205 Cal. App. 4th 697 (2012).

<sup>37</sup> See Cal. Gov. Code Section 6250.



business prepared, owned, used, or retained by any state or local agency....”<sup>38</sup> California case law has routinely held that implicit in the democratic process is the notion that government should be accountable for its actions and, in order to verify accountability, individuals *must* have access to government files to permit checks against the arbitrary exercise of official power and secrecy in the political process – essentially creating citizen auditors.<sup>39</sup> Unless explicitly exempted by the legislature, all public records may be examined by any member of the public with no greater interest than idle curiosity.<sup>40</sup> While disclosure is not absolute,<sup>41</sup> it is to be broadly construed and exemptions are narrowly construed.<sup>42</sup> An agency opposing disclosure under the California Public Records Act (CPRA) bears the burden of proving that an exemption applies<sup>43</sup> and such an assertion is reviewable by petition for writ of mandate in a “reverse-CPRA” lawsuit.<sup>44</sup>

The list of companies subject to the CSCTA compiled by the Franchise Tax Board and statutorily disclosed to the Attorney General’s Office clearly falls within these definitions and public concern. The information contained in the FTB list is an essential component of the legislative intent of public disclosure. Without the disclosure of the list the public would not have the ability to verify the Attorney General’s faithful and diligent adherence to its mandate as watchdog and the proper execution of the *sole* statutory remedy of injunction. As the Legislature specifically found:

Absent publicly available disclosures, consumers are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products free from the taint of slavery and trafficking. Consumers are at a disadvantage in being able to force the eradication of slavery and trafficking by way of their purchasing decisions.<sup>45</sup>

Allowing business names to be subject to a public records request creates the citizen auditors the case law presumes and legislature intended to create. Absent a valid exception, the denial of a request by the Franchise Tax Board or the

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<sup>38</sup> See Cal. Gov. Code Section 6252.

<sup>39</sup> International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court, 42 Cal. 4th 319, 165 P.3d 488 (2007) [emphasis added].

<sup>40</sup> San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist., 139 Cal. App. 4th 1356 (2006).

<sup>41</sup> American Civil Liberties Union of Northern Cal. v. Superior Court, 202 Cal. App. 4th 55 (2011).

<sup>42</sup> County of Los Angeles v. Superior Court, 211 Cal. App. 4th 57 (2012).

<sup>43</sup> County of Santa Clara v. Superior Court, 170 Cal. App. 4th 1301 (2009).

<sup>44</sup> Marken v. Santa Monica-Malibu Unified School Dist., 202 Cal. App. 4th 1250 (2012).

<sup>45</sup> S.B. 657, 2010 Leg., Reg. Sess. (Cal. 2010) (enacted).

California Attorney General's Office would clearly frustrate the spirit and essence of the CSCTA.

## **b. Exceptions to Disclosure**

Disclosure of public records pursuant to California Public Records Act (CPRA) involves two fundamental, yet competing, interests: (1) prevention of secrecy in government and (2) protection of individual privacy.<sup>46</sup> All public records are subject to disclosure unless the legislature has expressly provided to the contrary<sup>47</sup> and will be narrowly construed.<sup>48</sup> In assigning weight to the general public's interest in disclosure, courts should look to the nature of the information and how disclosure of that information contributes to the public's understanding of government.<sup>49</sup> As even the Attorney General's office has routinely opined: "[M]ost records maintained by state and local agencies are subject to disclosure."<sup>50</sup>

The FTB is expressly enjoined from disclosing "information as to the amount of income or any particulars (including the business affairs of a corporation)" included in tax returns filed with the Board.<sup>51</sup> The name and state identifying number of a corporation are explicitly excluded from this prohibition.<sup>52</sup> The California Revenue and Tax Code defines "[b]usiness affairs," as "details relative to the business activities of the entity as disclosed by the return but . . . exclude extraneous matters, such as the exact corporate title, [and state] corporate number...."<sup>53</sup> This extraneous information can be disclosed as long as "there is no reason to believe that the information will be used for commercial list purposes."<sup>54</sup> The public policy exception to the tax return privilege, preventing compelled disclosure of tax returns, is narrow and only applies when warranted by a legislative declaration,<sup>55</sup> supporting a compelling state interest.<sup>56</sup> These exceptions are rarely sustained.<sup>57</sup>

Retailers subject to list identification are likely to assert their loss of

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<sup>46</sup> *Gilbert v. City of San Jose*, 114 Cal. App. 4th 606 (2003).

<sup>47</sup> *Teamsters Local 856 v. Priceless, LLC*, 112 Cal. App. 4th 1500 (2003).

<sup>48</sup> *American Civil Liberties Union of Northern Cal. v. Superior Court*, 202 Cal. App. 4th 55 (2011).

<sup>49</sup> *Humane Society of the United States v. Superior Court of Yolo County*, 214 Cal. App. 4th 1233 (2013).

<sup>50</sup> AG Opinion No. 07-208, 2008 Cal. AG LEXIS 25, at 2 (May 19, 2008).

<sup>51</sup> See Cal. Rev. & Tax Code Sec. 19542.

<sup>52</sup> See Cal. Rev. & Tax Code Sec. 19542.

<sup>53</sup> See Cal. Rev. & Tax Code Sec. 19543(a).

<sup>54</sup> See Cal. Rev. & Tax Code Sec. 19543(a).

<sup>55</sup> *Deary v. Superior Court*, 87 Cal. App. 4th 1072 (2001).

<sup>56</sup> *Fortunato v. Superior Court*, 114 Cal. App. 4th 475 (2003).

<sup>57</sup> *Fortunato v. Superior Court*, 114 Cal. App. 4th 475 (2003).

competitive advantage in the market place by disclosing annual receipts. Any tangential privacy interest arising from its identification as an entity subject to the parameters of the CTSCA directly conflicts with the legislation's express directives. At its core, the CTSCA is a public awareness and disclosure law. Even under the balancing of equities analysis, any perceived privacy interest in the list information held by a corporation must bow, to the express intent of the law and the public's overriding interest in disclosure.<sup>58</sup> Mere assertion of possible endangerment from the disclosure of public records does not "clearly outweigh" the public interest in access to the records, as required to compel nondisclosure.<sup>59</sup> The courts have repeatedly held that the fear of possible condemnation or embarrassment is insufficient to prevent disclosure of records under a valid California Public Records Act request.<sup>60</sup> Additionally, a corporation's annual revenue is not confidential information. Its mandatory annual 10-K filing with the Security and Exchange Commission, a company is required public reporting of the exact same worldwide revenue. This information is subject to public inspection and is published in numerous outlets - often found on the corporation's own website. Given these similar parallel public-reporting requirements, any concern of loss of confidentiality are entirely hollow. Provided the body of case law, the Attorney General's own published legal opinions, and the lack of confidentiality, the balancing test of Section 6255 must fall in favor of the public's interest in disclosure.

#### **IV. Conclusion**

Globalization of the manufacturing base and marketplace storefront encourages the movement of people and capital across borders. While this corporate evolution is not inherently predatory, trafficking syndicates often capitalize on the permeable nature of borders and the unique need of a large and available workforce.<sup>61</sup> Human trafficking is an egregious crime that occurs in almost every country in the world. As corporations spread globally, searching for cheaper labor costs increase the risk to vulnerable populations. The further the supply chain is removed from the end consumer, higher the likelihood of illicit criminal activity and the less likely the consumer will be aware of it.<sup>62</sup>

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<sup>58</sup> See Cal. Gov't Code Sec. 6255.

<sup>59</sup> County of Santa Clara v. Superior Court, 170 Cal. App. 4th 1301(2009).

<sup>60</sup> New York Times Co. v. Superior Court, 52 Cal. App. 4th 97 (1997).

<sup>61</sup> Dr. Ranee Khooshie Lal Panjabi, "Born Free Yet Everywhere in Chains: Global Slavery in the Twenty-First Century," Denver Journal of International Law and Policy 37, no. 1 (2008): 6-7.

<sup>62</sup> See Patrick Keenan, Patrick, "Do Norms still matter? The Corrosive effects of Globalization on the vitality of Norms," Vanderbilt Journal of Transnational Law 41, no. 2 (2008): 327, 355-370.

If a corporation is certain the behavior of their suppliers will not be discovered, potential rewards and sanctions become exceedingly less relevant. Information disclosure is therefore a vital tool for consumer awareness and lead to meaningful social controls. When corporations are held accountable to the consumer – corporate behavior is monetarily motivated to change. With proper supply chain disclosure, activists can target corporations who sell goods which fail to meet the community's standards and voice their disapproval with a free market approach by taking their business elsewhere. Because corporate profit margins are too often elevated above human right concerns, policy makers are exploring new avenues to encourage good corporate behavior.<sup>63</sup> The United States has one of the world's most powerful economies. From that position of strength, it stands in a unique position to influence corporate behavior.

A comprehensive approach to fighting forced labor involves a strong criminal justice response, but also necessarily includes effective methods of public awareness to prevent future predation. Our legislatures and legal systems have begun to formulate and structure the necessary responses to protect those who are vulnerable. Instead of promoting better business practices and foreign labor conditions through government action, the power to effect change lies in the (invisible) hands of the consumers and their free market approach of demand. The California legislature has crafted an attempt to give the consumer the role of watchdog. Making the list of companies required to comply with CSTCA public is an essential component to the effectiveness of the law. Failing to make the list public would deprive the concerned citizens of California their right to ensure full compliance with and enforcement of this landmark law.

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<sup>63</sup> United States Department of State, *Trafficking in Person Report* (United States Department of State: 2012), 7, 26. available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

# **A Truly Free State in the Congo: Slavery and Abolition in Global Historical Perspective**

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## **ABSTRACT**

The differences between slavery now and then are less important than the historical links that bind them, links in an awful chain of bondage that bind the history of the transatlantic slave trade from Africa to the resurgence of slavery in Africa today. As this article illustrates, nowhere is this truer, both in historical and contemporary terms, than in the Congo. The links binding the Congo to the history of human bondage were first forged in the crucible of early modern capitalism and they have been made fast by the proliferation of “free market reform” today, which despite the fundamentalist cant of its advocates, has hardly proven to be a force of human liberation; instead, placing the last 500 years of the Congo region in global context, we can see how capitalism has proven to be the world’s greatest purveyor of human bondage. The article concludes with an argument that the reconstruction of civil society in the Democratic Republic of Congo after decades of war, dictatorship, and neo-colonial rule depends crucially on the continued success of an already impressive Congolese abolitionist movement. Without making an end to slavery, once and for all, civil society can hardly prosper in a country where slavery has historically brought about its destruction.

## **INTRODUCTION**

There are many Orwellian ironies of the neo-liberal order. One is that “free market reforms” have contributed to the resurgence of slavery in our own day. Such a situation brings to mind another chilling irony, that we are still struggling to abolish slavery in a post abolition world. Estimates of the world’s total enslaved population vary widely; on the low end, the United Nations’ International Labor Organization works with a figure of twelve million while Kevin Bales, a leading scholar of modern slavery, puts the number at twenty seven million.<sup>1</sup> Despite the significant differences between the two figures, taken together, they really tell the same story: that slavery remains an undeniable and pervasive feature of global capitalism.

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<sup>1</sup> Kevin Bales, *New Slavery: A Reference Handbook* (Denver, CO: ABC-CLIO, 2004), p. 4; also see Bales’ reflections on the methodological difficulties in developing modern slavery statistics in “The Challenge of Measuring Slavery,” *Understanding Global Slavery* (Berkeley: University of California Press, 2005), pp. 87-111. For the ILO’s statistics, see their website: [http://www.ilo.org/global/Themes/Forced\\_Labour/lang--en/index.htm](http://www.ilo.org/global/Themes/Forced_Labour/lang--en/index.htm). According to the ILO estimate, 80% of the enslaved are women and children. [add new report from Jim Stewart]

Slavery today is not the same thing that it was on the plantations of the early modern Atlantic world, where bondage was legal, racial, expensive, and perpetual; today, slavery is illegal and non-racial; moreover, slaves are cheap. In Bales' famous reckoning they are even "disposable," there being no vested interest in the present for masters in maintaining an enslaved person beyond the often short period in which their labor is in demand.<sup>2</sup> But the differences between slavery now and then are less important than the historical links that bind them, links in an awful chain of bondage that bind the history of the transatlantic slave trade from Africa to the resurgence of slavery in Africa today.

As this article illustrates, nowhere is this truer, both in historical and contemporary terms, than in the Congo. The links binding the Congo to the history of human bondage were first forged in the crucible of early modern capitalism and they have been made fast by the proliferation of "free market reform" today, which despite the fundamentalist cant of its advocates, has hardly proven to be a force of human liberation; instead, placing the last 500 years of the Congo region in global context, we can see how capitalism has proven to be the world's greatest purveyor of human bondage.<sup>3</sup>

This article explains the persistence of slavery in the Congo today, particularly in the Democratic Republic of the Congo (DRC) through a global, historical perspective that takes into view the central part played by the Kingdom of Kongo in the early modern, transatlantic slave trade. The focus shifts next to the persistence of slavery in the Congo after abolition during the region's imperial occupation ca. 1884-1960. The article then moves on to a discussion of the resurgence of slavery in the DRC today and its links to the neo-colonial order of corrupt Congolese elites, multinational corporate interests, and global economic

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<sup>2</sup> Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley: University of California Press, 1999).

<sup>3</sup> Although historians in the past have debated whether or not new world slavery was a capitalist institution in the early modern period, most now agree that it was, and not just in British North America but all over the Americas north and south. Scholars have largely relegated the planters' rhetorical pretenses to paternalism to the world of self-justifying discourse rather than reading them as realistic reflections of the economy of the plantation complex. For older arguments against the capitalist nature of new world slavery, see Elizabeth Fox Genovese and Eugene D. Genovese, *The Fruits of Merchant Capital: Slavery and Bourgeois Property in the Rise and Expansion of Capitalism* (New York: Oxford University Press, 1983). For varied interpretations of capitalism's direct relationship to slavery in the early modern Atlantic, see Eric Williams, *Capitalism and Slavery* (Chapel Hill: University of North Carolina Press, 1944); David Eltis, *Economic Growth and the Ending of the Transatlantic Slave Trade* (New York: Oxford University Press, 1987); Robert William Fogel and Stanley L. Engerman, *Time on the Cross, 2 vols.* (Boston: Little Brown and Company, 1974); Seymour Drescher, *Econocide: British Slavery in the Era of Abolition* (Pittsburgh: University of Pittsburgh Press, 1977); Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1800* (New York: Verso, 1997); Peter Linebaugh and Marcus Rediker, *The Many Headed Hydra: Sailors, Slaves, Commoners and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon, 2000); Stuart B. Schwartz, ed., *Tropical Babels: Sugar and the Making of the Atlantic World, 1450-1680* (Chapel Hill: University of North Carolina Press, 2004); David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York, 2006).

institutions that now govern the nation. The article concludes with an argument that the reconstruction of civil society in the DRC depends absolutely on an internal abolitionist movement that has already begun the crucial work. Without making an end to slavery, once and for all, civil society can hardly prosper in a country where slavery has historically brought about its destruction.

The transatlantic slave trade and the enslavement of Africans in the Americas should be understood as a holocaust occasioned by the inaugural epochs of global capitalism and European empire building. Twenty million people, the number of Africans ensnared for the transatlantic trade (ca. 1480-1880), became human sacrifices on an altar of murderous avarice. Of this number, scholars think perhaps half died en route to the coast, where captives were kept in baracoons on the beach or in massive, fortress-like compounds called slave “castles” or “factories.” European governments invested in these impressive strongholds, such as the Portuguese built castle at El Mina (present day Ghana).

Others were maintained by joint-stock companies, the antecedents of today’s multi-national corporations. The Royal African Company, for example, headquartered their trade at Cape Coast Castle (present day Sierra Leone). These private, state-chartered entities were governed by elected boards of directors who oversaw capital intensive commercial and colonization projects around the world, financing the ventures by selling shares in them to large groups of investors to spread risk and maximize potential profits. From the sixteenth through the early nineteenth centuries, slave trading joint-stock companies and private investors from Holland, Britain, Denmark, France, Spain, Portugal, the United States, and their colonial dominions legally commissioned slave ship captains to purchase their human “cargos” in these coastal marts before setting sail for European colonies in the Americas.

The illegal transatlantic slave trade continued until close to the end of nineteenth century. Regardless of legal questions, joint stock company directors and private merchants took care to calculate the potential profitability of a slave trading venture; they did so in part by anticipating the number of captives who would die en route from Africa to the colonies, subtracting this portion from the number of survivors they planned to sell at an expected price. As historians have discerned, 13%-20% of the people below deck would perish over the course of the Middle Passage. Mass murder, as the white and black abolitionists of the past first told the world, was literally built into the profit-maximizing equations that drove the transatlantic traffic in bodies and souls; but mass murder in the slave trade did not end with the Middle Passage. Approximately two million more Africans died during the “seasoning process,” the period when migrants tried to adjust to the climate and their new lives in the colonies and later, the Empire of Brazil and the United States of America. But for new arrivals from Africa, seasoning also served

an important economic purpose, when masters tried to separate human beings from their humanity by using violent terror to “break them” into slaves, although they rarely succeeded to the extent they desired.

In colonies like Jamaica where sugar profits were so high, the death dealing nature of new world slavery became particularly apparent, as planters discovered that it was more profitable to work their slaves to death and buy new ones instead of giving slaves enough food, shelter, and rest to prolong their lives and productivity. As a result, for the nearly two centuries that Jamaica served as a British sugar colony, its enslaved population did not reproduce itself naturally until emancipation. It’s hardly an overstatement, then, to say that throughout the early modern period, the Atlantic slave system evolved into a very efficient killing-machine that produced exponential profits, and did so with such rapidity that it became integral to the financial, commercial, and productive innovations that generated the global expansion of early modern capitalism.<sup>4</sup>

As historians of Africa have long known, from the start, the Kingdom of Kongo occupied center stage in the history of the transatlantic slave trade, providing the opening scene for an awful drama that would eventually span six centuries. In the late 1400s, Kongo’s leaders forged strong ties with the Portuguese forces that colonized Angola. The ties were based primarily on Roman Catholicism and a profitable if not problematic trade in slaves that Kongo’s King, Afonso I, tried unsuccessfully to regulate in 1526.

Afonso wanted to set the terms of the trade to his advantage and to secure basic liberties for his subjects, to prevent them from being illegally enslaved for Portuguese traders to sell abroad; the Portuguese knew, however, that they could always tap into the underground market supplied by illicit Congolese slave traders. Even though they eventually exercised the upper hand in the relationship, the Portuguese did cultivate close diplomatic and commercial ties with the Kings of Kongo, as their cooperation became indispensable to the expansion and profitability of the nascent Luso-Atlantic empire. Slave trading with the Kongolese supplied the cheap labor that would make for high profits in the sugar plantations that enterprising Portuguese settlers had founded in new colonies off the coast of present day Gabon in Sao Tome (1485) and across the southern Atlantic in Brazil (1500).

The commercial network of sugar and slaves that connected the Kingdom of Kongo to the rise of the Luso-Atlantic held immense significance in world history.

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<sup>4</sup> John K. Thornton, *The Kingdom of Kongo: Civil War and Transition, 1641–1718* (Madison, WI: University of Wisconsin Press, 1983); Joseph C. Miller, *Way of Death: Merchant Capitalism and the Angolan Slave Trade, 1730–1830*, Madison, WI: University of Wisconsin Press, 1988); Linda M. Heywood, “Slavery and Its Transformation in the Kingdom of Kongo: 1491–1800,” *The Journal of African History*, Vol. 50, No. 1 (2009), pp. 1–22.



For much of the early modern period, Brazil functioned as the sugar emporium of the global economy, a status that made it a contested colonial region, one that the Portuguese would defend from the onslaught of Dutch armies, the British navy, and pirates of all nations. With such wealth to be made in such an enormous tract of colonial space, it should not surprise that Brazil would receive approximately 85% of the Africans who survived the Middle Passage. Peering into the foul holds of the slave ships that brought these unfortunates into a land of bondage, we would find that most of the captives destined for Brazil came from Angola and the Kingdom of Kongo.<sup>5</sup>

With such a central place in the history of the slave trade and, concomitantly, the rise of European empires and the expansion of the global economy, the Kingdom of Kongo invariably suffered from the ill-effects that the trade had in every African region where it operated. But due to the Kingdom's preeminent place in the Atlantic system, its people suffered with atypical intensity from the dysfunctional impacts that the slave trade left in its bloody and grasping wake. Endemic military conflicts with colonial Portuguese regimes in Angola and a devastating forty year civil war in the late seventeenth century depopulated the Kingdom and set it on a course of destructive political discord and economic dissipation. As a result of such civil instability, the Kongolese eventually succumbed to economically dependent relationships with the Portuguese and other European empires, a paradigm for foreign domination that would continue to plague the country throughout the eighteenth century and into the next.<sup>6</sup>

By the end of the nineteenth century, the Kingdom's weakened position made it ripe for external political control and economic exploitation. Kongo's decline coincided precisely in time with the West's ascent as a global hegemon, which had been hastened by the advent of an industrial capital order financed in part from the capital accreted from centuries of colonial slavery and slave trading in the Congo.

In contrast to the rise of Europe's industrial empire, the Congress of Berlin confirmed the Kongo's decline in 1884, when the Kingdom was dissolved into the Congo Free State, with its former territory divided between France, Portugal and a personal fiefdom governed by Belgium's King Leopold II. By 1908, Leopold's

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<sup>5</sup> John K. Thornton, "The Origins and Early History of the Kingdom of Kongo," *International Journal of African Historical Studies* vol. 34, no. 1 (2001), pp. 89–120; Ann Hilton, *The Kingdom of Kongo* Oxford: Oxford University Press, 1982; Stuart B. Schwartz, *Sugar Plantations in the Formation of Brazilian Society: Bahia, 1500-1835* (New York: Cambridge University Press, 1985); Robert Edgar Conrad, *World of Sorrow: The African Slave Trade to Brazil* (Baton Rouge: Louisiana State University Press, 1986).

<sup>6</sup> John K. Thornton, *The Kingdom of Kongo: Civil War and Transition, 1641–1718* (Madison, WI: University of Wisconsin Press, 1983); Joseph C. Miller, *Way of Death: Merchant Capitalism and the Angolan Slave Trade, 1730-1830*, Madison, WI: University of Wisconsin Press, 1988; Linda M. Heywood, "Slavery and Its Transformation in the Kingdom of Kongo: 1491-1800," *The Journal of African History*, Vol. 50, No. 1 (2009), pp. 1-22.

personal domain had become a Belgian colony. While officially abolished under British pressure earlier in the nineteenth century, slavery and slave trading in the Congo continued well into the twentieth century, conducted tacitly under the direction of the Belgians and other interested Europeans with cooperation from local elites. Indeed, slavery, sometimes under the guise of contract labor, persisted in a variety of forms until independence. As the research of African historians has proven, slavery cannot be separated from the history of how the Congo's modern infrastructure, both civil and economic, came into being.<sup>7</sup>

While revolutionaries led by Patrice Lumumba and others managed to wrest nominal independence from the reluctant Belgian government in 1960, real independence has been hard in the making. The DRC has struggled to achieve true autonomy due to internal divisions and often violent, foreign intervention. Genocidal conflicts afflicted the country and those that bordered it when the region was caught in the cross-fire of a Cold War proxy war between the United States and the Soviet Union. Although that polarizing struggle for global domination ended in the late twentieth century, the DRC's geopolitical importance –and appeal to outside interests, hardly ended with it.

The nation found itself torn again in the 1990s by civil strife and wars with its neighbors, Rwanda and Uganda, whose own conflicts had spilled across their borders and into the DRC, where they raged on at an incredible, even stupefying human cost. Taken together, these post-Cold War conflicts killed upwards of five million people, causing some critics, rightly dismayed by the world's indifference to the violence, to call the collective carnage the "African world war."<sup>8</sup>

Historically, the wars of the 1990s/2000s arose from circumstances similar to those that undermined the Kingdom of Kongo in the seventeenth and eighteenth centuries, with the same, devastating effects. Now as then, relentless, destabilizing political violence has left behind a vacuum of governance that compromises the state's role as sovereign actor, to the extent that it essentially becomes impossible to prevent warring political factions, both domestic and foreign, from taking control of large swathes of territory within the state's jurisdiction.

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<sup>7</sup> Wyatt MacGaffey, "Kongo Slavery Remembered by Themselves: Texts from 1915," *The International Journal of African Historical Studies* vol. 41, no. 1 (2008), pp. 55-76; Samuel Nelson, *Colonialism in the Congo Basin, 1880-1940* (Athens, OH: Ohio University Press, 1994); William J. Samarin, *The Black Man's Burden: African Colonial Labor on the Congo and Ubangi rivers, 1880-1900* (Boulder, Co: Westview Press, 1989); John Higginson, *A Working Class in the Making: Belgian Colonial labor policy, private enterprise, and the African mineworker, 1907-1951* (Madison, Wis.: University of Wisconsin Press, 1990); Adam Hoschild, *King Leopold's Ghost: A Story of Greed, Terror and Heroism* (New York: Houghton Mifflin, 2009).

<sup>8</sup> David N. Gibbs, *The Political Economy of Third World Intervention: Mines, Money, and U.S. Policy in the Congo Crisis* (Chicago: University of Chicago Press, 1991); Georges Nzongola-Ntalaja, *The Congo: From Leopold to Kabila: A People's History* (New York: Zed Books, 2002); Thomas Turner, *The Congo Wars: Conflict, Myth and Reality* (New York: Zed Books: 2007)

In 1884, European powers assembled in Berlin began filling the vacuum of governance in central Africa by staking their respective claims to the Kongo at the imperial conference table, guided by the diplomatic wizardry of Otto von Bismarck, which proved salutary in Europe but lethal in Africa. The Europeans would be helped in their “scramble for Africa” by corrupt and self-serving Congolese who found that their own opportunity for advancement lay in the subjection of their countrymen. A little over a century later, the heirs to Bismarck and company, the world’s neo-colonial powers and the global economic institutions that they dominated, would fill a new political vacuum in central Africa. And once again they would enjoy the imperative cooperation of corrupt, Congolese elites.

Led by the world’s most powerful nations, multi-lateral economic federations, and multi-national corporations, a neo-colonial order has largely commandeered control over the DRC’s affairs through the implementation of neo-liberal “reforms.” Foreign interests have achieved this influence in ways that resonate with Africa’s imperial past. Take, for example, the alleged “antipoverty” policies of international institutions such as the International Monetary Fund; like the measures of nineteenth century empires, its policies are allegedly designed to lift African nations out of poverty; but like the empires of old, the IMF’s policies have created more poverty than they have alleviated in the Congo.<sup>9</sup>

But war has worked better than words, as it always has for imperialists with designs on the Congo, who in a tradition that stretches back to the early modern period, continue to orchestrate, foment, and exacerbate political tensions in the region. To secure their own economic interests in exploiting the DRC’s rich mineral and forestry resources, nations and corporations have manipulated, bribed, and otherwise collaborated with the warring factions battling each other in the country’s catastrophic civil wars; such meddling has also worked to perpetuate the fighting between the DRC and its neighbors, most of which continue to be fought within the DRC itself, the site of unrelenting warfare for the last half century. Beyond foreign manipulation of DRC politics, foreign investment and economic development in the DRC, constrained as it has been by endemic war, has come perversely at the expense of the majority of the country’s people.<sup>10</sup>

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<sup>9</sup> For the IMF and poverty reduction, see the following from the “Overview” section on the institution’s website: “The IMF works to foster global growth and economic stability. It provides policy advice and financing to members in economic difficulties and also works with developing nations to help them achieve macroeconomic stability and reduce poverty.” <http://www.imf.org/external/about/overview.htm>.

<sup>10</sup> Stephen Jackson, “Making a Killing: Criminality and Coping in the Kivu War Economy,” *Review of African Political Economy* vol. 29 (2002), 516-536; “No justice in Canada for Congolese massacre victims as Canada’s Supreme Court dismisses leave to appeal,” November 1, 2012, GlobalWitness.org [<http://www.globalwitness.org/sites/default/files/library/No%20justice%20in%20Canada%201%20Nov%202012.pdf>]; *Coming Clean: How Supply Chain Controls Can Stop Congo’s Mineral Trade Fueling Conflict: A Report by Global Witness* (May 2012), pp. 1-36 [[http://www.globalwitness.org/sites/default/files/library/Coming\\_clean.pdf](http://www.globalwitness.org/sites/default/files/library/Coming_clean.pdf)]

Over the last two decades, the International Monetary Fund (IMF), the World Trade Organization (WTO), and the World Bank have partnered with the DRC ostensibly to attract foreign investment and to commercially integrate the nation into the global economy. According to their rhetoric, these organizations have advised the DRC on governmental economic policy and have used various forms of financial aid to re-organize and rejuvenate the economy and the government's relationship to it, supposedly to make the DRC an autonomous, diversified, competitive force fully integrated into the international market.

Markets previously closed by national tariffs were thrown open to Congolese goods as the DRC opened its own borders to products previously restricted by protective trade measures. IMF loans were intended to finance improvements to the DRC's economic infrastructure, improvements which ranged in scope from road building and electrification to increasing the nation's hi-tech capacities. Investment could also be industry specific, and funds were directed to Congolese mining and commercial agriculture and forestry.

The plan was to bring the DRC's infrastructure up to levels high enough to help the nation's economy function more efficiently by attracting additional investment from rising economic powers such as China and from corporations, especially those in need of scarce minerals vital to a variety of industries that ranged from heavy manufacturing to electronics. Foreign investment dollars would also upgrade the technological infrastructure of mining, forestry, and commercial agriculture, again as a means to enhance the DRC economy from within while also profiting economic interests without. The gap, however, between these stated plans and their realization has been painful.<sup>11</sup>

The pain stems from the insistence of the IMF, World Bank, WTO, corporations, and national trading partners that the DRC commit itself to a free market revolution. The revolution would be won through "structural adjustments," or the conditional reforms which the DRC would undertake to receive the promised developmental loans and access to foreign markets. According to the dogma informing the structural adjustment programs, economic growth in the DRC and across the global south had been hampered not because of years of imperial exploitation, elite domestic collaboration, and violent, genocidal authoritarian rule propped up by the United States. Instead, the nation's economic woes stemmed from corruption and political instability that flowed from a bloated public sector.

After independence, so the narrative went, post-colonial governments stifled their economies through myopic, nationalist policies that rejected the natural wonders of the free market. Support for collective bargaining rights, minimum

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<sup>11</sup> Bernard Logan Ikubolajeh and Mengisteab Kidane, "IMF-World Bank Adjustment and Structural Transformation in Sub-Saharan Africa," *Economic Geography* vol. 69, no. 1(1993), pp. 1-24; Ngaire Woods, *The Globalizers: The IMF, the World Bank, and their Borrowers* (Ithaca: Cornell University Press, 2006).

wages, pensions, tariffs to protect home industries, agricultural subsidies to keep prices high for the nation's farmers, a progressive tax system and partial or full nationalization of select industries to fund education, national parks, healthcare, clean water, modern sewage systems, electrification, and infrastructural improvements, all of these had bloated the public sector and frightened off foreign investors, keeping the nations of the global south from reaching their destiny as fully integrated members of the global economy. Now, insisted the powers of the new global economy, unfettered capitalism rather than a mix of the state and the market would better guarantee the original promise of liberty and prosperity held out by the colonial liberation revolutionaries of the mid-twentieth century.<sup>12</sup>

The free market revolution imposed on the DRC by outside forces thus forced the nation to literally reconstitute itself according to the principles of free market dogma, which meant drastic cuts to public spending and curbs on the power of organized labor. Structural adjustments of this sort were designed to ensure that the IMF, the World Bank, the nations of the WTO, and multi-national corporations that they could secure their loans at a disproportionately favorable rate and maximize profits by investing in the DRC, where labor costs had been forcibly slashed in order to create a "business friendly" environment. The DRC was hardly alone in being subjected to such terms, which became common all over the global south. But again, just as the Congo's exceptional value in the slave trade left behind an exceptionally devastating legacy in the age of industry and empire, so has the DRC's value in today's global economy guaranteed that the nation would suffer more than most under the auspices of neo-colonialism.<sup>13</sup>

In the DRC, two decades of structural adjustments have failed to produce real and sustained economic growth for the vast and overwhelming majority of the Congolese people, who have experienced an intensification of the already harsh material conditions that they have endured within the context of protracted political violence. Perhaps the best way to measure the impoverishing effects that the neo-colonial free market revolution has had upon the Congolese people is through the Human Development Index (HDI).

Created by the Nobel Laureate economist Amartya Sen, HDI gauges the human effects or lived experience of the social inequalities and inequities created by the dominant, capitalist organization of the global economy. Sen combined

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<sup>12</sup> Irfan Nooruddin and Joel W. Simmons, "The Politics of Hard Choices: IMF Programs and Government Spending," vol. 60, no. 4 (2006), 1001-1033; Baqir, Rodney Ramcharan and Ratna Sahay, "IMF Programs and Growth: Is Optimism Defensible?" *IMF Staff Papers*, vol. 52, no. 2 (2005), pp. 260-286.

<sup>13</sup> Michael Goldman, *Imperial Nature: The World Bank and Struggles for Social Justice in the Age of Globalization* (New Haven: Yale University Press, 2005); Joseph Stiglitz, *Globalization and its Discontents* (New York: Norton, 2003); *Fair Trade for All: How Trade Can Promote Development* (New York: Oxford University Press, 2005); Richard Peet, *Unholy Trinity: The IMF, World Bank, and WTO* (New York: Zed Books, 2003); Jan Joost Teunissen and Age Akkerman, eds., *Helping the Poor? The IMF and Low-Income Countries* (New York: FONDAD, 2005)

several key indicators to calculate a nation's HDI: average life expectancy, literacy rates and years of education, and per capita income as derived through a nation's Gross National Income. The constituent members of the United Nations are then ranked according to these calculations and are placed in four groups: Very High Human Development, High Human Development, Medium Human Development, and Low Human Development.

The latest HDI figures published by the U.N. in 2011 reveal that twenty one of the top twenty five nations in the Very High Development category hail from the West--Hong Kong, Japan, and South Korea being the outliers. The bottom twenty-five placed in the Low Human Development category are all African nations, most of them in the sub-Saharan region.

The DRC ranks last in Low Human Development and thus last in the entire world, with an HDI of .286, although its former imperial overlord, Belgium, sits comfortably within the Very High Human Development section, ranked eighteenth worldwide with an HDI of .886. Statistics can be very abstract measures of human experience, but when placed within the framework of indicators designed by Sen, not only do we get a sense of the urgent humanitarian crisis in the DRC, we see how it came into being through a deep history predicated upon the exploitation of the people of Africa, and particularly those of the Congo region, a history that today's neo-colonial powers have inherited to their advantage as the heirs of their imperial predecessors.<sup>14</sup>

The structural adjustment regime has not elevated the standard of living in the DRC; what it has elevated is the national debt, so much so, in fact, that the government's first priority is now paying off that debt; it does so, of course, with the tax revenue that it used to use to secure the welfare of its own people, who are now suffering more than the people of any nation in the world. As many scholars, activists, and politicians have noted, the DRC's debt problem underscores how the logic of free market capitalism applied through social policy, meaning gutting government spending on things that improve peoples' quality of life, has worked undoubtedly to the disadvantage of African people and, indeed, people all over the global south. For instance, in 2008, the DRC's external debt stood at 93% of GDP, 150% of exports, and 501% of government revenue. The DRC's total publicly-guaranteed external debt (or PPG) stood in 2009 at \$13.1 billion; of this total, \$7.1 billion has been borrowed from bilateral creditors; the rest is owed to multi-lateral institutions such as the IMF (\$4.4 billion) and foreign banks or commercial

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<sup>14</sup> See the following tables and indices, taken from the 2011 HDI reports, on the UN Human Development website [<http://hdr.undp.org/en/statistics/hdi/>]: 2011 Report Table 1 - Human Development Index and its Components; Table 2 - Human Development Index trends, 1980–2011; Technical Notes; Human Development Statistical Tables; FAQs about the Human Development Index (HDI)

creditors (\$1.5 billion). The nation is already \$4.9 billion in arrears in paying off these loans, which caused the IMF to suspend “interim assistance” in 2006.<sup>15</sup>

Now prey to exploitative powers abroad to solve its debt crisis, the DRC has been forced into a servile position of economic dependency only two generations following political independence, this despite the fact that the nation ranks as the world’s richest in terms of the value of its natural resources.

One of the most disturbing, far-reaching impacts of the DRC’s new era of economic dependency is that it threatens the de facto political independence the nation achieved in 1960. The draconian debt repayment schedule demanded by the IMF structural adjustment regime provides a clear example, as it compelled the DRC government to relinquish control over its own fiscal policy, thus forfeiting a crucial dimension of its sovereignty. The debt repayment plan and the attendant cuts to public spending proved such a colossal failure in terms of alleviating poverty, reducing political corruption, and improving standards of living that the IMF moved toward a policy of debt relief in 2010.<sup>16</sup>

In 2011, in the midst of the worst economic downturn since the Great Depression, the DRC’s GDP grew by 6.5%, a more than impressive feat that, all things being equal, should mean more wealth in the hands of more of the Congolese people. But as we know, free market fundamentalism and domestic corruption have ensured little in the way of equity, most particularly in regard to the dignity of human life, when one considers the disparity between the HDI rankings of nations in the global south and north.

But while it suffers from the world’s lowest HDI, the DRC is a very wealthy nation when measured by the economic worth of its natural resources; indeed, within this context, the DRC is perhaps the wealthiest nation on earth. The value of the DRC’s mineral reserves alone has been estimated at an incredible value of \$24 trillion.<sup>17</sup> Wealth of this magnitude should guarantee the DRC’s economic independence, not the reverse. How its national wealth was used to regenerate an era of foreign domination can only be explained by the colonial dynamic driving

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<sup>15</sup>Mark Plant (IMF), Dominique Desruelle (IMF), Carlos Alberto Braga (ADA), and Sudhir Shetty (IDA), and the Staffs of the International Monetary Fund and the International Development Association, *Joint IMF/World Bank Debt Sustainability Analysis 2009:Democratic Republic of Congo* (Washington, DC: International Monetary Fund and International Development Association, 2010), 71, 72.

<sup>16</sup> “Democratic Republic of the Congo: Staff Report for the 2012 Article IV Consultation,” International Monetary Fund, 5-59. Debt relief, however, has not come with the restoration of sovereign budgetary control to the DRC government. The report cited here calls for increasing budgetary cuts, which if past practice is any guide, will come in the way of reductions in health and education spending, which will hardly improve living standards.

<sup>17</sup> Conflict Diamonds: World Bank African Region Working Paper Series, vol. 13 [<http://www.worldbank.org/afr/wps/wp13.pdf>]; Damon Van der Linde, “The Democratic Republic of Congo and the Future of Cobalt Mining,” *Cobalt Investing News* (November 10, 2010) [<http://cobaltinvestingnews.com/121-the-democratic-republic-of-congo-and-the-future-of-cobalt-mining>]; Facts About Copper: United States Geological Survey, June 2009 [<http://minerals.usgs.gov/minerals/pubs/mcs/2009/mcs2009.pdf>].

the neo-liberal order that has come to organize and dominate the global economy. Diamonds, copper, gold, silver, and tin have been mined for centuries in the region for their value in luxury and manufactured goods, although now their extraction in the DRC feeds a supply chain organized by multi-national corporations that stretches around the world.

The DRC ranks fourth in terms of value among the world's diamond producers, a value that will grow along with the demand for diamonds which continues to increase in nations with expanding middle classes such as Russia, India, China, and Brazil. The nation produces about 1/6 of the world's supply of cassiterite, the ore necessary to produce tin, which now is used to create circuit boards as well as a host of other manufactured goods. The DRC has 80% of the world's reserves in cobalt and is its largest producer; the mineral can be found in products that range from dyes, to rechargeable batteries, to jet engines. Cobalt and copper are often found in the same deposits, and the DRC also ranks among the top producers of copper, the value of which is magnified by its versatile applications in construction, plumbing, the wiring of electrical, heating, and cooling systems, and manufacturing machinery. The amount of copper wire in many cars can be stretched for close to a mile. But while older industries benefit from the DRC's rich mineral reserves, the explosion in the production and demand for hi tech electronics have brought the nation today to a place in the global economy rivaling that held by the Kingdom of Kongo during the early modern era.<sup>18</sup>

Hi tech electronics have revolutionized not only our capacity to transmit and receive information over time and space, they have also revolutionized consumer society around the world. Billions of people who have enough disposable income and many of those who do not, now use cash or credit to purchase consumer items like cell phones not as luxuries but as indispensable necessities. The same might be said about personal computers, laptops, and electronic tablets and notebooks. The invention of such consumer necessities has created a new and ever-growing demand for a host of new electronic goods, some of which barely existed even a decade ago. None of these items can be made, however, without minerals that are relatively rare, except in the DRC.

The DRC is often ranked first, holding at least 64% of the world's reserves in tantalum; tantalum is the mineral which is refined into coltan, which has become one of the most valuable substances in the global economy due to its importance in the production of hi tech electronic goods. Coltan, cobalt and other high demand

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<sup>18</sup> Conflict Diamonds: World Bank African Region Working Paper Series, vol. 13 [<http://www.worldbank.org/afr/wps/wp13.pdf>]; Damon Van der Linde, "The Democratic Republic of Congo and the Future of Cobalt Mining," *Cobalt Investing News* (November 10, 2010) [<http://cobaltinvestingnews.com/121-the-democratic-republic-of-congo-and-the-future-of-cobalt-mining>]; Facts About Copper: United States Geological Survey, June 2009 [<http://minerals.usgs.gov/minerals/pubs/mcs/2009/mcs2009.pdf>].



minerals mined in the DRC thus supply the global supply chain with the solder, resistors and capacitors and additional items required to make cell phones, PCs, laptops, iPads, Kindles, and a multitude of other electronic products that have become staple goods in the global economy. Their price, and hence their value in the DRC, will continue to climb as a function of growing world demand, although another severe recession may stunt such expansion.<sup>19</sup>

Why the DRC remains poor despite being the first and most vital link in a global supply chain that has increasingly profited multinational corporations remains a complex question. Part of the answer lies in the fact that the state has not been able to establish effective rule in the Kivu provinces of the eastern DRC, where most of the mining industry is located, as rebel groups and armies from Rwanda and Uganda have battled the state for control of this territory since the mid-1990s. Corruption within the DRC government also prevents its people from realizing the potential benefits of the nation's mineral resources. But beyond all else, the neo-liberal organization of the global economy ensures that the DRC will remain poor in the face of its natural wealth, as its policies have ensured that the DRC's mineral wealth is exported on a global supply chain that has been organized, at its expense, for the benefit of others.<sup>20</sup> In sum, to use a telling metaphor, the neo-liberal genesis of the current neo-colonial moment has transformed the body politic of the DRC into the bond slave of foreign masters; at the same time it has returned many of the nation's people to a state of literal slavery.

Bond slaves are those who serve masters due to the debts that they or their families have accrued. Many bond slaves, historically and in the present, have inherited their condition from their families due to debts that stretch generations into the past. Using inherited bond slavery as a metaphor works well to characterize the DRC's neo-colonial relationship with its foreign creditors and exploiters. As we have seen, the historical roots of this relationship run deeply into the past.

The civil wars that plagued the Kingdom of Kongo were inextricably entwined with the domestic discord that arose as a function of the Kingdom's involvement in the Atlantic slave trade, discord that was in part manipulated by foreign powers. The Kingdom's subsequent decline allowed it to be overtaken by European imperial powers in the late nineteenth century, with all of the attendant

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<sup>19</sup> The Democratic Republic of the Congo: Major Challenges Impede Efforts to Achieve U.S. Policy Objectives; Systematic Assessment of Progress Is Needed" GAO-08-562T, March 6, 2008 [<http://www.gao.gov/new.items/d08562t.pdf>]

<sup>20</sup> Conflict Minerals and the Democratic Republic of Congo: Responsible Action in Supply Chains, Government Engagement, and Capacity Building (BSR: May 2010) [[http://www.bsr.org/reports/BSR\\_Conflict\\_Minerals\\_and\\_the\\_DRC.pdf](http://www.bsr.org/reports/BSR_Conflict_Minerals_and_the_DRC.pdf)]

under-development and exploitation that accompanied the extraction of the region's wealth at the expense of its people and for the benefit of their colonizers and the Congolese elites who abetted the process. Slavery within the Congo tacitly expanded in this age of empire and industrial capitalism, even though the European powers who profited from it had agreed to abolish slavery in their Atlantic colonies only a generation previous. After colonial liberation in the mid-20<sup>th</sup> Century, a new generation of corrupt, U.S.-backed Congolese elites led by Mobuto Sese Seko allowed their nation to be pillaged and politically manipulated by the West in return for a share of the spoils. The neo-colonial/neo-liberal order of the twenty first century, using a language of civilizing progress that paralleled the discourse of older generations of external exploiters, has continued, again with the help of domestic mercenaries, to rip out the wealth of the country, literally from under the feet of its own people, using their own labor to do so in a way that keeps them poor while enriching those from beyond its borders and a few within them. But now, the Congolese people work to pay taxes to their own government so it can pay back loans to foreign creditors so that the latter may, in effect, continue to perpetuate the neo-colonial cycle of exploitation initiated after the end of the Cold War.

But linking slavery to the present condition of the Congolese people involves more than a metaphorical flourish, because real slavery flourishes in the DRC today and does so again as part of the nation's long-term historical inheritance. The political instability and relentless war fostered by internal corruption and external exploitation have now made the eastern DRC, especially the mineral-rich region of the Kivus, one of the worst modern slavery sites in the world, not the least because the minerals mined there have such immense value in the global economy.

As a result, the DRC, rebel factions within the country, and their armed allies who have invaded the country from Rwanda (the FDLR) are all battling for control of the Kivus and the wealth that can be found there. These groups, including the DRC national army (FARDC) have no interest in bettering the lives of the people they claim to represent; instead, they enslave them to harvest the rich resources of the province. In some cases, the tantalum, cobalt, copper, cassiterite and other materials are sold by corrupt DRC military and civil officials straight out of the country where they enter the global supply chain.

In other cases, the produce of the mines is shipped out of the nation into Rwanda where it is sold to foreign concerns who also pay bribes to even more corrupt officials so that they may pass a careless eye over illicit documentation that purports that the mined material has been extracted according to international standards. Sometimes bribes mask the fact that no documentation exists at all.

But whatever way these conflict minerals leave the DRC, the chances are that they have been mined by slaves. The fact that slaves do the lion's share of the work in the Kivu mines, as we will see, is certainly no secret, which makes the corporations that purchase the minerals and refine and manufacture them along the global supply chain directly complicit in continuing the long, sordid, historical relationship between the proliferation of global capitalism, slavery, and the Congo region.<sup>21</sup>

Studies undertaken in November 2009, June 2010, and July 2010 in conjunction with the modern abolitionist NGO Free the Slaves (FTS) have presented insurmountable evidence that slavery has once again become a plague on the civil society of the Congo region. For the purposes of clarification, the group defines slavery as the condition where a person is "forced to work, under threat of violence or coercion, for little or no pay, and [is] unable to walk away." FTS has found that slavery is "endemic" in the mines of the Kivus, particularly those controlled by military forces, either those under command of the DRC or by rival factions fighting to dominate the region. FTS has identified five typical forms of slavery that flourish there.

In the first, slavery at gunpoint, soldiers terrorize people into leaving their homes and villages and force them into the mines, where they work as miners, carters, and sorters. Sometimes such coercion takes the form of *salongo*, the tradition by which local leaders could claim a day's labor from members of the community; in the case of FARDC, soldiers force people in the Kivus into slavery through an adaptation of this tradition, which, due to exploitative innovations, had already fallen into ill repute during the Mobuto regime, when it faced widespread resistance.<sup>22</sup>

A second form of slavery, debt bondage, or bond slavery, has also made its mark. Since little economic opportunity exists in the Kivus or elsewhere in the nation, people voluntarily seek their fortunes in the industry. Armed forces or private companies supply tools, money, and food to such people on terms calculated to keep them in debt. Hailing from straitened circumstances, the people accept the terms, especially those who have come some distance in search of work to support their families. Those in this situation know they are bound to remain in the mines until they pay off the debts, although their captors have made this extremely difficult or next to impossible to do. The debts can range from \$100 to \$1000; 37% were held by debts that exceeded \$500, not an easy sum to repay in

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<sup>21</sup> *Coming Clean: How Supply Chain Controls Can Stop Congo's Mineral Trade Fueling Conflict: A Report by Global Witness* (May 2012), pp. 1-36 [[http://www.globalwitness.org/sites/default/files/library/Coming\\_clean.pdf](http://www.globalwitness.org/sites/default/files/library/Coming_clean.pdf)]

<sup>22</sup> The Congo Report: Slavery in Conflict Minerals (Free the Slaves, June 2011), p. 13 [[FreetheSlaves.net](http://freetheslaves.net)].

nation with a per capita income of \$210, the second lowest in the world.<sup>23</sup> Bond slaves can also be sold, although allegedly only their “contracts” are being sold; but as common sense tells us, contracts are not sold without the workers, who have been essentially enslaved.

A recent study, not conducted by FTS, found 90% of the workers in the Bisie tin mines had been enthralled by debt bondage. Bond slavery in the DRC is not limited to the mines themselves, or other violently exploited, physical labor. Even mine managers and businessmen have worked as bond slaves.<sup>24</sup>

Sexual slavery, the third form, has also spread through the Kivus, largely through the kidnapping of women and girls by soldiers, who under the pretense of marriage, effectually secure a license for serial rape. Sexual slavery thrives in the pubs surrounding mining sites, where girls, sometimes before they’ve reached the age of puberty, are inveigled from distant locales under false pretenses of legitimate work.<sup>25</sup>

The fourth form of slavery in the DRC is penal slavery, actually abetted by the judicial system instead of being deterred by it. In the provinces of the Kivus, people are brought up on real or manufactured charges by corrupt law enforcement officials and in tribunals run by one of the military forces that rule over the area. In whatever “court” these unfortunates find themselves, they are tried, convicted, and sentenced to work in the mines.

Finally, in the fifth form of slavery, children are kidnapped and forced to serve as soldiers, and are often compelled to fight against their own relatives and neighbors, or to oversee their enslavement at gunpoint. It should be noted that these categories of enslavement are not mutually exclusive. A peon, or a person sent to work against their will in the Kivus through a false criminal conviction can find themselves deeply in debt after being forced to pay for their tools and their keep while working in the mines. The peon thus becomes a bond slave. Turning this example on its head, if a bond slave flees their debt, they can be arrested, convicted, and sentenced to forced labor. Despite the variety of ways that people can be enslaved, most of those enslaved are young, some very, as low as the age of five, although sixty year olds can be found among the unfree as well. As long as the labor gets done, slavers do not discriminate, reflecting the kind of inequality

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<sup>23</sup> Background Note: Democratic Republic of Congo, U.S. Department of State (<http://www.state.gov/r/pa/ei/bgn/2823.htm#econ>).

<sup>24</sup> The Congo Report: Slavery in Conflict Minerals (Free the Slaves, June 2011) , pp. 11, 13, 15 [Freetheslaves.net]; Nicholas Garrett, Walikale: Artisanal Cassiterite Mining and Trade in North Kivu. Implications for poverty reduction and security, CASM report, June 2008, p. 45, [[http://www.resourceglobal.co.uk/documents/CASM\\_WalikaleBooklet2.pdf](http://www.resourceglobal.co.uk/documents/CASM_WalikaleBooklet2.pdf)].

<sup>25</sup> Congo Report: Slavery in Conflict Minerals (Free the Slaves, June 2011) , p. 17.

that exists when the equity of a civil society collapses in the face of the might-makes-right ethos of authoritarian rule.<sup>26</sup>

The specter of modern day slavery in the DRC becomes all the more haunting once we descend into the mines themselves to comprehend the conditions that exist there. Quoting from a research report filed by Free the Slaves in 2010, we would see that the

“miners...work without even basic equipment or safeguards. [They experience] threats [that] range from landslides, cave-ins of shafts, to asphyxiation. Public health concerns are equally high as a result of poor sanitation and no clean water supply. Common injuries and ailments include: eye injuries; silicosis; conjunctivitis; bronchitis; tuberculosis; asthma; diarrhea; skin lesions; deformed muscle and bone in children due to heavy loads; regular dental problems of abscesses, cavities and lesions; tetanus; fractures and contortions; contusions and severe bruising. Added to those are the impact of extensive drug use, and sexually transmitted diseases. The intense crowding (many enslaved miners are forced to sleep jammed together in the mine shafts) means that infectious diseases are rampant. One informant stated that after four to five years working in the mines the body was “completely deteriorated” and cited spinal column damage and lung damage, conditions worsened by the extreme pollution of air and water and exposure to toxic chemicals.”<sup>27</sup>

One other horror that does not appear in the above litany would include the systemic rape of children and women who work in the mines or nearby.<sup>28</sup>

The DRC’s enslavement problem can hardly be solved through the logic or the policies of free market fundamentalism, which have actually helped to create the conditions which leave millions in the nation vulnerable to enslavement. As we have seen, the neo-liberal revolution foisted upon the people of the DRC has only impoverished them in the midst of their own plenty; thus, those in the nation, especially in the Kivus, who might go elsewhere in their country to seek economic opportunity really have nowhere to go find it. Far from providing a solution to slavery, free market capitalism has perpetuated it by fostering the economic

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<sup>26</sup> *Ibid.*, 12.

<sup>27</sup> Findings of Slavery Linked with Mineral Extraction in Eastern DRC, Free the Slaves Research Brief, July 2010, p.1. [Freetheslaves.net]. Brackets mine, parentheses in original.

<sup>28</sup> *Ibid.*, 2.

dependency, domestic corruption, and mass impoverishment that leaves people vulnerable to enslavement and thus makes modern bondage possible.

## Conclusion

Ultimately, neither the free market nor international law, nor foreign governments, foreign NGOs and multi-national corporations can remove the scourge of slavery from the DRC. The solution must come from the people of the DRC and their government, working in conjunction with allies from abroad, who will be found aplenty in NGOs such as Free the Slaves. Allies will be scarce, however, among the politicians of foreign governments, the executives of multi-national corporations and their comrades in the IMF, World Bank and WTO. Their rhetoric about and policies requiring “due diligence” in regard to the international commerce in “conflict minerals” can be relegated to meaningless lip service as long as they keep the maximization of profits through free market “reform” as their first priority rather than promoting immediate and essential well-being of the people of the DRC through measures such as debt relief and criminal proceedings against corporations that benefit from the slave labor that produces the conflict minerals themselves.

Organized in coordinated, localized movements as a part of a larger grass roots movement, the people of the DRC can improve upon the work of centuries of abolitionist agitation by bringing a de facto as well as de jure end to slavery in their country; in the process, such work can do much to advance the reconstruction of civil society in the war ravaged nation. Given the violence that continues to rage through the Kivus, such a task seems well-nigh impossible. The case would prove exactly that save for the courage demonstrated by many Congolese who would risk poverty, ostracization, arrest, imprisonment, torture, and even death rather than permit slavery to continue to spread within their society. Those searching for the rebirth of civil society in the Congo will find it within and among these very citizens, who are already organizing in a very impressive and consequential fashion. When FTS undertook its research into slave labor in Kivu mines in 2009 and 2010, it could only do so through the cooperation of the members of the Association for the Development of Peasant Initiatives (ASSODIP) and the Research Center on Environment, Democracy and Human Rights (CREDDHO), Congolese NGOs founded and operated by Congolese people. The mainstay of the data that FTS used to publish its influential report on slavery in the DRC came from the 742 interviews that the groups conducted in the Bisie, Omate, and Bibatma mining regions. ASSODIP and CREDDHO consulted “local customary leaders, government officials (territorial administration and local security forces), religious and civil society leaders, representatives of professional cooperatives, and

artisanal miners themselves.” The information that many of these figures divulged about the practice of slavery in the mines and elsewhere in the eastern DRC was given at great risk, and went far to document to the international community the acute urgency of the problem.

One of the more disturbing realizations to accrue from the work of the Congolese abolitionists was that many of the enslaved as well as their enslavers seemed unaware that the slavery and other forms of abuse practiced in the mines was actually illegal. Such revelations reflect the uphill battle to reconstruct civil society in the DRC, as many of its citizens are seemingly uninformed that every person in the country is by law free and protected by those laws from being enslaved. The work of ASSODIP and CREDDHO takes on even more significance in this respect, as the process of gathering information about enslavement in the DRC can also educate its people that slavery has no rightful place in their presence. Knowledge is power, and the efforts to rebuild civil society in the DRC depend upon this powerful knowledge. Civil society consists of citizens, and no person can be a citizen unless they are free. Therefore, a civil society will never truly flourish until its people understand that their first and most essential right is their own fundamental liberty from enslavement.

Articles 16 and 61 of the 2006 Constitution of the Democratic Republic of the Congo forbid slavery, in all of its forms, absolutely. Carried out through the work of local Congolese organizations and fortified by the will of their members, educating the populace about the illegality of slavery and demonstrating how and why it exists among them marks the first step toward real abolition. Through the partnership of foreign NGOs such as Free the Slaves, this work has flourished, which points to a way forward for other modern abolitionists around to follow in their own work in the Congo. Whether we are in the DRC or not, we can all contribute to the cause, but the burden of ending slavery in the country will always remain with the Congolese people themselves, who have another historical inheritance beyond external subjugation and internal corruption, that being the struggle, originating in the independence movement, to build a truly free state in the face of enemies foreign and domestic.

# **Slavery Beyond History: Contemporary Concepts of Slavery and Slave Redemption in Ganta (Gamo) of Southern Ethiopia**

**Boshia Bombe<sup>1</sup>**

## **Abstract**

Slavery was officially abolished in Ethiopia by Emperor Haile Sellassie in 1942. Despite the abolitionary law slaves and their descendants have continually been marginalized in the country (especially in the peripheral parts of southwestern Ethiopia) from the time the law passed until today. In the Gamo community of southern Ethiopia, descendants of former slaves carry the identity of their ancestors and as the result they are often harshly excluded. Today, not only are they considered impure, but their perceived impurity is believed to be contagious; communicable to non-slave descendants during rites of passage. In order to escape the severe discrimination, slave descendants change their identity by redeeming themselves through indigenous ritual mechanism called wozzo ritual. However, the wozzo ritual builds the economy of former slave masters and ritual experts while leaving redeemed slave descendants economically damaged. This study is both diachronic and synchronic; it looks at the history of slavery, contemporary perspectives and practices of slavery and slave redemption in Ganta (Gamo) society of southern Ethiopia.

## **Background to the problem**

Despite the twentieth century abolitionary law, various international conventions<sup>2</sup> and state sanctioned laws, slavery to this day has not been eradicated (Miers 2011, Welch 2009, Craig and et al 2007). At present “slavery and slavery-like practices » affect the lives of millions of people throughout the world (Welch 2009: 9). Kevin Bales’ cross cultural slavery index indicates that in the year 1999 there are about 27 million slaves throughout the world (Bales 2004, 2005).

Officially/legally speaking slavery is “non-existent” but it is a lived condition of many people across different cultures of the world.

In Ethiopia, apart from those studying classical slavery (e.g. Pankhurst 1964, 1968, Dirk 2010, Smidt 2010) little attention is paid on impacts of historical

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<sup>2</sup> The 1926 League of Nation sanction on slaver, International Labour Organization(ILO), forced Labour Convention, UDHR 1948, Supplementary Convention on the Abolition of Slavery 1956



slavery on contemporary social equality. The problem of historical slavery is a neglected topic despite the fact that it is a concern for many people, especially those in the south and southwestern parts of the country. Smidt in his article explains that although the abolitionary proclamation was issued in 1942 by Emperor Haile Sellassie, slaves and their descendants have continually been marginalized in the country, especially in the peripheral parts of the southwest, until the 1990s (Smidt 2010). Smidt's finding is quite authentic but the practice did not stop there (1990s), it continued until today.

In the Gamo society of southern Ethiopia slavery is a lived condition. In Ganta (Gamo) society, in the absence of legal slave-master relationships, descendants of former slave masters control the social and economic life of slave descendants. They restrict non-slave descendants' (free born descendants) involvement in the lives of slave descendants under several specific situations.

Descendants of former slave masters turn the free born into the status of slave when they closely participate with slave descendants by crossing culturally sanctioned social boundaries. Because of the cultural ban on the relationship between free born and slave descendants in these specific situations, the slave descendants are seriously excluded. The slave descendants (ayle) are detested and perceived as subhuman because of their social origin. The ayle are considered as impure and their impurity is believed as contagion; if a non-slave participates by eating (during a mourning event, for example) in a slave home, this will turn him/her also into a slave. It's as if being "slave" can be transmitted from one person to another just the same as a contagious disease. Close interaction with slaves during such events can result in automatic exclusion of the free born; they therefore avoid close interaction with them during rites of passage—a period of time when it's believed that transmission of the impurity of slaves to other people can occur.

To escape the suffering, the slave descendants have been "redeeming" themselves through ritual purification called *wozzo*. Through *wozzo* ritual the slave descendants completely change their slave identity and assume all privileges of the free born, however, it is an exploitative method that creates opportunity for slave redeemers, descendants of former slave masters (*lathi*), and politico-religious ritual experts (*maga* and *kati*) to profit while leaving the redeemed slave descendants economically broken. The study is both diachronic and synchronic; it looks at the history of slavery, contemporary perspectives and practices of slavery and slave redemption in Ganta (Gamo) society of southern Ethiopia.

## Contemporary Slavery: Conceptual Approach

There is no agreed upon definition for contemporary slavery; different scholars and international organizations define modern slavery in different ways. According to Miers, contemporary slavery is “an all catch name” for various human exploitations such as debt bondage, forced prostitution, sexual slavery, child slavery, forced labor, forced or servile marriage, cult/ritual slavery and others across the world (Miers 2000). For Bales, contemporary slavery is a “hidden crime” because slavery is illegal in all countries and banned by international organizations (Bales 2005). Bales further explains that fundamentally slavery is the same throughout history but the “package” i.e. the defining apparatus such as cultural, social, religious, political, psychological, ethnic and commercial context is different. Slavery at the fundamental level is violent control of the slaves by the slave holder (Bales 2004, 2005).

Welch explains that contemporary slavery is characterized by subtle practice:

*The current manifestations of slavery are far more subtle than those of captured, racially-differentiated slaves imported into a society to fill specific labor needs, the form most familiar to Westerners. Slavery in the twenty-first century is deeply rooted in many societies, promulgated by existing norms, in which selected groups in the general populace are particularly liable to slave-like practices (Welch 2009: 73).*

For Craig et al contemporary slavery denotes “severe economic exploitation, absence of any framework of human right and maintenance of control of one person over another by the panorama or reality of violence” (Craig et al 2007). It also implies as an umbrella expression for numerous forms of slavery such as descent-based slavery, bonded labour, serfdom, debt bondage, sexual slavery, child labour and enforced participation in armed conflict (Craig et al 2007, Jordan 2011, OHCHR 2002).

Quirk and Vigneswaran argue that the term “human bondage” is an overarching concept that helps us analyze contemporary forms of human exploitation because this concept covers all definitions and manifestations of contemporary forms of slavery such as forced labour (the 1930 Forced Labour Convention), human trafficking (the 2000 Trafficking Protocol), child labour (the 1999 Worst Forms of Child Labour Convention) and debt bondage (the 1956 Supplementary Slavery Convention) as well as all other human exploitations. In the perspective of Quirk and Vigneswaran, and in the framework of human bondage, slavery is part; it includes various combinations and manifestations,

violent coercion, social subordination, psychological compulsion, severe exploitation and strict social hierarchy<sup>3</sup>.

Quirk and Vigneswaran further state that to understand contemporary slavery we must look to the links between historical legacies and today's practices. From the perspective of historical legacies, the current trends and practices should be built up on the cumulative effects of the past institutional and sociological precedents. They justify this assumption by offering an illustration that in the countries of West Africa (such as Mali and Mauritania) continuing legacies of slavery are due to long standing arrangements from the past.<sup>4</sup>

Orlando Patterson in his book *Slavery and Social Death* (1982) argues that slavery should be examined in terms of socio-political relationships and the power dynamics in human societies. He asserts that, "all human relationships are structured and defined by the relative power of the interacting persons." Patterson claims that slavery at the fundamental level is a "relation of domination." Patterson further states that slavery is defined by three kinds of relationships of oppression that collectively constitute "social death."

The first relationship is characterized by subjugation of slaves by owners that express violence and physical coercion. The second is that slaves are totally isolated from kin groups, family and communities. Finally, slaves are viewed as inferior creatures, whereas their masters are considered elites and nobles (Patterson 1982: 1).

Anti-Slavery International explains contemporary slavery in terms of caste-based exclusion and strict social hierarchy. The organization argues that slavery exists today despite the fact that it is illegal in all the countries where it is practiced. The slavery practiced takes various forms and affects people of all ages, gender and races. Among other forms, descent-based slavery is common especially in West African and sub-Saharan countries. In descent-based slavery, slavery is a condition ascribed at birth, passing through generations. In societies where descent-based slavery is prevalent there exists a strict hierarchy based along ethnic and sometimes racial lines. Free men are at the top of the hierarchy followed by caste-based occupational groups. The slaves and their descendants are at the very bottom of the caste system and experience severe exclusion<sup>5</sup>.

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<sup>3</sup> . Quirk, Joel and Darshan Vigneswaran. Chapter One: Human Bondage in Africa: Historical Legacies and Recent Innovations PP. 1-35.

<sup>4</sup> .Ibid

<sup>5</sup> Anti-slavery International. What is Modern Slavery? // [www.antislavery.org/](http://www.antislavery.org/) accessed on 4/11/2013.

## The Setting: Study Area description and methodology

This study was conducted in Ganta (Gamo) of southern Ethiopia. The Gamo lies in the Gamo Gofa zone, which is one of the administrative zones of Southern Nations, Nationalities and Peoples Regional State/SNNPRS/. The Gamo receives an average of 500-1800 ml annual rainfall and the temperature of the area ranges between 24<sup>0</sup>c and 10<sup>0</sup>c yearly. The area of the Ganta people (the research site), who belong to the wider group of the Gamo people, belongs administratively to the Arbaminch zuria *woreda* and is located at hilltop some 20 km North West of Arbaminch town. The total population of Ganta was 13,392 in the year 2007, out of these 6,498 were males and 6,894 were female (CSA of 2007). The total households registered were 2,934. During my field stay I identified nearly seventy-one households of *ayle* both in Ganta and upper town of Arba Minch, capital of Gamo Gofa zone, with a total population of 300 individuals. The people of Ganta have a mixed economy which is related to the agro-ecological zone of the area. Barley, wheat, *teff*, sorghum, beans, horse beans, sweet potatoes and *enset* (false banana) are the main crops produced in the highlands. In the lowlands the main crops produced are maize, cotton and bananas.

The people of Ganta are hierarchically divided into three strata. The *mala* (free born) who constitute the dominant portion of the population are at the top, the occupational castes (*mana*) at the middle and the slaves/slave-descendants (*ayle*) at the very bottom. Crossing the caste-based social hierarchy is common for *ayle* and *mala*. The slave descendants, *ayle*, disclaim their slave identity, redeem themselves and achieve the strata of *mala* thereby assuming all the privileges of the free born. The *mala* on the other hand fall from their honored social position when turned into a slave if they closely participate with slave descendants during rites of passage.

This study is based on field work (conducted from February 2012 - May 2013) and focused on qualitative method because the qualitative method was important to uncover data regarding people's feelings, opinions, experiences, and personal accounts and also observations of everyday behavior—an important variable which can help us understand people's motivation to uphold their views and practices. This kind of data cannot be obtained through quantitative design. Data was collected by using different data collecting tools: in-depth interviews, informal conversation, case studies, collection of genealogies and observation of everyday life.

## Origin of Slavery in Gamo Society

The historical origin of slavery in Gamo society is associated with many factors. According to several informants, including the politico-religious leaders and ritual experts (*kati & maga*), descendants of former slave masters, *lathi*, slave descendants, *ayle*, and others there had been frequent famines (*gaffe*) in the middle of the nineteenth century. During that time people were forced to subjugate themselves to those few who still had ample resources. The many impoverished had to beg for food from the few rich. This later turned the many into slaves as they were unable to give back what they had been given to sustain their lives. Informants even revealed that *gaffe* stricken people had “bartered” their children for survival needs, i.e. they gave a child in exchange for food<sup>6</sup>. Descendants of slave holders asserted that their fathers and grandfathers bought slaves with only small amounts of grain and flour. Some slave descendants also confirmed that their ancestors had turned into slaves during the time of famine.

Second, the nineteenth century slave trade in the country had a paramount role in developing slavery in Gamo highlands. Oral traditions elucidated from informants proved that the Gamo highlands in general and Ganta in particular had been connected to the long distance caravan trade routes of 19<sup>th</sup> century in southwestern Ethiopia, mentioning that the Shoshane market had been a historic slave market then. Numerous informal conversations with different categories of people at Shoshane market, polling center and sacrificial places of the Ganta people revealed that slaves were formally traded at the market in the past. Informants from Ochole, where the market is situated, asserted that there was an *ayle do'o* (slave-selling part) in the market. They said that slaves had been traded like animals; bargaining over the price after the age, sex and healthiness of slaves was revealed was actually a common practice. The price of young and healthy slaves was higher than that for old ones. In the southwest, the Shoshane had been connected to Wortsiso (now Amaro-kelle), a leading slave trading market. Slave raiders had traded in these two markets. The genealogical data of origin of slave descendants' ancestors indicates that some came to Ganta (Gamo) from Wortsiso.

Informants also elucidated that the historic Shoshane market had been linked to Wolayta, Dawro, Keffa and Jimma. Alito Kayt (about 80-years-old and a descendant of slave holders) explained that the Gamo highlands had been connected to the nineteenth century along with the Omotic states, Kaffa and Konta. Referring to his father, Alito recalled that there had been a frequent exchange of

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<sup>6</sup> Some redeemed slave descendants whose ancestors' case related to this issue indicated that the intention of parents when bartering their children with some food was not to let them become slaves but rather to allow them to simply be adopted children by “new parents.” However, with passage of time the children were claimed as slaves.

goods and services between these states during the 19<sup>th</sup> century. The main trading items were slaves, ivory, civet and incense (see also Freeman 2004:29).

The third factor that contributed to the development of slavery in the Gamo highlands was the frequent conflict among the Gamo themselves. Numerous discussions with various people pointed out that in the past the different Gamo communities had been involved in frequent war. The creation of nearly forty Gamo communities was related to these conflicts. Mostly the fight was between the hereditary *kawos* (kings).

The fundamental causes of these skirmishes arose from economic issues. According to Olmstead, war could occur among various communities because of conflict over stolen livestock, a runaway wife, or ownership of a pasture lying between the communities (1973:226). Freeman also indicates that the desire to capture slaves was a fundamental reason because by then slaves already played a significant role in the Gamo economy (2004: 29-30).

During the conquest and skirmishes the war captives (*de'oo*) were taken as slaves by the victorious group. Besides turning individual captives into slaves, the victorious community brought the vanquished under their subjection. They became the vassal of the triumphant<sup>7</sup>. Traditionally, this period of war in Gamo history were known as: Gamo Tora *woode* "Gamo spear time" and it occurred at the dawn of nineteenth century. Generally one can say that famine takes first place in inventing slavery in Gamo highlands. The situation became more aggravated with frequent war between various Gamo *dere* and at the same time the connection of the highlands with the 19th century international slave trade.

### Contemporary Perspectives of Slavery

Today in the context of Ganta (Gamo) society slavery is broadly defined as *gale*- "debt bondage." This definition, however, differs from what "debt bondage" means in the literature of contemporary slavery<sup>8</sup>, and it also partially contradicts that of the historical origin of slavery in the Gamo society. The literal meaning of *gale* is "debt" but in connection to slavery the term has loaded connotations. It implies an innate debt (money or goods) that ancestors of slave descendants

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<sup>7</sup> Olmstead explains that vassal *dere* were of two kinds. Those called children (*yelo* in Ganta, also called *shato*) owed the dominant *dere* support in future wares. Those called wives (*macho*) owed agricultural labor; living at home during much of the year, their citizen had to work for specific individuals in the dominant *dere* as well (1973:227). Some of my informants indicated to me that vassals were also called *dere ayle*.

<sup>8</sup> The 1956 Supplementary Convention of Slavery defines debt bondage "status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined"(see OHCHR .2002. Abolishing slavery and its Contemporary Forms, Miers 2000, Welch 2005)

borrowed during famine or in time of social insecurity (sickness, mourning, and funeral). The *gale* also denotes an inherent debt, i.e. the money or good that was given in exchange for slave ancestors, the amount for which they were bought (during slave trade). The term is also unfairly linked to ancestors of slave descendants who were caught as captives during Gamo war periods. It seems that the definition of slavery, seen broadly in the context of *gale*, is connected to the role of slave redemption during which all slaves (slaves whose ancestors were bought or turned into a slave due to famine or caught as captive or was enslaved via other mechanism such as marriage contracts with people of slave descent) are required to pay huge amounts of money to descendants of former slave masters and ritual experts in order to retrieve their lost identity.

*Gale*, slavery, is considered impurity and consequently slave descendants are perceived as pollutants who transmit impurity to non-slaves. They are also considered as a kind of inferior creature when compared to non-slave descendants. This inferiority serves as a culturally frowned-upon link that travels back to their ancestors' dehumanization in the moment they became slaves. In the past, slaves had been treated no better than any other commodity or animal traded in the market and slave descendants, it is believed, share their ancestors' sub-humanity. Only through redemption, when slave descendants repay *gale* for their ancestors, can they retrieve their lost identity.

In the perspective of the Ganta community, slavery, *gale*, is both heritable and social contagion. With the heritability of slavery (and although the Ganta are patrilineal), slavery is believed to be heritable through both parents line. Many believe that a child shall be a slave by descent whether both or either of his parents were a slave. Slavery is also believed to be transferable through social participation with slave descendants. According to this assumption slavery is truly considered a "communicable disease," transferring from slaves to non-slaves through social participation during times of death, funerals, and even child delivery. Slave descendants are severely excluded during these events because close proximity partaking with them in those episodes turns him/her into slave.

### **Different Categories of Slaves**

Slave descendants in Ganta are broadly categorized into two: *bacha ayle* and *chancha ayle*. In the phrase '*bacha ayle*' the suffix *bacha* means sickle, a cutting tool used for cutting grass and weed. The term *bacha ayle* implies that the ancestors of that *ayle* had been bought from a market and had served their master by cutting grass for his mules and cattle. Such *ayle* also had to do farming, keeping cattle, washing the feet of their master, collecting firewood, and leading them when their master had to go somewhere. Informants indicated that *bacha ayle* had the

lowest position because their duties of serving someone by cutting grass for cattle are considered the lowest, defiled task. Associating slaves with this task was also used as a means to hint to their dehumanized position, as they were bought like cattle from the market. Descendants of these slaves today are called *bacha ayle* because they inherited their ancestors' status.

Another category of slaves contain those who became slaves through other mechanisms, such as during times of famine, during times of a Gamo war (as war captive) and through marriage. Descendants of such slaves are called slaves by descent (*lataa ayle*: inherited slavery). However, some informants argued that slaves by descent can also be called *bacha ayle* if they are fourth and fifth generations of their ancestors. The logic behind this explanation is that one of the essential features of *bacha ayle* is that it is hereditary, and *lataa ayle* share this attribute. During the redemption process it becomes obvious that there is quite a difference between the two; the *lataa ayle* do not give up their land and property to descendants of their master in order to acquire a new status like *bacha ayle*. If *bacha ayle* want to be redeemed, they should give up whatever property they have produced and whatever they have attained in their lifetime, including their houses and farms. All should be given to their *lathi* (master), or, more specifically, the descendants of their master. They reason out that the ancestors of these categories of *ayle* had been devoid of any property when they were bought. They had put off their clothes, shaved their hair, cut their nails and were naked when they came to their master's home. After that whatever property they produced and resources they attained were produced on the lands given to them by their masters. Thus, if they want to be "redeemed," it is said that they should give up their lands, houses and any property produced from the descendants of their master and leave themselves the way they had come: naked and without property. Then they should start a new life in another area.

The third slave category is called *chancha ayle*. The *chancha ayle* are *mala*, i.e. non-slaves, who were turned into slaves by participating in funerals of slave descendants or during a child's delivery. The term *chancha* stands for the food and drink offered to the grieving slave descendants' home when a relative has died, to comfort them. The same custom exists at *mala* homes. Here the equivalent food and drink is called *bochocha* (clean food)<sup>9</sup>. *Chancha* also stands for food and drink at slave descendants' home in the first week when a woman gives birth.

When non-slaves ignorantly or knowingly participate in eating *chancha*, the food offered during a funeral at a slave descendant's house, or in the first week when a woman gives birth, they automatically turn into slaves. These new kind of

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<sup>9</sup> I was told that when people do not eat *mala* at home during the time of the death, the grieving family accuses them by saying: this is not *chancha*! Why don't you eat? In other words, *chancha* means polluted food.



slaves have appeared only recently it seems, in connection with the intensification of slave redemption.

### **Everyday Interaction of Slaves with the Rest of the Community**

Daily life in Ganta at first glance can be characterized as a peaceful coexistence of slave descendants, *ayle*, members of *mala* (free born) and craft workers, *mana*. In church they worship and serve together. There are slave, *ayle*, church leaders, deacons, evangelists, singers, Sunday school teachers and worship-leaders. In community-based organizations such as *idir* (burial association) and *iqub* (saving association) the slave descendants have equal rights with the other members. Some of them serve in those organizations in leadership positions and equally benefit as the other members. In the neighborhood they entertain friendly relations, help each other out, work together and visit each other. The slave descendants also equally benefit from the infrastructure of the community. Their children go to school with the other children; they equally use the piped water set-up in each *qabale*. At local level government functions they equally participate with the rest of the community.



Ganta Idir association including: mala, lathi and ayle, constructing a house for mala widow.  
Photo by Boshia B. April 2013



The Idir Association having Lunch. Photo by Boshia B. April 2013.

All this shows that the slave descendants have a position very different to that of the original slaves. Today the *ayle* work for themselves and do not serve their masters, *lathi*, anymore. They are independent economically and socially, and many of them are now richer than the *mala*. Officially/legally there are no slave-master relations between slave descendants and their masters; however, in practice, the past relationship between the two is not forgotten especially during rites of passage (marriage, mourning, and funeral and child birth).

While the daily life of slave descendants with the rest of the community is relatively peaceful, the situation of *mala* is quite different. They are discriminated against, insulted and ridiculed continuously. The reason is, as my *mala* informants explained, that turning into slave by closely associating with slave descendants is considered more shameful than being a slave by descent.

While being a slave by descent is considered a part of a person's identity, i.e. an inborn inferior attribute, turning into a slave is considered the same as falling from grace, i.e. losing one's honored identity. Thus, usually *mala* are seriously excluded, and even more by their own relatives than by the rest community, because the relatives consider that the change from *mala* into *ayle* is not only shame for the person himself but also for them. During my research I met some *mala* who had turned into a slave by marrying slave descendants. They were severely discriminated by their own kin, evicted from their own land and banished from their residence, with ties to their kin completely cut off. Such *ayle* were therefore forced to migrate to another area.

## Marriage Contract

Arranged marriage was in the past and present is the responsibility of the parents. In the past, parents selected the spouse for their children, sent elders, a go-between, *lazantha*, to the family of the potential spouse of their child, decided on the schedule, organized the ceremony, and provided all necessary resources needed. Today, children can select their spouses but their selection still has to be approved by the parents. Most important, even today they have to make sure that the background of the potential spouse is clean. The main criterion is *uma* (descent cleanness), i.e. the partner should be descendants of free born. To be sure that the prospective spouse of their child is not of slave descent, parents usually engage in intensive genealogical counting. Many discussions with informants take place and parents usually go as far as seven generations back to ensure the clean origin of the would-be partner of their child. In such investigations when they detect slave origin in either paternal or maternal ancestral roots, they avoid all contracts.

*Uma* matters greatly if one wants to continue to live in close relation with his/her kin. Because of the strict parental involvement in investigating the “clean origin” of the potential partner of their children, informants asserted that mixed marriage alliance, i.e. marriage between slave descendants and non-slaves, has been uncommon since the introduction of slavery in the study community. During my field work I cross-checked the marriage ban by collecting marriage genealogies of both redeemed and unredeemed slave descendants and it revealed that slave ancestors started marrying slaves and that they continued to practice this for more than four generations in the study community. Almost all slave descendants whom I identified engaged in contracted marriages with slave descendants.

Nevertheless, there are a few cases of mixed marriage (between slave descendants and free born). During my field stay I identified four cases of mixed marriage; two in Kanchama-Ochole and two in the upper town of Arbaminch. In Kanchama-Ochole a rich slave descendant and his son both married *mala* women. The women had volunteered to marry the *ayle* as they were wealthy. Such women, I was told, say “*Uma ala othai, santemewa!*” (What is important about the clan or social origin? What is important is money!); and “*Athi meyoda hedes ayleko gele!*” (If you want to have a luxurious life, marry a slave!). These women were completely cut off from their parents and kin groups after marrying *ayle*, as now they had turned into *ayle* themselves. The families of these women argued that, “*Tsegara durora alawa bu’asi!*” (Goat and sheep cannot mix), meaning that slave descendants cannot mix with freeborn.

Two freeborn men from Kanchama-Ochole who got married to *ayle* women were facing severe discrimination by their parents, kin groups and other *mala*.

Their parents and kinsmen wept and mourned after the marriage, saying that they had lost their children who had turned into slaves. The two men indicated to me that they felt as if they had lost their real humanity, as they were continuously mocked, insulted and scorned. Because of the serious exclusion from their kin groups and the community members they finally decided to migrate to Arbaminch to escape exclusion and maltreatment.

## Death and Funeral

Transmission of slavery during death and funeral rituals is dramatic and often results in the immediate exclusion. Death is the most serious of all the slave descendant transmission periods. Close interaction with descendants at such events can automatically turn people into slaves. It is also during an event of death, mourning and funeral, that people still recognize the previously existing slave-master relationships. The slave master initiates all activities: from giving postmortem care to the dead and giving funeral rituals at the death of the slaves who were owned by them in the past.

Numerous discussions conducted with informants (slave descendants, *mala* and *mana*) revealed that isolation of former slaves at events of death started right from the beginning of the origin of slavery in the study community. By then there were two areas of exclusion: by avoidance of food and drink and overnight stay before *la'a*<sup>10</sup>. The prevention was aimed to keep oneself away from being contaminated by slavery because of the strong traditional doctrine established that lack of deterrence on such areas during death automatically turned participants into the status of slave, and the pollution continues to contaminate the family line of the participant until he/she becomes redeemed. Therefore, when death occurs at a slave's home, the rest of the people weep and mourn with them but they do not share food and drink and stay overnight. They present food and drink to the deceased slave's family, but their own food is believed to turn into *chancha* (polluted and uneaten) as soon as it is handed over to the deceased slave's family<sup>11</sup>.

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<sup>10</sup> *La'a* is complex concept having various connotations. In this study it denotes two issues. First, it implies emancipation/redemption of a slave descendant. In this case it denotes complete and permanent cleanness of the slave descendant. When a slave descendant is redeemed, it is called *la'atis* (meaning emancipated). Second, it indicates cleanness from temporary impurity. When a slave descendant dies or gives birth, the first six days are considered as the period of pollution. The seventh day is called *la'a* meaning the end of the period of impurity. There is no ritual required of the slave descendant to get cleaned. According to the customary law the seventh day is considered pure. Some of my informants, especially descendants of slave holders, associated *la'a* with Moses' laws from the Old Testament.

<sup>11</sup> I was repeatedly told that if one does not eat at a death event at a *mala* home, then the deceased's family complains by saying this is not *chancha*! Why don't you eat?

It is allowed, however, for *mala* to eat at their own slave descendant's funeral, i.e. slave masters are free to eat and drink at the death of the slaves who were owned by them in the past; it is only polluting to eat at an unrelated slaves' home.

On the death of the descendants of one's own slaves, the master and his kin group support the deceased slave's family in every aspect; they stay overnight, comfort them, eat and drink with them and even help bury the dead body. They freely do that because, people say, the slaves are considered to be their kinsmen since the time they became slaves of their masters. At that time the slaves were cut off from their kin group and established new fictive relation with their masters. I was told that the cooperation of slave master at the slaves' death is obligatory, and without him no one approaches the deceased slave's family. This is the case even though today there exist no real slave-master relationships anymore, but people still recognize the previously existing relations of their forefathers.

### **Recent Developments**

Apart from avoiding these principles other customs were introduced recently. The newly developed avoidance customs further complicated the situation of slave descendants. Almost all informants I interviewed agreed that the recent developments of avoidance customs are highly associated with "the commercialization" of slave redemption. Recently many slave descendants got redeemed, and the politico-religious leaders and ritual experts were concerned about the issue. They worried that all slave descendants could be redeemed and there would be no profit for them; they introduced new avoidance rules hoping that they would turn free borns into slaves.

The first newly introduced custom is that the free born should not be present at a slave descendant's home when he/she dies. This newly introduced norm caused more fear to non-slaves regarding the situation of slave descendants than ever before. A redeemed non-slave wife explained that she fears slavery more than a wild beast. Informants pointed out that when a slave descendant gets seriously sick, the non-slaves do not go to visit him/her because they fear that he/she could die at his/her presence, and that potentially could turn them into a slave of the dying person's master. Thus, instead of visiting and comforting the seriously sick slave descendant, the non-slaves run away—especially if they are in the neighborhood of the sick person.

The second is avoiding postmortem care to the dead. Informants elucidated that this is the obligatory task of the slave master. They explained that no one can



perform this task except for the deceased person's family.<sup>12</sup> If anyone gives postmortem care before the master he immediately declares that a person becomes his slave. Therefore, during such time the slave descendants can be helped only by their master or they carry the burden by themselves. In other words, the situation is worse for the slave descendants; a father gives postmortem care for his dead son and vice versa; a husband gives such care for his lost wife... etc. If death occurs at a woman-headed household, the situation becomes worse; she could be helped by her relatives or she could be isolated until her master comes.

The third avoidance consists of various issues. I was told that when a slave descendant dies, the first six days are believed to be the period of "temporary impurity." The non-slave informants explained to me that when a person dies, *suba* (liquid?) discharges in his/her mouth and/or nose. Therefore, when a slave dies it is believed that a drop of *suba* further pollutes the whole deceased person's compound and his family, and they get cleaned at the seventh day, *la'a*. In this context in previous time what was avoided was food and drink but now newly added avoiding practices include: washing hands, brushing teeth, sitting on wet grass, initiating tent erecting for guests and smoking cigarettes. I was told that anyone who is found doing one of these lists automatically turns into a slave of the deceased slave master. In addition to avoiding these, informants indicated that before *la'a* exchange of any household equipment with deceased, slave descendant's family is strictly prohibited; for example, the non-slaves can present food to deceased person's family but they cannot return the tool by which they presented the food to the grieving home prior to *la'a*.

The last avoidance is participation in the process of corpse burying. The process of burying the dead body starts by preparing a new grave. Preparing the tomb can only be started when the master of the deceased slave first initiates the digging, *chare*. If the grave is started in his absence by anyone, the master asks: *Odewa bosasi chare?* "Who initiated the tomb?" which means he is claiming to make the initiator his slave. Informants indicated that carrying the corpse to the tomb did not contaminate and turn one into slave but initiating it from home to outdoor does have the potential to pollute. During corpse burying, participation in filling up the pit does not impure one but initiating it is danger.

### **Transmission of Slave Status During Child Birth**

Various discussions with informants (*ayle*, *mala* and *mana*) indicated that the mechanism of transmission of slave status during child birth is almost similar to what it is during death and funeral and consequently exclusion of slave

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<sup>12</sup> Informants elucidated to me that in this circumstance other slaves cannot help the deceased person's family because the local tradition forbids them doing so.

descendants during time of child delivery is almost similar to the one described in time of death. Informants portrayed that non-slaves do not help when a slave woman gives birth. They do not give the office of midwife to her. After she gives birth, the non-slaves can visit about the well being of the woman but they do not eat and drink at her home. They also do not wash their hand, brush their teeth and/or sit on wet grass. In addition, no household tool can be exchanged between that slave home and the rest of the people until the woman gets cleaned at the seventh day, *la'a*. In other words, any household tools borrowed by slaves before the delivery would not be returned to the non-slaves until the seventh day. Only slaves give office of “midwife” to a slave woman when one is giving birth. It is also they who cooperate and interact with them after one gives birth.

The logic behind excluding slaves at the time of child birth is controversial among informants. Many argued that during the child birth the woman sheds blood and that the blood contaminates the slaves and their home further. Especially *mala* informants claimed that standing where slaves bleed can potentially impure him/her. This is not at every time and every place, they argued, it is only during culturally sanctioned times, such as during child birth. This assumption is not clear but many accept the thought and they simply argued that it is a culturally established norm.

### **The *Wozzo* Ritual: Redemption of Slaves**

Given the dehumanization slave descendants face during rites of passage, redemption is the only hope through which slave descendants retrieve their lost identity. The *wozzo* is Gamo language and implies redeeming or ransoming, and refers to “the buying back” of lost identity of the free born, *mala*. The ritual consists of several complex steps and missing one of them leads to a complete failure of the process. In case all required ritual steps are completed, this guarantees the slave descendant to be fully integrated into the mainstream society and therefore assuming all rights and privileges of the *mala*. The intricate and exact procedure of the ritual performance depends on the category of the slave to be redeemed.

According to the interview I conducted with redeemed slave descendants, slave masters and ritual experts (*maga* and *kati*) there are four basic levels or steps in the *wozzo* ritual that all have to be completed during the redemption process.

At level one the slave descendants accomplish the redemption process with their master. At this level the slave descendants can take the initiative to redeem themselves, or a mediator (*oge maga*) will connect him to his master.

When the slave descendant decides to undergo the ritual process, he selects elders (*lazantha*). The *lazantha* should be aged, socially accepted and respected

and influential. They should also be knowledgeable of all details of the *wozzo* ritual, and they should also know the master's family and lineage very well.

The *lazantha* and the slave descendant together go to the master's home. After their arrival, the *lazantha*, on behalf of the *ayle*, falls down at the master's feet. While kissing the soil they plead, "*Tsela! Tsela! Tsela!*" ('Look! Look! Look!'), asking the master to accept the request of his slave to be redeemed. At this level pleading and continuing negotiation and bargaining over redemption prices is tedious and complex. The master has absolute power; he can accept or reject the request of the slave descendant, he can handle the whole procedure fairly, but he can also make it difficult. Once the basic agreement has been made, the master initiates the redemption process by asking the price of the first ancestor of the slave descendant (*uma harafa*), which costs about 300-400 Ethiopian Birr. Paying *uma harafa* is the beginning step to redeem everyone in the descent line.<sup>13</sup>

When the master has collected *uma harafa*, he directs the next steps by ordering the elders of slave descendants: "*Gaydi eshayto!*" ('Drive my oxen/cows'). Hereby he refers to the slave descendant who is considered his 'ox/cow', and then he tells the price of each of his ancestors up to the first in the descent line. The elders lead the *ayle* to the master, saying: "*Eshayto gaydi! Hiti! Hiti! Hiti!*" ('Your ox/cow is this'), and then the *ayle* has to fall down on his knees and walk like an ox/cow before his master, roaring and mooing.

As indicated above, the cost of the redemption is not fixed. It depends on the category of the slave (*bacha/chancha*), sex and the economic power of the slave descendants. *Bacha ayle* must give up their residence and farm land, and material produced and attained in their lifetime to their master. They cut their nails, shave their heads and leave completely naked after being redeemed, so thereby start a new life in a new area. *Chancha ayle* have no impurity in their descent line and they, therefore, undergo only their own case. Their cost is much less than that of the *bacha ayle* or/and *lataa ayle*. The cost of female *ayle* is usually higher than that of male because female slaves are considered as "seed" to produce new slaves through formal marriage or sexual immorality.

The order of redemption is flexible. At the first level of redemption, a married *ayle* can first redeem his own descent line, or his wife's descent line. However, redeemed slave descendants indicated to me that often husbands redeem their descent line first and afterwards they redeem their wives'. The slave descendant can also redeem his deceased ancestors first or he can redeem himself, his family and his living parents first and then his deceased ancestors.

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<sup>13</sup> During slave redemption slave descendants not only redeem themselves but all deceased ancestors starting from the apical ancestor. Without redeeming deceased ancestors redemption cannot be complete. In addition to redeeming the deceased ancestors individually they redeem the works their ancestors delivered to their masters. According to informants this is the most fraudulent and deceptive part of the redemption process.



When the *ayle* finishes paying the required amount for his father, himself and his children, the master starts the redemption. The *ayle* should be present, his children can be there in person or represented by ritual sticks, one for each child. The master relieves him from being an *ayle* and blesses him:

Hanzope gede nena anjakotede, nena dere maqada la'akotede, kati shato maqe, dana shato maqe ne shatora ta shatora eputi geluti  
(‘From now on I have blessed you, so that you can be a citizen, live like a king and noble man, May your children and mine marry each other!’)

Then he puts wet grass on the *ayle*, which means that now he is redeemed. Now, the redeemed *ayle* starts singing (*gayro*):

Ntsa kesisade wozitisade, lathi kare halsutesadee, hanzope gede galape kastakotede metope kesokotede  
(‘I am set free, I am redeemed, and I finished at master gate, from today on I am released from my debt. My problem is solved!’)

Then, the redeemed *ayle* runs away. He avoids looking behind the master because gazing back at the master during the ritual process is believed to disqualify the redemption.

The next step of the *wozzo* ritual is performed at the *maga*’s gateway. The *maga* is politico-religious ritual expert positioned below the *kati* (king). At the *maga*’s gate the *lazantha* once again fall down on behalf of the *ayle* and laying at the *maga*’s feet they kiss the soil and plead “*Tsela! Tsela! Tsela!*” (‘Look! Look! Look!’). Again there is negotiation over the price for redemption but often it depends on the economic power of the *ayle*. Other than at the master’s house, many people attend the ritual at the *maga*’s home, including the elders of the community, the family of the redeemed *ayle*, and the ritual elders of the redeemed slave descendant and the lineage (family) members of the *ayle* master.

Before ritually blessing the *ayle*, the main task of *maga* is to cross check whether the *ayle* has completely finished his redemption with various *lathies*<sup>14</sup>. He has to confirm that the redemption, i.e. the payment to the master’s family has been completed before one can proceed, as an unfinished redemption means that the *ayle* has not changed his status and therefore still is a danger to the *maga* and others as he can still pass on his status through marriage alliance or eating and drinking together at funerals, etc.

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<sup>14</sup> Redemption starts with the first ancestor in the descent line and therefore there could be many masters when a man starts to redeem both his mother’s and father’s line.

The *maga* and his wife are paid for redeeming the *ayle*. After completion of payment, the *maga* purifies and blesses *ayle* by saying:

Hanzope gede nena anjakotede, nena dere maqada la'akotede, kati shato maqe, dana shato maqe nu shatora ne shatora eputi geluti  
(‘Now that I have blessed you, be a citizen, live like a king and noble man, may our children and your children marry each other’).

Then he puts wet grass on the *ayle*'s head suggesting he is cleaned and emancipated. Soon the *ayle* starts expressing his happiness by *gayro* (singing):

Ntsa kesisade wozitisade, maga kare halsutesadee, hanzope gede metope kesokotede  
(‘I am set free, I am redeemed, my freedom is assured by the maga, and my problem is solved’)

Ritual purification of the slave descendant with the *kati* is the third and most important step. Again, the elders of the slave descendant accompany him and on behalf of him fall down at the *kati*'s feet and kiss the soil while saying: “*Tsela! Tsela! Tsela!*” (‘Look! Look! Look!’). The difference between the *maga* and the *kati* redemption is that the *maga* recognizes the redemption of the slave descendant to his constituency only, whereas the *kati* acknowledges his redemption to the entire Ganta community. The *kati* and his wife are paid for the ritual process. The *kati* ends the redemption by saying:

Hanzope gede la'a maqe apute, gelute  
(‘From now on you are emancipated and integrated into the community, marry and be married with them’).

The final stage of the *wozzo* ritual performance is the *soffe* celebration which involves the public announcement of the new status of the *ayle*. The *soffe* is performed at Shoshane market. The Shoshane market is the meeting point of the entire Ganta community and the surrounding areas including Arbaminch and other Gamo communities. The basic objective of celebrating the redemption at this market is to announce to the entire community, i.e. the people from nearby and from far, that the slave descendant is redeemed and integrated. Hereby, future confusion in marriage arrangements shall be avoided, and the full participation and interaction during funerals, marriage and childbirth will be granted for the redeemed and all his family.

Regardless of its complex and economically destructive aspects, the community trusts in *wozzo* ritual. Out of 71 households in three Ganta villages (Kanchama-Ochole, Meyche and Bonke) with a total population of 300 people I identified 51 households were integrated through the *wozzo* ritual, having completed the above mentioned noted levels and steps): Five households remained unfinished, i.e. they processed level one and were interrupted at that level due to financial problems. Today they are perceived as potential sources of impurity. The remaining fifteen households are unredeemed.

## Conclusion

Years ago, Kevin Bales, a noted scholar in the field of contemporary slavery, argued that “in the academic and policy analysis of contemporary slavery, many of the fundamental areas of enslavement are yet to be explored and brought into systematic presentation” (Bales 2005:1). Taking Bales’ argument as point of departure, in the conclusion I will be concerned with two issues. First, the ethnographic material and the conceptual framework I used. Second, I’ll show what is new in this research.

I argue that despite peaceful, cooperative and coexistent relationships between slave descendants and the rest of the community members (*mala* and craft workers) slavery is still a lived condition of slave descendants in Ganta (Gamo) community of southern Ethiopia.

My first justification comes from the contemporary slavery definition from Anti-Slavery International. Since its foundation in 1839 Anti-Slavery International started working on chattel slavery and now shifted its attention to contemporary slavery (Welch 2009). According to Anti-Slavery International, descent slavery is a form of contemporary slavery. In societies where descent slavery exists, slavery is a condition ascribed at birth, passing through generations. Such societies living under caste-based social hierarchy are based on ethnic or racial lines. Free born (noble class) at the top, craft workers at the middle and slaves at the bottom level. The slaves face high exclusion due to being member in the slave caste group. This framework clearly shows how the Ganta (Gamo) society practices slavery today. In Gamo, slavery is not achieved status. It is ascribed to them because of their descent line. The strict social hierarchy is also a practical way of putting the slave descendants at the bottom level (below craft workers). Severe exclusion of slave descendants due to being members in the slave caste group is the real case in Gamo society.

Related to Anti-Slavery International’s definition of contemporary slavery is the theory of Orlando Patterson. In his book *Slavery and Social Death* (1982), Patterson argues that slavery is a “relation of domination.” He says that power

hierarchy and domination is essential to define slavery. In Ganta (Gamo) society, asymmetrical power relationships between slaves and their master, slaves and ritual experts, slaves and free born, slaves and the craft workers clearly reveals the relation of domination. In all aspects slave descendants are at the bottom. Nevertheless, masters have total power and slave descendants are not totally powerless. The “social death” and “natal” isolation of slaves from the community (which Patterson argues) is incompatible in the context of Gamo.

My second justification is based on Caring and *et al's* (2007) approach on contemporary slavery. According to these authors slavery is “severe economic exploitation” and “control of one person over another by the panorama or reality of violence.” I argue that the severe economic exploitation of slave descendants in Ganta (Gamo) can be seen in the process of slave redemption. During slave redemption slave descendants lose all their assets acquired or produced during their lifetime, including their land and house (especially when they are *bacha/lataa ayle*); they give all to their master, descendants of former slave holders. They go naked as that was the way they joined their master. Is that not economic exploitation? The requirement of redeeming all deceased ancestors in the descent line is a deliberate mechanism to exploit the slave descendants. During redemption the slave master solely decides the redemption price and slaves have no right to argue and are forced to pay the determined amount. Borrowing Bales’ expression I argue this is a “hidden crime,” or, according to Welch it is a “subtle” form of slavery. Control of slave masters over slave descendants by panorama can be revealed on the way they restrict others’ involvement in the lives of slave descendants during rites of passage (marriage, death and child birth). When non-slaves closely participate with slave descendants during rites of passage the slave masters automatically turn them into the status of slaves. Then, unless they redeem themselves, their descent line continues in contamination. Thus non-slaves harshly exclude the slaves in such specific situations. Exclusion is a precondition for redemption and redemption is an exploitative strategy. It is control in my view.

When Bales says, “many of the fundamental areas of enslavement are yet to be explored and brought into systematic presentation” (Bales 2005:1), it was on the issue of debt bondage. I argue that this study partially fulfills that anticipation. The ideology of “debt bondage” in Ganta (Gamo) is to some extent different from what it is defined in “1956 Supplementary Convention” that Bales himself approach in *Southeast Asia: Collateral debt bondage slavery and coercive fraudulent debt bondage slavery* (Bales 2005: 1). In Ganta (Gamo) debt bondage is a loaded term and implies: innate debt (money or good) borrowed by slave ancestors, inherent debt (money or good) given in exchange for slave ancestors. Also it implies slave ancestors who were caught as captives during the war periods.

Finally, I argue that this study sheds light on the history as well as on contemporary perspectives of slavery. In my view the contagion aspect of slavery is new. Manumission and redemption of slaves is common in the history of slavery. What is new in Ganta (Gamo) is this structured and institutionalized form of ancestral redemption. As last point I confess that this study is limited to the community of Ganta (which belongs to the larger Gamo communities—there are more than forty Gamo communities). Therefore, this study can be used as a point of departure for further study in broader Gamo communities or in Omotic regions within southern Ethiopia in general.

### References

- Bales, Kevin. 2004. *Understanding Global Slavery*. University of California Press. New Slavery. California and Santa and Barbara: ABC-CLIO, LLC.
- Bales, Kevin. 2005. 'Introduction'. In: Dobyns, Sarah B. *et al* (eds.). *Human Rights and Contemporary Slavery. Graduate School of International Studies, University of Denver*
- Craig, Gary *et al*. 2007. *Contemporary Slavery in the UK*. Joseph Rowntree Foundation.
- Dirk, Bustorf. 2010. 'Domestic and Court Slavery'. In. Uhlig, Siegbert. 2010. *Encyclopedia Aethiopica* (ed.), Vol. 4, O-X, Harrassowitz Verlag. Iesbaden 678-680
- Gould, Amanda J. 2010. *Modern Slavery: A Regional Focus*. A Thesis Presented to University of Denver, Faculty of Social Science, Department of Economic.
- Jordan, Ann. 2011. Slavery, Forced Labor, Debt Bondage, and Human Trafficking: From Conceptual Confusion to Targeted Solutions. ISSUE PAPER 2
- Manzo, Kate. 2005. Modern Slavery, Global Capitalism Deproletarianisation in West Africa. *Review of African Political Economy* No.106:521-534

- Miers, Susanne. 2000. 'Contemporary Forms of Slavery'. *Canadian Journal of African Studies / Revue Canadienne des Études Africaines*, Vol. 34, No. 3, PP. 714-747. 2011. 'Slavery and Abolition in 20<sup>th</sup> Century'. In: Rodriguez, Junis P. *Slavery in the Modern World. A History of Political, Social and Economic Oppression*. California and Santa Barbara: ABC-CLIO, LLC. 3-16
- OHCHR. 2002. *Abolishing Slavery and Its Contemporary Forms*. New York and Geneva: UNO
- Patterson, Orlando. 1982. *Slavery and Social Death: A Comparative Study*. Cambridge, [Mass.]; London: Harvard University Press.
- Smidt, Wolbert. 2010. 'Slavery and Politics'. In: Uhlig, Siegbert. 2010. *Encyclopedia Aethiopica* (ed.), Vol. 4, O-X, Harrassowitz Verlag. Iesbaden PP.680-681
- Welch, Claude. 2009. 'Defining Contemporary Forms of Slavery: Updating a venerable NGO'. *Human Rights Quarterly*. PP. 70-128

# Ending Slavery

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There is a famous line in Milan Kundera's *The Book of Laughter and Forgetting* when his character Mirek asserts that "*The struggle of man against power is the struggle of memory against forgetting.*"<sup>1</sup>

Beyond the complexities that Kundera wished to convey with in his story this idea of memory against forgetting resonates in a number of ways in relation to the contemporary struggle against slavery because before anyone can ever be convinced to take action in this struggle they must throw off the comforting myth that slavery is a thing of the past. Instead they must acknowledge that slavery remains a major contemporary problem. They must also remember that, like the human rights struggles of the past, the struggle to end contemporary slavery must of necessity emerge out of an accumulation of numberless local and national struggles waged by flawed human beings for a plurality of, sometimes self-contradictory, reasons.

This is because of the diverse nature of slavery itself: a life lived in bonded labour in Indian brick kilns is different in important respects from that of a Nepalese domestic worker in Lebanon, or a child slave working in the cocoa fields of West Africa or the cotton fields of Uzbekistan or a forced labourer in American agriculture. Hence the responses to these problems must be nuanced and adjusted to the realities of those particular abuses.

However there are some significant similarities: generally speaking, slavery emerges at the conjunction of three factors: vulnerability, usually this is poverty but it can simply be about physical weakness or social isolation in a country where you do not speak the language; discrimination; and failure of government and rule of law.

The issue of discrimination is a fundamental one in slavery: when we look at historical slavery in the Americas we see that racism was both a cause and a consequence of that slavery. Thus has it been, thus will it always be. In Latin America today many in forced labour are indigenous people. In Western Europe

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<sup>1</sup> Of course the matter of remembering is never a straightforward one as Kundera illustrates with Mirek's story, where, for all his protestations of commitment to memory, Mirek strives to eradicate evidence of a youthful affair that he now, for rather shallow reasons finds embarrassing, and where his rash efforts to diligently record political events since the Soviet invasion of Czechoslovakia results with himself, his son and his friends in prison.

most people in slavery are migrants workers. In South Asia most people in slavery are Dalits or from other scheduled castes or minority groups.

This is important for a variety of reasons, not least that it inhibits the issue from becoming a political one: if slavery is only being inflicted upon groups and individuals who the wider society simply does not like, then that wider community is more likely to tolerate the abuses if they see them and not raise their voice to demand that governments do their jobs to stop the problem.

And slavery is very much a failure of government and rule of law. Child labourers enslaved in the garment workshops of Delhi tell how when the workshop owners fail to pay bribes to the police, the police come, arrest the children and hold them hostage, stopping work, until the bribes are paid.

Many benefit from this toleration of contemporary slavery: rich and poor alike can obtain substantially free labour for their businesses and their homes, More broadly the toleration of slavery provides cheap bricks for construction across South Asia, attractive natural stone for the kitchens and bathrooms of Europe, and cheap clothes for sale on European and North American high streets. So extensive is the use of the forced labour of girls and young women in garment manufacture in southern India, not to mention the forced child labour in cotton production in Uzbekistan, that the probability is that every reader of this article will own at least one garment that is tainted by the use of contemporary slavery in its production.

Just to give one illustration of what that means: In the course of a piece of research that Anti-Slavery International, funded by Humanity United, conducted into the forced labour of girls and young women in the garment sector of the state of Tamil Nadu in Southern India we spoke to the mother of one young woman who worked in a cotton spinning mill there. She described visiting her daughter:

*“I spoke to her in a room provided for visitors”, she said, “because visitors are not allowed to go inside the mill or hostel. My daughter told me that she was suffering with fever and vomiting often. ...I met with the manager and requested him to give leave to my daughter because she was unwell. I told him that I would send my daughter back once she was better. But the manager refused saying that there was a shortage of workers therefore they cannot grant leave. He also assured me that they would take care of my daughter and asked me not to worry.”*

A week later she received word that her daughter was dead. She was only 20 years old.



The Bellagio-Harvard Guidelines on the Legal parameters of Slavery<sup>2</sup> note that:

*“Mistreatment or neglect of a person may provide evidence of slavery... [it] may lead to the physical or psychological exhaustion of a person, and ultimately to his or her destruction; accordingly the act of bringing about such exhaustion will be an act of slavery.”*

*“Evidence of such mistreatment or neglect may include... the imposition of physical demands that severely curtail the capacity of the human body to sustain itself or function effectively.”*

Hence when we use the term "slavery" to describe the conditions in many of the spinning mills that produce garments for our high streets, we use that term after much consideration, and in the face of a refusal of many garment retailers who want to be seen as ethical to recognize the facts of the case as such.

But while contemporary slavery disproportionately affects poor people in the world it is not solely an issue in poor countries. In late 2013 the investigative journalist Pete Pattison exposed the extent of forced labour in Qatar in that country's preparations for the 2022 FIFA World Cup. There tens of thousands of migrant workers from South Asia, in particular Nepal, arrived with the promise of decent work but instead found themselves barred from leaving the country and forced to work in frequently lethal conditions often for considerably less pay than they had been promised.

In Qatar this system of forced labour is underpinned by a system known as "kafalah" by which migrant workers can only obtain work if "sponsored" by a particular Qatari employer. On arrival this employer will confiscate their travel documents and they will be banned from changing employer irrespective of how abusive the working relationship becomes. Clearly the government of Qatar has the lion's share of the blame for this system of forced labour, but FIFA has much to answer for in awarding one of the world's premier sporting events to a slave state.

Furthermore the governments of the sending countries also have responsibility here: they must recognise that their responsibilities towards their citizens do not end at the borders of their state and hence they must do more to establish consular and labour attaché services for those citizens whose remittances are so vital for the development of their countries.

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<sup>2</sup> Drawn up by a network of academics and activists under the leadership of Prof Jean Allain, of the Human Rights Centre at Queen's University Belfast to provide greater explication of the definition of slavery in the 1926 Slavery Convention which reads: ‘Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’;

Unbelievably the UK has a de facto 'kafalah' system for migrant domestic workers to that country and so, as in Qatar, effectively give license to employers for forced domestic labour. This disregard that the UK has for safety of domestic workers is projected internationally with the UK government aligning itself with the government of Sudan in 2012 in refusing to support a new international convention on decent work for domestic workers at the International Labour Conference. It is disappointing to have to point out to the UK government that if they are on the same side as the government of Sudan on a human rights issue, they are probably on the wrong side.

Up to this point this article has focused on questions of national policy that facilitate forced labour within particular countries. Given the nature of slavery much of the response to it should be national. However there are two major transnational or international challenges to ending slavery.

The first relates to the huge lacuna with regards to international rule of law regarding how, in this globalizing political economy, international business and individual business executives can be held to account on human rights issues in their supply chains. In the 21st century with this increasingly globalised economy the capacity of states to regulate business, as envisioned by classical economics, is proportionately limited. Re-establishing the legal accountability of international corporations, and of individual business executives who are running those corporations, is a central requirement in the struggle against contemporary slavery, particularly as companies extend their operations into countries with limited rule of law and high levels of corruption.

Both the United Kingdom and the United States have extraterritorial legislation, in the case of the UK, for example, in relation to bribery, because these countries recognize that the damage that certain practices can do to both business and the rule of law itself. There is as yet, unfortunately, little apparent appetite for similar extraterritorial law against forced labour which has corresponding devastating impact on vulnerable people across the globe and entrenches poverty by removing further the promise of decent work as a path out of poverty. If history shows us one thing it is that a request for voluntary initiatives to respond to systemic abuses, such as slavery in international business supply chains, do little to change the system. Hence there is a need to introduce extra-territorial legislation to make explicit the legal accountability of international business entities and their executives in relation to slavery in their supply chains.

The second major "transnational" issue relating to eradication of slavery relates to the broad international anti-poverty and development agendas. As was noted above the eradication of slavery will have a major impact on poverty by increasing decent work. However few international development or anti-poverty organizations prioritize slavery eradication as a means to end poverty. This is

problematic not only because it denies resources to the struggle against slavery but also because few recognize the risk of slavery in the communities they work amongst. Hence they run the risk that their interventions either relatively or absolutely exacerbate the position of the most vulnerable groups in those communities. For example in 2005 during the West African famine our colleagues in the organization Timidria noticed that slaves were being used in food for work programmes: they were being sent to these schemes by their masters who would then confiscate the ration card they received for their labour. In other words an important and well-meaning humanitarian programme was contributing to the absolute worsening of their lives. Matters may have improved somewhat since 2005, but this is not an isolated case. Hence the imperative of reducing slavery needs to become a central focus of the entire international development sector.

This can be obtained by two principle means. First, slavery eradication must be made a post-2015 development goal, recognizing the fundamental constraint that slavery is on poverty reduction as well as the continuing human rights atrocity that it is, Second, and to advance this development goal, all aid actors must be required to state how their programmes address the challenges of slavery and non-gender based discrimination in their operations.

It should be an acceptable response to say that it will have no impact: some programmes will necessarily respond to other priorities. But the requirement should be that at least they consider this matter in the same way as they are now rightly required to consider gender in programming.

Slavery is a human institution and like all human institutions it can be changed by human action. But we must stop just tinkering at its edges and instead aim to destroy it utterly.