

# SLAVERY TODAY JOURNAL

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## **A Theory of Human Trafficking Prevalence and Forecasting: Unlikely Marriage of the Human Security, Transnational Organized Crime, and Human Trafficking Literatures**

by **Davina Durgana**, Adjunct Instructor and Doctoral Candidate; Human Trafficking Specialist; School of International Service, American University

## **Human Trafficking Specific Jury Instructions: Tools to Increase Prosecutions and Convictions**

by **Alexander Essee** (Stetson University College of Law Juris Doctoral Candidate, 2015) and **Emily Tocci** (Juris Doctoral Candidate, 2015; Trainer, International Association of Human Trafficking Investigators)

## **Human Trafficking Investigations, Implications of Apathy and Inaction, Recommended Solutions**

by **David Hartless**, Municipal Police Officer, Ontario, Canada

## **Funding and Capacity Building Fuel Cooperation: A Case Study of Counter-Force Networks Fighting Sexual Exploitation and Trafficking in India**

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## **Au Pair Scheme: Cultural Exchange or a Pathway to Slavery?**

by **Tina Davis**, International award-winning documentary maker, University of Sydney PhD Candidate, board member of the Norwegian Anti-Slavery Association.

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Reviewed by **Benjamin Thomas Greer**, Former Special Deputy Attorney General, California Department of Justice

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# **A Theory of Human Trafficking Prevalence and Forecasting: Unlikely Marriage of the Human Security, Transnational Organized Crime, and Human Trafficking Literatures**

**by Davina Durgana**

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## **Introduction**

Vulnerability to human trafficking is essentially indistinguishable from vulnerability to myriad other violent crimes. Trafficking importantly diverges from sexual abuse, domestic violence, physical abuse, and kidnapping with the explicit intentions of the exogenous agent to sustainably profit from harm. The United Nations Office on Drugs and Crimes (UNODC) provides a compelling definition of vulnerable people and victims. According to UNODC, vulnerable people are “people who find it especially difficult to fully exercise their recognized rights due to cultural, physical, or psychological reasons, caused by, for example ‘victimization.’”<sup>1</sup> A victim is “any physical person who has suffered damages caused by criminal offence.”<sup>2</sup> Similarities in vulnerable conditions are implied by the standard definition of human trafficking, which first requires an individual to submit against their will through force, fraud, or coercion. However, trafficking retains unique characteristics with the stated purposes of these activities as providing commercial sex or labor and services. These similarities are evident in the diverse coalitions of actors that successfully provide care for survivors of all violent crimes as well as trafficking, including legal assistance, trauma therapy, job placement, housing, law enforcement advocates, and many others. The critical distinguishing feature between vulnerability to trafficking and vulnerability in general again requires that the offending exogenous agent, such as the trafficker, the facilitator, or public demand exploit the vulnerable individual for profit instead of simply for pleasure. The commercialization of harm is what distinguishes human trafficking from other related crimes.

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<sup>1</sup> United Nations Office on Drugs and Crime (UNODC), “The Criminal Justice Response to Support Victims of Acts of Terrorism.” New York: 2011, Page 19. Available at: [http://www.un.org/en/terrorism/ctitf/pdfs/victims\\_rights\\_e-book\\_en.pdf](http://www.un.org/en/terrorism/ctitf/pdfs/victims_rights_e-book_en.pdf)

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC), “The Criminal Justice Response to Support Victims of Acts of Terrorism.” New York: 2011, Page 19. Available at: [http://www.un.org/en/terrorism/ctitf/pdfs/victims\\_rights\\_e-book\\_en.pdf](http://www.un.org/en/terrorism/ctitf/pdfs/victims_rights_e-book_en.pdf)

This article provides the first concerted effort to combine major relevant factors measuring and contributing to vulnerability to human trafficking in the United States for statistical extrapolation of victim prevalence. While utilizing the human security framework to better conceptualize the risks of human trafficking for vulnerable individuals remains an underdeveloped academic contribution, this project proposes a theoretically more ambitious and complete response to underpin prevalence and forecasting models. Operationalizing<sup>3</sup> the human security framework to capture pervasive potential risks is only the first of three parts of a comprehensive theoretical approach to assessing human trafficking vulnerability. I argue that measuring vulnerability requires consideration and isolation of first structurally pervasive threats or risks, then those that are regionally specific, and finally those that are individually experienced. The human security literature best relates to the first task of distinguishing structurally pervasive threats among the sub-population of vulnerable individuals. The control variables employed in the next stage refer to the regional specification of the model. In this project, I will have selected two control variables that account for regional legislation and protection efforts that correspond with my dependent variable of human trafficking incidences as reported to the National Human Trafficking Hotline. The final component of my operational model is theoretically derived from the requirement that in order for potential risk to become actualized or likely risk, it must be individually experienced. This is the most challenging variable to operationalize given the underdeveloped work on “Demand” in this regard, and the developed world’s particular culpability in this area. However, in order to operationalize this final component, I will incorporate one variable that relates directly to Demand, or the specific likelihood that one is to face punitive action based on their consumption of trafficked goods or sex as a deterrent based on available law enforcement data. Unfortunately, this data has notoriously demonstrated that there are significantly low prosecution and arrest rates of the general public for these crimes, which suggests a relatively non-existent deterrent to demanding trafficked sex, labor, goods, and services.

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<sup>3</sup> Operationalization is the process of strictly defining a variable or concept so that it may be quantitatively measured, particularly in statistical extrapolation.

| Human Trafficking Vulnerability Prevalence Theory   |   |  |
|---|---|--|
| <b>Structurally Pervasive:</b><br>Vulnerability must be reasonably generalizable across a large sub-population. | <b>Regionally-Specific:</b><br>An environment will in some way, induce, enhance, or impede structurally pervasive-risk. | <b>Individually-Experienced:</b><br>The individuals or members of the sub-population in question, must subjectively determine that they are affected by said risk. |

This article begins by introducing an original working definition and theory of how to best estimate human trafficking prevalence and construct forecasting efforts. It then unpacks this conceptual model by each of its three component parts in three subsequent sections: structurally pervasive threats, regionally specific threats, and individually experienced threats. For each component part, a brief review of the relevant body of literature is provided, as well as an explanation of how this conceptual understanding addresses existing gaps in the literature and academic canon. Each section will conclude with examples of how this component has been operationalized in this project and ideas for replication in general for future related projects.

## Conceptual Model of Vulnerability to Human Trafficking in Three Parts

A close review of the security field in general, but the transnational organized crime literature, human security literature, and human trafficking literature in particular, indicates a significant inconsistency with the construction of security that is omnipresent in the transnational organized crime literature. This is evident in topics such as global prohibition norm creation according to E. Nadelmann and P. Andreas<sup>4</sup> to state-state considerations of security, crime, and intervention efforts. This analytical rift between the presumed prevalence of states in international security and the post-Cold War paradigmatic shift that saw an increased focus on the academic study of human insecurity and exacerbated risk in

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<sup>4</sup> Andreas, Peter and Ethan Nadelmann. *Policing the Globe: Criminalization and Crime Control in International Relations*. Oxford: Oxford University Press, 2006.

the human trafficking literature is not served well by potentially outdated understandings of risk, vulnerability, and viable threats to individuals. In fact, this type of understanding is highlighted clearly by the fact that one could presume that within a strong and secure state, that crimes such as human trafficking would be less of a concern. As this article's focus on the United States demonstrates, by providing demand, human trafficking can be just as prevalent in wealthier, or more secure, countries as it is in developing countries.

This conceptual model is grounded in the theoretical foundations of the human security, transnational organized crime, and human trafficking fields. This model attempts to provide a comprehensive solution to patent gaps in the treatment of vulnerability in general and vulnerability to human trafficking specifically. This model could be described as a method for further defining the vulnerable populations in question until a likely threshold of vulnerable persons to human trafficking specifically are identified. Then, statistical extrapolation from the final component of individually-experienced risk can be used to determine a point estimate for actualized risk, or how many expected cases of human trafficking there might be in a given year. The first component of this model includes all structurally pervasive risks and vulnerabilities for a sub-population, minors in the United States in the case of this project. Subsequently, from among this vulnerable pool of individuals that could be vulnerable to human trafficking as well as a myriad of other crimes, the next component of regionally-specific threats considers which of these individuals' initial risks are either amplified, deterred, or merely induced by the specific environments of certain groups. Finally, from this component, one can attempt to determine the actualized risk that will manifest among this sub-population by considering Demand or the extent to which the community at-large can engage in these illicit behaviors with relative impunity. All three factors are critical in the estimation of the risk that any given population faces and the true extent of vulnerability that should be accounted for in any predictive or descriptive model.

### **Structurally-Pervasive**

While an elusive concept to define and conceptualize, vulnerability is critical to any understanding of the issue of human trafficking. The necessity of vulnerability in this crime is inherent in the requirements of deprivation of liberty through the means of force, fraud, or coercion as the subject being deprived of liberty is vulnerable to control through these means. As the human trafficking field progresses, it must begin to reconcile vague concepts of vulnerability and victimization with existing operational tools to facilitate prevalence measurement, targeted intervention efforts, and accurate reporting. This structurally pervasive

criterion of the conceptual model for forecasting and measuring the prevalence of human trafficking requires that included risk and vulnerabilities be generalizable to a reasonable extent to a large sub-population. This concept builds on the *United Nations Development Programme's* 1994 Report on Human Security that identifies the seven major areas of security as political security, community security, personal security, environmental security, food security, economic security, and health security. Among these vast areas of potential insecurity, all of these vulnerabilities could apply to greater or lesser extents to a large sub-population. This introduces the important element of comparability across regions and localized models to contribute a future potential product of comparability on a global scale. This comparability will include not only the factors of vulnerability that contribute to human trafficking specifically, but also provide a way of securely grounding efforts to define and identify risk within the accepted *United Nations Development Programme (UNDP)* definition of broad human security from a global governance and consensus-building perspective.

### **Regionally-Specific**

Once the broad categories of potential risk to a large sub-population have been established through the first criterion of structural pervasiveness, the next component in this model considers the environmental factors involved on a regional or localized level. Without quite considering the individual-level risks at this time, this second step requires analyzing the environmental factors that might amplify, induce, or deter the effects of the broad categories of risk from having tangible impacts on each regional group. This criterion is critical as efforts to intervene in the crime of human trafficking vary widely across states and regions, as will their demonstrated effectiveness. In order to analyze regionally specific threats from among the structurally pervasive ones, the considerations will vary by each crime and region. This component is meant to acknowledge that despite the fact that some threats may be structurally pervasive, they may not have equal impact across regions due to other factors related to enforcement, regulation, and intervention efforts, which vary.

### **Individually-Experienced**

This final criterion of risk that is not only structurally pervasive, and regionally specific, but also individually experienced, is critical to any accurate prevalence and forecasting model for human trafficking. Ironically, it is also the least utilized. This final component helps to move our analytical model from potential to actualized risk by examining the final context in which the public or



community at-large is emboldened or deterred from participating in consuming or demanding trafficked goods, labor, or sex. If all other risks are present, this final criterion indicates that even if these risks are both structurally pervasive and regionally amplified or induced, they should not count in the final prevalence estimates if they are not also manifest in the individual experiences of the vulnerable populations in question. This individually experienced risk can be mitigated by effective law enforcement, community engagement against this issue, and lack of opportunity. Regardless of whether an individual member of a particularly vulnerable sub-population, by all other estimation measures, should be victimized, if they are ultimately insulated from this crime, then they should not be included in the final prevalence and forecasting outcomes.

## **Structurally-Pervasive Risk:**

### **Human Security Literature Contributions**

Human security as a developing security sub-field has many overlapping and diverging definitions without any clear “consensual definition”<sup>5</sup> among scholars. Some critics, such as Barry Buzan, believe that “human security presents a reductionist vision of international security and hence has limited academic usability.”<sup>6</sup> Roland Paris, Edward Newman, Andrew Mack and Don Hubert also question the academic usability of the concept. But where these scholars converge is the ability of human security to include a broader array of non-traditional security concerns in scholarly debate and treatment. Kyle Grayson cites this as a particular strength and states, “as no workable definition exists, human security enables broader and deeper questioning of subjects usually and unjustifiably peripheral to security studies.”<sup>7</sup> Similarly, Amitav Acharya sees human security as a “holistic paradigm which offers opportunities for creative synthesis and theoretical eclecticism”<sup>8</sup> without the need for constant comparison to more established theoretical security paradigms. Human security ultimately subverts the power relationship upheld by security studies in order to question the legitimacy of established paradigms. The most basic shared characteristic of human security as a concept involves a focus on the safety and well-being of individuals regardless of

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<sup>5</sup> S. Tadjbakhsh and A.M. Chenoy, *Human Security: Concepts and Implications*, London: Routledge, 2007.

<sup>6</sup> Buzan, B. (2004) ‘A Reductionist, Idealistic Notion that Adds Little Analytical Value’, in P. Burgess and T. Owen (eds), ‘What is Human Security? Comments by 21 authors’, Special Issue of *Security Dialogue*, 35(9): 369-370.

<sup>7</sup> Grayson, Kyle. (2008) “Human Security as power/knowledge: the biopolitics of a definitional debate,” *Cambridge Review of International Affairs*, 21(3): 383-401.

<sup>8</sup> Amitav Acharya, “Human Security: East Versus West,” *International Journal*, Vol. 56, No. 3, 2001, pp. 442-460.

their citizenship status or relationship to a nation-state. Much of the literature focuses on human security's rise to prominence following the Cold War to reflect a new type of security studies that no longer privileges state security. As Poku and Graham state, traditional security is a focus on "individuals qua citizens" whereas human security is a focus on "individuals qua persons."<sup>9</sup> Importantly, the field of human security represents a shift away from state-centered or traditional security to a focus on individuals as the referents of security.

Human security as a security sub-field rose to prominence following the Cold War, but not only due to reconfiguration of the international security system and its priorities. Globalization has had a tremendous effect on exacerbating human vulnerability at an incredibly fast pace. John Gray observes that, "the spread of new technologies throughout the world is not working to advance human freedom. Instead it has resulted in the emancipation of market forces from political and social control."<sup>10</sup> This further isolates states from becoming the most effective providers of security for individuals. As Sommaruga finds, "there is...human insecurity generated by the neo-liberal globalization...Many human beings are often caught between criminal organizations and governments, in particular immigrant workers easily referred to as 'illegal' because of the missing international legal basis for a coherent global approach to this serious human problem."<sup>11</sup> John Gray in his work, *False Dawn*, found a similar trend when examining the application of free market policies to the modern day states of Mexico, New Zealand and the United Kingdom. He concludes,

The resemblances between the effects of free-market policies in Mexico, New Zealand and the UK are hardly accidental. In each country, the free market acted as a vice within which the middle classes were squeezed. It enriched a small minority and increased the size of excluded under-classes. It inflicted serious damage on the political vehicles through which it was implemented. It used the powers of the state without scruple, but corrupted and in some measure de-legitimated the state's institutions. It scattered or destroyed its initial coalition of political support and fractured societies. In its aftermath it set the terms within which oppositional parties were compelled to operate.<sup>12</sup>

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<sup>9</sup> Graham, D.T. and Poku, N.K (eds) (2000) *Migration, Globalization and Human Security*, London: Routledge.

<sup>10</sup> John Gray, *False Dawn*, New York: The New Press, 1998.

<sup>11</sup> C. Sommaruga, "The global challenge of human security," *Foresight: The Jour. of Future Studies, Strategic Thinking and Policy*," 6, 4, 2004.

<sup>12</sup> John Gray, *False Dawn*, New York: The New Press, 1998.

Finally, Tow and Thomas cite in their work the findings of Richard Matthew and George Shambaugh. These scholars identify two critical factors that exacerbate human security threats in our time, “the increased rate and degree of unfettered human mobility and transnational access to goods, services and technology on a global scale, compromised only by corporate interaction or globalization. These factors can be critical in a human security context because they may comprise a state’s natural propensity to provide maximum security for its own citizens.”<sup>13</sup> These are all similar reasons cited for the exacerbation and increased proliferation of modern day slavery.

The distinction between human security and traditional security cannot be overstated when defining the parameters of this newer field of study. Tadjbakhsh and Chenoy state that “human security advocates criticize neo-realism in four main ways: on the question of the referent object, on values, on perception of threats and on means to protect.”<sup>14</sup> Basically, the distinction between neo-realism and human security culminates in human security making the individual the referent object of security whereas neo-realism maintains that the state is the referent object. Neo-realism tends to focus on direct threats to states in their analyses, while human security broadens their definitions of threats to include direct and indirect threats to states and to individuals. Human security also tends to promote human development as well as political development to protect individuals, groups, states and the international order, whereas neo-realism tends to focus on military protection. According to Kanti Bajpai, this distinction is further developed by arguing that national security or neo-realism privileges “territorial integrity and national independence” of states while human security privileges “personal safety and individual freedom” of individuals. He also elaborates that neo-realists support the use of “force as the primary instrument of security” while human security uses “force as a secondary instrument and considers its key instruments to be sanctions, human development and humane governance.”<sup>15</sup> Roland Dannreuther in *International Security: The Contemporary Agenda* attributes this significant shift in our thinking about international security by arguing that three major historical trends in the post-Cold War world has led to two theoretical shifts. Dannreuther argues that since the end of the Cold War, there has been a “reduction in the expectation of a major war between the great powers, a shift of global focus from East-West to North-South and doubts about the state’s ability to be the most

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<sup>13</sup> N. Thomas and W.T. Tow, “The Utility of Human Security: Sovereignty and Humanitarian Intervention,” *Security Dialogue*, 33:2, 2002, 177-92.

<sup>14</sup> S. Tadjbakhsh and A.M. Chenoy, *Human Security: Concepts and Implications*, London: Routledge, 2007.

<sup>15</sup> Bajpai, K. (2000) *Human Security: Concept and Measurement*, Occasional Paper 19, The Joan B. Kroc Institute for International Peace Studies, University of Notre Dame, August.

effective or sole security provider and that there is a problematic relationship between power and legitimacy and the role of norms and international cooperation in a unipolar international world.”<sup>16</sup> Dannreuther finds that these three historical shifts have led to the current manifestation of human security as emblematic of the theoretical changes that have “shifted popularity from rationalist to constructivist explanations of international security and a more optimistic view of the possibilities and need for change that have led to a more cosmopolitan and universalist conceptualization of international security.”<sup>17</sup> John Mearsheimer responds to this critique in “The False Promise of International Institutions” and gives four reasons why American elites regard realism with hostility, including that it is “pessimistic, treats war as inevitable and sometimes necessary action, realism treats states as static objects without accounting for good or bad states”<sup>18</sup> and there is a historical legacy of disdain for realism in the United States. Both Mearsheimer and Kenneth Waltz maintain that realism is still the most poignant and accurate approach to international security, as Waltz argues, “structural realism remains the basic theory of international politics.”<sup>19</sup> However, many of the theorists whose work will be reviewed and analyzed in this chapter fundamentally disagree.

The UNDP approach, championed by the United Nations Development Programme’s 1994 *Human Development Report* includes seven features of human security: economic security, food security, health security, environmental security, personal security, community security and political security.<sup>20</sup> Some of its major proponents include Mahbub ul Haq, Sadaka Ogata of the Commission of Human Security and many others. Within this analytically broad conception of human security, which includes a diverse coalition of actors and individuals as well as a plethora of indirect threats, Baldwin’s discussion of whether human security rights are indivisible or hierarchical remains salient. Sabina Alkire of the Commission on Human Security states that efforts to promote human security must, “protect the vital core by selecting only critical (severe) and pervasive (widespread) threats.”<sup>21</sup> Sadako Ogata and John Cels also of the Commission on Human Security expands this definition to include, “protects vital core of all human lives in ways that

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<sup>16</sup> Roland Dannreuther, *International Security: The Contemporary Agenda*. Cambridge: Polity Press, 2007.

<sup>17</sup> Roland Dannreuther, *International Security: The Contemporary Agenda*. Cambridge: Polity Press, 2007.

<sup>18</sup> John Mearsheimer, *The False Promise of International Institutions*, *International Security*, Vol. 19, No. 3, Winter 1994/95, pp. 5-49.

<sup>19</sup> Kenneth Waltz, “Structuralism after the Cold War,” *International Security*, Vol. 25, No. 1 Summer 2000, pp.5-41.

<sup>20</sup> United Nations Development Programme (UNDP) (1994) *Human Development Report 1994 – New Dimensions of Human Security*, New York: Oxford University Press.

<sup>21</sup> Sabina Alkire, “A Conceptual Framework for Human Security”, Centre for Research on Inequality, Human Security, and Ethnicity (CRISE), Working Paper 2, London: University of Oxford, 2003.

enhance human freedoms and human fulfillment.”<sup>22</sup> Interestingly, Caroline Thomas extends her definition to include the broader concerns of the “realization of human dignity” in her definition, “material sufficiency lies at the core of human security... [it] refers to the provisions of basic, material needs...and the realization of human dignity including emancipation from oppressive power structures, whether they be global, national or local in origin.”<sup>23</sup> Jennifer Leanning also supports a broader definition of human security that includes, “social, psychological, political and economic factors and encompasses psychosocial needs and individuals’ relationships with location, community and time.”<sup>24</sup> Ramesh Thakur believes that “human security is improved when the ‘quality of life’ of people in a society can be upgraded...enhancing human welfare.”<sup>25</sup> Similarly, Jorge Nef provides a five-part classification system for human security that includes, “1) environmental, personal and physical security, 2) economic security, 3) social security including freedom from discrimination based on age, gender, ethnicity or social status, 4) political security and 5) cultural security.”<sup>26</sup> Olser Hampson also offers a comprehensive view of human security including in his model, “those growing out of human rights and rule of law traditions, those featuring safety of peoples and those focusing on sustainable human development.”<sup>27</sup> Astri Suhrke’s definition of human security involves a central component of vulnerability and references three categories of victims, “those of war and internal conflict, those living at or below subsistence levels and victims of natural disasters.”<sup>28</sup> These categories of exceptionally vulnerable victims are also identical to the ones cited by Tow and Thomas in their work.<sup>29</sup> However, the potential conflation of human development with human

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<sup>22</sup> Sadako Ogata and Johan Cels, “Empowering People for Human Security,” Presentation to 56<sup>th</sup> Annual DPI/NGO Conference.

<sup>23</sup> Caroline Thomas, Global Governance, development and human security: exploring the links,” *Third World Quarterly*, 22:2, 2001, 159-75.

<sup>24</sup> Leanning, J. and Arie, S. (2000) ‘Human Security in Crisis and Transition: A Background Document of Definition and Application’, CERTI Project, Payson Center for International Development and Technology Transfer, Tulane University, December. Available at <http://www.certi.org/publications/policy/humansecurity-4.htm> (accessed 21 April 2013).

<sup>25</sup> Thakur, R. (2004) ‘A Political Worldview’, in P. Burgess and T. Owen (eds), ‘What is Human Security?’ Comments by 21 authors, Special Issue of *Security Dialogue*, 35(9): 347-348.

<sup>26</sup> Nef, J. (1999) ‘Human Security and Mutual Vulnerability The Global Political Economy of Development and Underdevelopment’, 2<sup>nd</sup> edition, Canada: International Research Development Centre. Available at [http://www.idrc.ca/en/ev-9383-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-9383-201-1-DO_TOPIC.html) (accessed April 2013).

<sup>27</sup> Hampson, F. O. (2004) ‘A Concept in Need of a Global Policy Response’, in P. Burgess and T. Owen (eds), ‘What is Human Security?’, Comments by 21 authors, Special Issue of *Security Dialogue*, 35(9): 349-350.

<sup>28</sup> Suhrke, Astri. (1999) “Human Security and the interests of state,” *Security Dialogue*, 30(3): 265-276.

<sup>29</sup> N. Thomas and W.T. Tow, “The Utility of Human Security: Sovereignty and Humanitarian Intervention,” *Security Dialogue*, 33:2, 2002, 177-92.

security is a source of debate among scholars. Keith Macfarlane does not believe that “relabeling human development as human security”<sup>30</sup> will be helpful in establishing clear policy priorities and instead advocates for “narrower protection-focused” definitions. In response, other scholars such as Peter Ulvin believe that human security provides a useful analytical linkage between these concepts of humanitarian relief, development assistance, human rights advocacy and conflict resolution<sup>31</sup> to allow practitioners and scholars to meaningfully engage in debates. Additionally, Paul Evans believes that “reconciling national security and development is necessary in developing countries... the individual must be at least one of the referent points for determining security for whom, from what and by what means.”<sup>32</sup> Despite the wide array of scholarship on this broader definition of human security, this general definitional scope has remained influential and can generally be seen as the starting point from which all other debates continue in this field following the 1994 UNDP Report.

### **What Gaps Does this Component Address? Security at a Non-state Level - Generalized Risk**

The development of a risk assessment model specifically for human trafficking of minors in the United States responds to myriad perceived lacunas in the literatures. This project seeks to unite the human security, transnational organized crime and human trafficking literatures along a common thread of measuring human insecurity as manifested through the vulnerability of minors in the United States to human trafficking.

Many scholars have contributed towards the development of a measure for human insecurity while many others yet have supported local victim prevalence estimates of human trafficking for accuracy before endeavoring global prevalence estimates. Considering recent discussions of the importance of poverty, inequality, and state capacity as central concerns in issues of human security, the next logical step for the field is measurement. King and Murray offer a measure that includes, “the number of years of future life spent outside a state of ‘generalized poverty.’”<sup>33</sup> Additionally, they consider five indicators of wellbeing to include: poverty, health,

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<sup>30</sup> Macfarlane, S.N. (2004) ‘A Useful Concept that Risks Losing its Political Salience’, in P. Burgess and T. Owen (eds), ‘What is Human Security?’ Comments by 21 authors, Special Issue of *Security Dialogue*, 35(9): 368-369.

<sup>31</sup> Ulvin, P. (2004) ‘A Field of Overlaps and Interactions’, in P. Burgess and T. Owen (eds), ‘What is Human Security?’ Comments by 21 authors, Special Issue of *Security Dialogue*, 35(9): 352-353.

<sup>32</sup> Evans, P. (2004) ‘A Concept Still on the Margins, but Evolving from Its Asian Roots’, in P. Burgess and T. Owen (eds), ‘What is Human Security?’ Comments by 21 authors, Special Issue of *Security Dialogue*, 35(9): 363-364.

<sup>33</sup> King, G. and Murray, C. (2001) ‘Rethinking HS’, *Political Science Quarterly*, 2001-2002, 116(4). Available at <http://gking.harvard.edu/files/hs.pdf> (accessed 25 October 2013).

education, political freedom and democracy. Their effort for a human security forecasting model is supplemented by the distinction made by Caroline Thomas between quantifiable measures such as “income poverty” and qualitative measures of human insecurity such as “human poverty.”<sup>34</sup> Kanti Bajpai incorporates both of these insights into his projections for a human security index that he asserts could have the benefits of: “developing a social early warning system, focusing attention on problem areas, redefining national and international policy priorities, setting national and international standards, and generating new social scientific knowledge.”<sup>35</sup> Finally, Jennifer Leanning and Sam Arie provide an additional conceptualization of the measurable components of a human security measure. They identify two sets of inputs as “those dealing with minimum inputs to sustain minimum levels of survival (water, food, shelter) and those dealing with supports to basic psychosocial human needs (identity, recognition, security, participation and autonomy).”<sup>36</sup> Roland Paris offers that, “for human security to be analytically useful, it must be able to provide tangible measurable threat parameters.”<sup>37</sup> Ultimately, evaluating levels of human security or insecurity will further define policy objectives and assist in providing policy parameters and setting goals.

A major contribution of this project revolves around the fact that the human security framework has never yet been applied or operationalized for a human trafficking prevalence or forecasting model.

### **Operationalization of Structurally-Pervasive Risk: Risk Index**

There is a two-part method to the creation of this risk assessment and forecasting model. In the initial phase, I conduct a hypothesis-building exercise and craft my risk index with input from adult direct service providers in human trafficking shelters through anonymous online surveys that allow them to describe the highest risk indicators of vulnerable minors to human trafficking from their experience in the United States. The identity of all survey participants is undisclosed and the only identifiable information provided is the respondent’s geographical location. The available survey responses are analogous to the seven

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<sup>34</sup> Caroline Thomas, Global Governance, development and human security: exploring the links,” *Third World Quarterly*, 22:2, 2001, 159-75.

<sup>35</sup> Bajpai, K. (2000) *Human Security: Concept and Measurement*, Occasional Paper 19, The Joan B. Kroc Institute for International Peace Studies, University of Notre Dame, August.

<sup>36</sup> Leanning, J. and Arie, S. (2000) ‘Human Security in Crisis and Transition: A Background Document of Definition and Application’, CERTI Project, Payson Center for International Development and Technology Transfer, Tulane University, December. Available at <http://www.certi.org/publications/policy/humansecurity-4.htm> (accessed 21 April 2013).

<sup>37</sup> Roland Paris, “Human Security: Paradigm Shift or Hot Air,” *International Security*, 26:2, Fall 2001, 87-102.

components of the United Nations Development Programme's concept of human security and include measurements for the US Citizen and foreign national minor populations in question. This model then utilizes these findings to craft a risk profile of vulnerable youth, for each regional population of foreign nationals and US Citizens, and apply them to the conceptual groundwork provided by Jay Albanese.<sup>38</sup> The main contribution relevant to this project of Albanese's model is that it reduces the universe of possible trafficking victims to those that are exceptionally at-risk and accounts for both the regulatory/enforcement environment and consumer access to the trafficked goods and services. While Albanese does not necessarily incorporate the human security framework for risk conceptualization or the specific concerns with Demand scholarship utilized in this project, this initial framework is nonetheless helpful and an important contribution.

## **Regionally-Specific Risk:**

### **Transnational Organized Crime Literature Contributions**

There are many different methods to attempt to measure and track transnational organized crime. UNODC offers, "the challenge at the international level is to collect information on a phenomenon that has both local (at the level of states) and international dimensions (organized criminal groups by their nature engage in illicit trade across borders)"<sup>39</sup> such interconnectivity between the local and global has been neatly termed "glocal."<sup>40</sup> Jay Albanese says of their method, "UNODC has utilized a triangulation model to estimate the extent of illicit drug manufacturing by combining three primary kinds of information for each drug: cultivation and production estimates, trends in seizures of drugs and drug-making labs, estimates of drug usage."<sup>41</sup> He also asserts that these measurements must be periodically conducted to assess changes in risk over time. Graeme Newman also offers the policy value of measuring crime in Albanese's book, "measuring the extent of your problem before you implement remedial responses will allow you to determine how serious the problem is; it will also give you a baseline against which to measure the effectiveness of the responses that you choose to

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<sup>38</sup> Albanese, Jay S. *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption, and Opportunity*. Oxford University Press, USA, 2011; page 18.

<sup>39</sup> UN Office on Drugs and Crime, *Results of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries*, 2002, Available at [http://www.unodc.org/pdf/crime/publications/Pilot\\_survey.pdf](http://www.unodc.org/pdf/crime/publications/Pilot_survey.pdf)

<sup>40</sup> Dick Hobbs. "Going Down the Glocal: The Local Context of Organized Crime" in the Howard Journal, November 1998.

<sup>41</sup> Albanese, Jay S. *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption, and Opportunity*. Oxford University Press, USA, 2011.



implement.”<sup>42</sup> Andreas and Greenhill also discuss the policy implications of measurement in their work, “to measure something – or at least claim to do so is to announce its existence and signal its importance and policy relevance...raises a unique question, what are the policy consequences of bad data in trafficking and other policy phenomenon?”<sup>43</sup> Andreas criticizes Moises Nairn’s<sup>44</sup> irresponsible data quality and replication standards in only using data from secondary sources of international organizations and non-profits. These figures were then reproduced and used in many other reports, much to the chagrin of Andreas and other scholars who now wish to move past this superficial level of data in the field.<sup>45</sup>

### **What Gaps Does this Component Address? Local Level Estimates - Enhanced Understanding of Generalized Risk**

Many scholars have attempted to derive accurate human trafficking victim prevalence estimates, but there are many serious methodological flaws in research design and similar to the transnational organized crime literature, a supreme reliance on secondary reporting mechanisms. Much of the work to date in this field is symptomatic of ecological fallacy and the presumption that something that is true at the individual or narrative level can be generalizable for all levels. This leads to the concern that potentially anecdotal narratives are misconstrued as representative of the whole population of human trafficking survivors, such as the disproportionate policy focus on minor sex trafficking when labor trafficking is more prolific by volume according to Feingold. However, significant challenges face researchers that attempt to overcome these challenges. Savona and Stefanizzi acknowledge the data collection problems in this field, “the major problem in studying and combating trafficking in persons is scarcity, unreliability, and non-comparability of existing international and national data.”<sup>46</sup> They go on to discuss, “three methods for understanding and measuring trafficking in human beings are assessed: 1) extrapolating the risk of trafficking from other known risks, 2) using known cases to estimate the universe, 3) using a network model of human trafficking as an illicit enterprise which reacts to known and measurable

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<sup>42</sup> Albanese, Jay S. *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption, and Opportunity*. Oxford University Press, USA, 2011.

<sup>43</sup> Andreas, Peter, and Kelly M. Greenhill, eds. *Sex, Drugs, and Body Counts: The Politics of Numbers in Global Crime and Conflict*. Cornell University Press, 2010.

<sup>44</sup> Nairn, Moises. *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy* (New York: Doubleday, 2005)

<sup>45</sup> Andreas, Peter, and Kelly M. Greenhill, eds. *Sex, Drugs, and Body Counts: The Politics of Numbers in Global Crime and Conflict*. Cornell University Press, 2010.

<sup>46</sup> Savona, EU & S Stefanizzi, eds. *Measuring Human Trafficking: Complexities And Pitfalls*. Springer, 2007.

practices.”<sup>47</sup> Finally, the International Organization for Migration (IOM) provides insight in their effective data collection measures with the contribution that, “telephone surveys of women in prostitution who operated through individual advertisements was slightly unorthodox, but highly successful.”<sup>48</sup> However some scholars, such as David Feingold, disagree and believe that a global prevalence estimate is policy-irrelevant.<sup>49</sup>

The United States as a critical case has tremendous support in the literature as well. David Feingold believes that the USA is the best possible shot for good human trafficking data, but even still, American data is sub-par.<sup>50</sup> Poignantly, Greenhill and Andreas second this notion by stating,

The search for global data can best be characterized as the pursuit of the unknowable by the unknowing. It would be hoped that local figures would be more accurate, at least in the United States...one would expect that data in the United States would be equal or superior to other countries. The United States has mobilized political will at the highest level, and has dynamic and active civil society support, a legal framework in place, relatively uncorrupt federal judiciary and prosecutorial service, and an engaged public media – all the elements that it seeks but rarely finds in its partner countries abroad...Nevertheless there is little basis for confidence in US local figures.<sup>51</sup>

Similarly, Jay Albanese argues that quantifying estimation values in trafficking trends should be done locally, as he believes that it is quite likely that human trafficking operates like other forms of organized crime, adapting to local conditions which always include considerations of supply, customers, regulators and competitors.<sup>52</sup> According to Louise Shelley, the USA is the ideal choice for an investigation of this type because she argues that:

Despite the absence of widespread corruption and close links between traffickers and state officials, patterns of American trafficking more closely resemble those of a developing than a developed country. All forms of

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<sup>47</sup> Savona, EU & S Stefanizzi, eds. *Measuring Human Trafficking: Complexities And Pitfalls*. Springer, 2007.

<sup>48</sup> IOM. “Data and Research on Human Trafficking: A Global Survey.” *Human Trafficking* (2005).

<sup>49</sup> Feingold, D. 2005. “Think Again: Human Trafficking” *Foreign Policy* Sept/October

<sup>50</sup> Feingold, D. 2005. “Think Again: Human Trafficking” *Foreign Policy* Sept/October

<sup>51</sup> Andreas, Peter, and Kelly M. Greenhill, eds. *Sex, Drugs, and Body Counts: The Politics of Numbers in Global Crime and Conflict*. Cornell University Press, 2010. Page 56.

<sup>52</sup> Savona, EU & S Stefanizzi, eds. *Measuring Human Trafficking: Complexities And Pitfalls*. Springer, 2007.

known trafficking exist in the US except for child soldiering and victims originate from all regions of the world.<sup>53</sup>

Sheldon Zhang's contribution is also insightful that the United States has the highest numbers of immigrants flocking to the country, but is not even in the top twenty countries when considering foreign-born citizens.<sup>54</sup> This combination of high vulnerable populations with limited access to citizenship or legal rights can only breed optimal conditions for further exploitation by traffickers.

These contributions bolster support not only for the case in study for this project on the United States due to its access to historical long-term databases for the risk inputs, but also for its wide variety of trafficking networks and high levels of uncorrupt governance. With all respect to Louise Shelley, this author would endeavor to argue that child soldiers are also present in the United States in the form of urban street gangs in major American cities.

### **Operationalization of Regionally-Specific Risk: Regulatory and Enforcement Control Variables**

For this study, various regulatory and enforcement control variables will be considered for each of the states for which the author has obtained original data from the National Human Trafficking Resource Center. In order to evaluate variation across state legislatures within the United States, various State Report Cards published by expert non-profits will be considered. Shared Hope International and the Polaris Project Policy Department have published comprehensive State Report Cards between 2011-Present, which rank the strength of anti-trafficking provisions in each state for comparability, and the presence or absence of human trafficking task forces, and continued training and technical assistance on this issue. Other potential measures could be employed such as competing profitability margins on other illicit markets to compare the lucrative value of human trafficking over other illicit industries in each state.

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<sup>53</sup> Shelley, Louise. *Human Trafficking: A Global Perspective*. 1st ed. Cambridge University Press, 2010.

<sup>54</sup> Zhang, Sheldon. *Smuggling and Trafficking in Human Beings: All Roads Lead to America*. Praeger, 2007.

## **Individually-Experienced Risk:**

### **Licit World Interactions Requisite in both Transnational Organized Crime and Human Trafficking Literatures**

One of the richest areas for further scholarship in the transnational organized crime literature is the complicity of everyday, otherwise law-abiding individuals in the commission of transnational organized crimes. Jay Albanese includes, “essential enabler for the sale of stolen property is understanding the public’s willingness to purchase merchandise with “no questions asked” motivates illicit entrepreneurs to emerge to cater to that market.”<sup>55</sup> R. T. Naylor mirrors this observation by arguing, “Not surprisingly, never in history has there been a black market defeated from the supply side...Supply-side controls act, much like price supports in agriculture to encourage production and increase profits. At best, a few intermediaries get knocked out of business. But as long as demand persists, the market is served more or less as before.”<sup>56</sup> Schelling highlights this nexus by stating, “organized crime exists to provide illicit services to the licit world.”<sup>57</sup> Hill mirrors this complicity, “organized crime exists because it functions as a business satisfying a demand for goods and services among members of the ‘legitimate’ world. The critical point is that while we would all be better off without robbers, some of us would feel the loss if the suppliers of illegal drugs, gambling and sexual services disappeared.”<sup>58</sup> This has transformative impacts on the lucrative markets for transnational organized criminals as Andreas notes, “laws and consumer demand are the most basic determinants of what is being smuggled.”<sup>59</sup> However, in terms of individual agency, many scholars specifically point to examples where transnational organized crime recruitment is thwarted by individual choice. Kleemans and de Poot note, “illegal opportunities extending from legal activities are seized upon by some professionals, but not by others. This means there is opportunity on the one hand and agency on the other hand.”<sup>60</sup> Levitt and Venkatesh notice a similar trend and utilize it as an opportunity for intervention, “the fact that

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<sup>55</sup> Albanese, Jay S. *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption, and Opportunity*. Oxford University Press, USA, 2011.

<sup>56</sup> Naylor, R. T. *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy*.

<sup>57</sup> Schelling, Thomas. *Choice and Consequence*, Cambridge: Harvard University Press, 1984.

<sup>58</sup> Hill, Peter. *Japanese Mafia: yakuza, law, and the state*, Oxford: Oxford University Press, 2003.

<sup>59</sup> Andreas, Peter. “Smuggling Wars: Law enforcement and Law Evasion in a Changing World.” *Transnational Organized Crime*, Vol. 4 (2), Summer 1998, pp.75-90.

<sup>60</sup> Kleemans, Edward R. and J. Christianne de Poot. 2008. “Criminal Careers in Organized Crime and Social Opportunity Structure,” *European Journal of Criminology* 5(1): 69-98.

most foot soldiers are simultaneously employed by the gang and in the legitimate sector suggests that gang participation may be sensitive to improvements in outside opportunities. This suggests a possible role for job-market interventions aimed at high-risk youths.”<sup>61</sup> Finally, corruption is another way in which transnational organized crime seeks to subvert and infiltrate licit institutions and businesses. Michael Johnston defines corruption as, “the abuse of a trust, generally one involving public power for private benefit, which often, but by no means always, comes in the form of money.” He further defines corruption as, “the abuse of public roles or resources for private benefit, but emphasizes that ‘abuse’, ‘public’, ‘private’ and even ‘benefit’ are matters of contention in many societies and of varying degrees of ambiguity in most.”<sup>62</sup> Marie Chene also documents the impact of corruption by transnational organized crime in her work in Nigeria, Mozambique and South Africa, “through corruption, criminals can obtain protection from public officials, influence political decisions and infiltrate state structures and legitimate businesses. Case studies of Nigeria, Mozambique and South Africa illustrate the specific characteristics of organized criminal groups in Africa and how corruption is used as part of their modus operandi to facilitate their criminal activities, avoid punishment and infiltrate public institutions.”<sup>63</sup>

In terms of demand, Trainor and Pelsner offer a global contribution that, “in the global market for trafficking victims, one major determinant of demand is certainly the purchasing power of the population in the countries of destination. In high-income countries, customers typically pay higher prices for non-tradable services, including sexual services.”<sup>64</sup> Yen argues that, “male demand for commercial sexual services sustains and grows the sex trafficking industry... The purchase of commercial sexual services is largely motivated by societal expectations of what ‘real men’ do and peer pressure to conform to these norms.”<sup>65</sup> IOM provides insight into the contributing factors of complicity in trafficking by purchasing these sex acts and labor services by recognizing that, “racism, xenophobia and prejudice against ethnic minority groups make it much easier for

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<sup>61</sup> Levitt and Venkatesh, “An Economic Analysis of a Drug-Selling Gang’s Finances,” *Quarterly Journal of Economics*, August 2000, pp. 755-789.

<sup>62</sup> Johnston, Michael. *Syndromes of Corruption: Wealth, Power, and Democracy*. New York: Cambridge University Press, 2005.

<sup>63</sup> Chéne, Marie. “Organized Crime and Corruption,” U4 Anti-Corruption Resource Center, 2011, available at: <http://issuu.com/cmi-norway/docs/expert-helpdesk-171/11>.

<sup>64</sup> *Globalization and the Illicit Market for Human Trafficking: An Empirical Analysis of Supply and Demand*. Danailova-Trainor Gergana and Patrick Pelsner. International Labor Organization, Special Action Programme to Combat Forced Labor (December 2006)

<sup>65</sup> Yen, Iris. “Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation.” *J. Crim. L. & Crim.* 98 (2007): 653.

sex workers, clients and employers of domestic workers (and indeed employers in the sex industry or in other sectors in general) to convince themselves that such practices are justified.”<sup>66</sup> Kara argues for the inversion of risk-demand sex slavery to adversely affect male sexual demand and disposable income.<sup>67</sup> In terms of taxonomical understanding of types of purchasers of commercial sex acts, Montgomery provides the conceptual difference of, “some academics refer to two types of child-sex tourist, the preferential user of child prostitutes and the situational user...The construction of childlike innocence is a feature of prostitution in Thailand and the line between men who have sex with children and those who have sex with adults can become very blurred.”<sup>68</sup> Finally Shared Hope International does corroborate this differentiation that, “buyers are situational, preferential or opportunistic.”<sup>69</sup> In application to the United States, I contend that most purchasers of trafficked goods and services or the products of trafficked labor are simply opportunistic consumers who are either unaware of their origin or economically unable to willfully reject these items.

### **What Gaps Does this Component Address? Measuring and Accounting for Demand - Movement from Potential to Actual Risk**

Demand is a critically overlooked component of all three literatures; it is absent in the human security literature and given barely a cursory glance in transnational organized crime as discussed above in terms of interactions with the licit world. Even human trafficking’s explicit Demand scholarship spearheaded by Michael Shively’s work is not sufficiently complemented by similar academic projects. However, the impact of Demand scholarship on human trafficking prevalence and its consequences for forecasting have never been measured, quantified, or rigorously studied. Yet, Demand is what moves potential risk to actual risk in my model of prevalence and is what clearly distinguishes human trafficking from myriad related crimes such as rape, child abuse, sexual abuse, etc. Demand is also generalizable to developed and developing countries alike. While one may find it more prudent to measure consumption in some developed or destination countries as a measure of the likelihood of risk being individually-

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<sup>66</sup> *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*. International Organization for Migration, IOM Migration Research Series.

<sup>67</sup> Kara, Siddharth. *Sex Trafficking: Inside the Business of Modern Slavery*. New York: Columbia UP, 2009. Print.

<sup>68</sup> Montgomery Heather. 2008. “Buying Innocence: Child Sex Tourists in Thailand.” *Third World Quarterly*, Vol. 29 (5): 903-917.

<sup>69</sup> *DEMAND: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands, and the United States*. Available on Blackboard/FILES or at <http://www.sharedhope.org/files/DEMAND.pdf>

experienced among the at-risk population, this could also be quantified in developing countries through the context of incentives or disincentives for recruiters to obtain vulnerable persons for profit-maximizing enslavement. The essence of demand is that an actor determines that it is a profitable endeavor to exploit vulnerable persons for profit, whether they provide or consume directly.

### **Operationalization of Individually-Experienced Risk: Demand or Likelihood of Punitive Action**

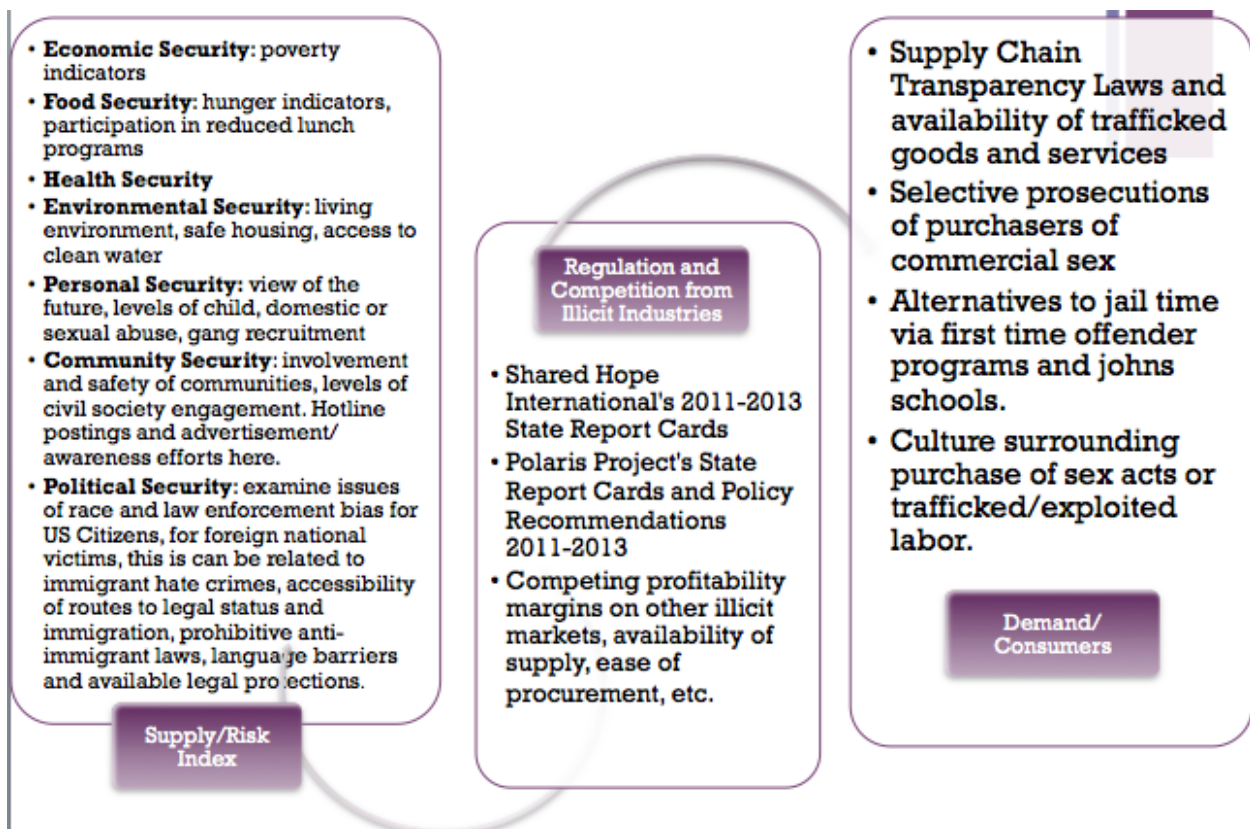
Operationalization of individually-experienced risk to human trafficking will essentially be the most difficult component to conceptualize and accurately quantify as it is an ever-changing and elusive entity. However, we may attempt to approximate this value by various innovative methods. One major component of whether risk of human trafficking is individually-experienced, aside from those confirmed or identified victims of human trafficking will be a more specific measure of the punitive climate in which the market exists. For example: a young girl could feel more vulnerable to human trafficking specifically, if she has many other friends that are controlled against their will by pimps, and all efforts for them to turn to legal systems or law enforcement have been futile or ineffective. One way in which this could be measured would be the prosecution rates in each state of traffickers as compared to complaints, reports of human trafficking, or relative volume of trafficking-prone areas or incidents. Another potential way of measuring this component could be derived from the amounts of alternatives to jail time for purchasers of commercial sex via first time offender programs, Johns Schools, and Dear John letters.<sup>70</sup> While many of these measures may not directly address human trafficking specifically, coupled with other measurements from the National Human Trafficking Resource Center hotline data, we should be able to determine the frequency of reports or complaints of human trafficking in an area and compare them with known prosecution rates for trafficking. Additionally, it would not be an inaccurate assumption that people who are actively engaging in prostitution are doing so under the control or relative control of a manager or local level pimp who might “own” parts of a known prostitution track or area. Thus, these individuals are very likely to individually-experience risk to human trafficking among many other physical and emotional dangers.

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<sup>70</sup> Dear John letters refer to programs implemented in some states where the license plates of cars parked in areas known for high volume of prostitution (distinct from human trafficking) are recorded and letters detailing the dangers of engaging in sex acts via prostitution are sent directly to the offending vehicle owner’s home.

## Conclusion

In conclusion, this project demonstrates the first concerted effort towards a theoretically-based and comprehensive model of assessing risk to human trafficking among a vulnerable population. For the purposes of this initial study, the sub-population in question will be minors in the United States. However, each component of this model and concept can be applied to any other country or region as long as the modeler has sufficient knowledge of the nuances of the trafficking trends in that country or region and the correct resources to help capture and quantify these trends.





# **Human Trafficking Specific Jury Instructions: Tools to Increase Prosecutions and Convictions**

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## **The Problem of Human Trafficking**

Human trafficking is a modern form of slavery.<sup>1</sup> Victims of human trafficking are faced with numerous and complex issues ranging from bodily injury caused by physical harm to post-traumatic stress disorder (PTSD) generated by repeated abuse, intimidation, and fear. While varying forms of human exploitation have been in existence for millennia, over the past two decades countries have taken a more serious approach to addressing the problem of human trafficking by enacting legislation, improving resources to victims, and encouraging more education of law enforcement officials. Despite the increase in the awareness of human trafficking, “most convictions still take place in only a few countries.”<sup>2</sup> Between 2007 and 2008, 40% of the more than 150 countries studied in the United Nations Office on Drugs and Crime (UNODC) Global TIP Report had not secured a single human trafficking conviction.<sup>3</sup> By the end of 2008, around two-thirds of the countries in the Global TIP Report had some form of law criminalizing the sexual exploitation or labor exploitation of men, women, and children.<sup>4</sup> In early 2009, ninety-one countries from the Global TIP Report had prosecuted a human trafficking case with seventy-three of these countries securing convictions.<sup>5</sup> The desire for countries to develop and implement human trafficking laws is on the rise, but simply enacting human trafficking laws does not mean that successful prosecutions and convictions will necessarily follow.<sup>6</sup>

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<sup>1</sup>UNODC. Global Report on Trafficking in Persons. 6. February 2009.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>*Id.* at 8.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* at 39.

For prosecutors to bring charges under new human trafficking laws, they must feel comfortable with the law's language and structure, and confident that the jury will be able to correctly apply the law to the facts of the case. While pattern jury instructions are "typically written by committees of judges and attorneys . . . [with] legal expertise, . . . [the] legal accuracy and vetting by multiple legal constituencies do no[t] guarantee that the instructions will be comprehensible to laypersons."<sup>7</sup> In order to avoid such issues, legislators should strive to develop straightforward laws so that committees tasked with writing pattern jury instructions do not misapply the law. Without the necessary legal guidance "juries may reach decisions that are inconsistent with the law they are ostensibly being asked to apply."<sup>8</sup>

### **Comprehension of Jury Instructions**

While effective anti-trafficking laws are key for prosecutors to successfully bring charges against an alleged trafficker, actually securing a conviction requires the jury be able to correctly apply the law to the facts and evidence presented in court. While the common assumption is that jurors fully comprehend the law outlined in jury instructions, "social science casts doubt on the ability of jurors to understand and properly apply [these] instructions."<sup>9</sup> The idea that jurors actually understand jury instructions has no historical or statistical support "and, given the legalistic wording of most jury instructions, common sense would suggest that the presumption ought to be that laypersons would have great difficulty in understanding them."<sup>10</sup> The judicial system in the United States relies heavily on the jury's ability to understand the law, and "questioning the validity of the presumption [that jurors carefully follow instructions] poses a threat to the survival of our system of justice . . ."<sup>11</sup> Ultimately, jury instructions need to "advise the jury on the proper legal standards to be applied in determining issues of facts as to the case before them."<sup>12</sup>

Jury instructions are used to "provide the jury with specific information on the law necessary to decide the factual issues of the case presented to the jury . . .

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<sup>7</sup>Diamond, S., Murphy, B., & Rose, M. "The 'Kettleful of Law' in Real Jury Deliberations: Successes, Failures, and Next Steps." *Northwestern University Law Review*. 106:1537, 1543-44. 2012.

<sup>8</sup>*Id.* at 1546.

<sup>9</sup>Thompson, Sandra G. "Criminal Law: Judicial Gatekeeping of Police-Generated Witness Testimony." 102 *J. Crim. L. & Criminology* 329, 362. Spring 2012.

<sup>10</sup>Ritter, Judith. "Your Lips are Moving . . . but the Words aren't Clear: Dissecting the Presumption that Jurors Understand Instructions." 69 *Missouri Law Review* 163, 164. Winter 2004.

<sup>11</sup>*Id.* at 163.

<sup>12</sup>Harrington v. U.S., 504 F. 2d 1306, 1317 (1st Cir. 1974).

[and] provide proper guidance and assistance to the jury so that it may reach a verdict.”<sup>13</sup> Additionally, because there is an inherent risk that juror predispositions can influence a verdict in one way or another, “carefully constructed instructions can thwart the potential for bias by jury members.”<sup>14</sup> The most effective jury instructions are those that are “correct in law, adapted to the issues developed at trial by counsel, and adequate for guidance of the jury.”<sup>15</sup> The current human trafficking laws require prosecutors to prove many complicated elements beyond a reasonable doubt. Due to the complex language of the statutes the resulting jury instructions need to avoid “overuse of legal jargon, unfamiliar use of grammar, and [unorganized] sentence [structure].”<sup>16</sup>

### **Challenges for State Prosecutions of Human Trafficking**

Despite an influx of human trafficking legislation in virtually every state, state prosecutions of human trafficking offenses are lagging far behind.<sup>17</sup> In general, state courts lack the basic infrastructure and processes to take on human trafficking cases.<sup>18</sup> Additionally, prosecutors lack experience using human trafficking laws and governmental support in terms of training and education of the issues is virtually nonexistent.<sup>19</sup> Proportionate to the actual occurrence of human trafficking offenses state prosecutions are very low, with only 69% of human trafficking cases moving forward with any charges at all.<sup>20</sup> Although cases disproportionately reflected the statutory element for sex trafficking, prosecutions were actually more common in the smaller number of labor trafficking cases.<sup>21</sup> Prosecutors prefer charging the familiar lesser-included offenses such as sexual battery, kidnapping, procuring, and false imprisonment because they are better known not only to the lawyer, but also to the court and the jurors. As a result of this lack of training and human trafficking case law precedent, prosecutors are reluctant

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<sup>13</sup>3-22 Moore's Manual--Federal Practice and Procedure § 22.68, 1.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>Ritter at 201.

<sup>17</sup>Polaris Project, 2012.

<sup>18</sup>Lederach, A., Martin, J., Price, D., Weller, S., & Yoder, J. “Addressing Human Trafficking in State Systems” at 17 (2013).

<sup>19</sup>*Id.*

<sup>20</sup>Farrell, A., McDevitt, J. Pfeffer, R., Fahy, S., Owens, C., Dank, M., & Adams, W. “Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases.” 4. April 2012.

<sup>21</sup>*Id.*

to charge human trafficking rather than the more comfortable and reliable offenses.<sup>22</sup>

Contributing to prosecutorial challenges are the complexities of human trafficking as a crime and the associated needs of its victims.<sup>23</sup> Their symptoms from trauma can vary, overlap, and recur depending on the levels and stages of identification, recovery, and rebuilding.<sup>24</sup> Further complicating the situation for prosecutors is the important evidence provided by the victim who is typically left with gaps in services and viable options to be free from exploitation. When victims do not see a realistic alternative to their current situation, they are less likely to cooperate with an investigation or prosecution.<sup>25</sup> Without the victim testimony, case outcomes typically result in lesser charges or unsuccessful convictions, which can lead to continued exploitation. In order to avoid failed prosecutions and the potential for recurring abuse, specialized training in human trafficking should be undertaken by law enforcement and prosecutors since more effective interviewing and investigating skills have proven to result in stronger cases and a greater likelihood of conviction.<sup>26</sup>

In addition to an unwillingness of victims to cooperate with the prosecution of their case, the lack of interagency cooperation with victim service providers and non-governmental organizations (NGOs) to address the needs of victims can often compound the dilemma. While it is not required by statute, prosecutors usually prefer for there to be multiple cooperating victims to help assist with the prosecution.<sup>27</sup> Without such a valuable asset prosecutors may seek lesser criminal charges or may not even file charges at all.<sup>28</sup> Prosecutors should not discount moving forward with a single-victim case where efforts have been exhausted to determine whether additional victims exist and are available to testify. The need for prosecutors to find innovative ways of applying current human trafficking laws is essential to building a foundation of case law and encouraging legislators to adjust laws so that they are most effective. For example, a string of recent federal human trafficking cases highlight the prosecutions' ability to adapt the laws to their

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<sup>22</sup>*Id.*

<sup>23</sup>Problems with identification and cooperation; lack of stable or safe housing; lack of proper therapeutic, mental health care, and sufficient trauma counseling; lack of proper medical care; problems with identity documents; custody issues; arrests or convictions due to offenses committed under the coercion of the trafficker; education or job skills; employment issues.

<sup>24</sup>Lack of ability to self-identify; general fear of trafficker and extreme reluctance to testify; fear of retaliation by trafficker; trauma bonds, Stockholm Syndrome, or conflicting loyalties; distrust; denial; helplessness; shame; guilt; self-blame; humiliation; shock; Post-Traumatic Stress Disorder; phobias; panic attacks; anxiety; depression.

<sup>25</sup>Farrell, et al. at 4.

<sup>26</sup>*Id.* at 7.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.*

specific fact patterns, specifically focusing on the use of coercion to exploit single victims in domestic servitude.<sup>29</sup> These cases can be instructive in providing a framework for proving coercion and the subjective belief standard of the victim in sex trafficking cases.

### **Victim-Witness Reliability**

Another important element that human trafficking jury instructions must address is the role of victim-witness testimony. In human trafficking cases, victim testimony is a crucial part of the government's case against the suspected trafficker. However, there are some issues that a prosecutor must work through in order to ensure the witness is both reliable and truthful. Human trafficking victims typically suffer from mental health issues that prevent them from candidly revealing their experiences to the court, especially in front of their alleged trafficker. As a result, it is typical for "witnesses [to] stumble, perspire, twitch, sneer, lose their tempers, or otherwise [be unable to] deliver a smooth presentation [to the jury causing the testimony to be] forgotten or not believed."<sup>30</sup> A court's ability to totally eliminate bias is unrealistic, but jury instructions can be used to at least minimize such attitudes.

Victims of human trafficking typically suffer from "psychological effects [that] can be devastating and, if left unaddressed, can undermine victims' recovery and potentially contribute . . . to re-victimization."<sup>31</sup> The physical and/or psychological abuse victims endure forces them to become dependent on their trafficker to survive, which many times leads the victims to participate in criminal behavior. Due to their role in such criminal acts, victims are weary of fully explaining their situation to law enforcement officers because they face the risk of being charged with those crimes.<sup>32</sup> As a result, it is important to enlist the help of mental health experts and social workers to provide some insight into the problems that human trafficking victims experience, including post-traumatic stress disorder, depression, and anxiety.<sup>33</sup>

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<sup>29</sup>See *United States v. Calimlim*, 538 F.3d 706 (7th Cir. 2008); *United States v. Udeozor*, 515 F.3d 260 (4th Cir. 2008); and, *United States v. Djoumessi*, 538 F.3d 547 (4th Cir. 2008).

<sup>30</sup>McErlean, W., Stolle, D., & Smith, M. "The Evolution of Witness Preparation." *Litigation* Fall 2010 Vol. 37 No. 1: 21.

<sup>31</sup>U.S. Department of State Office to Monitor and Combat Trafficking in Persons. "Addressing the Internal Wounds: The Psychological Aftermath of Human Trafficking." June 2012.

<sup>32</sup>U.S. Department of Health and Human Services: Administration for Children & Families. "National Human Trafficking Resource Center: Identifying Victims of Human Trafficking Fact Sheet." <[http://www.acf.hhs.gov/sites/default/files/orr/fact\\_sheet\\_identifying\\_victims\\_of\\_human\\_trafficking.pdf](http://www.acf.hhs.gov/sites/default/files/orr/fact_sheet_identifying_victims_of_human_trafficking.pdf)>.

<sup>33</sup>U.S. Department of State Office to Monitor and Combat Trafficking in Persons. "Addressing the Internal Wounds."

The negative effects of human trafficking do not end once a victim is out of the trafficking situation, and educating juries about the seriousness of the trauma is essential to putting victim-witness testimony into perspective. Trauma is defined as an “external threat” that “overwhelms the victim’s psychological and biological coping mechanisms.”<sup>34</sup> The trauma experienced during human trafficking situations is usually complex and has profound negative effects on the victim, including depression, anxiety, and aggression.<sup>35</sup> In order to adequately educate jurors on the traumatic effects caused by human trafficking, expert witness testimony should be integrated into the jury instructions, such as explanations for possible inconsistencies when gauging the reliability of victim-witness testimony and clinical definitions of terms like trauma. First, expert witness testimony from mental health professionals or trained and experienced social workers is helpful to the jurors because it explains the wide range of trauma that victims of human trafficking endure and what types of consequences the abuse might have on the victim’s testimony or demeanor in court. Second, by incorporating the definition of trauma into the jury instructions, the jurors will be better able to determine how much weight should be assigned to victim-witness testimony, especially if there are inconsistencies.

### **Expert Testimony on Effects of Human Trafficking**

Providing comprehensive, thorough, and easy to understand jury instructions to the jurors is crucial, and a good framework to apply to human trafficking cases can be found in domestic violence cases. Domestic violence cases utilize expert witness testimony to “assist the jury in evaluating a victim’s testimony or conduct.”<sup>36</sup> By applying this methodology to human trafficking cases, jurors will have a greater understanding of the psychological impacts human trafficking can cause to victims when analyzing the reliability of the victim’s testimony. While human trafficking affects men, women, and children, the battered-woman syndrome theory can be used to highlight some relevant connections with trafficking and how incorporating expert witness testimony should be handled in court. Battered-woman syndrome can be likened to the psychological impacts of

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<sup>34</sup>UNODC. Global Initiative to Fight Human Trafficking. “Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 3: Psychological Reactions of Victims of Trafficking in Persons.” 2009. p. 2 (quoting Saporta, J. and B.A. van der Kolk, *Psychobiological Consequences of Trauma, in Torture and its Consequences: Current Treatment Approaches*, M. Basoglu, Editor. 1992, Cambridge University Press: Cambridge).

<sup>35</sup>UNODC. Global Initiative to Fight Human Trafficking. 2-3.

<sup>36</sup>*Id.*

human trafficking because victims “are abused both physically and emotionally by [dominant figures] in their lives over a prolonged period of time.”<sup>37</sup>

The consequences of such abusive behavior is that the victim suffers from “decrease in self-esteem, an emotional dependence upon the dominant [individual], and a type of ‘learned helplessness’ arising out of an inability to predict or control the violence directed against them.”<sup>38</sup> As a result, victims of domestic violence suffer from “learned helplessness” and are afraid to report the abuse to the police out of fear that they will not be protected.<sup>39</sup> Foreign victims fear they will be deported if they are in this country illegally; families of both foreign and domestic victims alike are often threatened with harm or death by the trafficker/trafficking network; victims can often be charged with crimes associated with, or as a consequence of, the trafficking scheme. Also, elements of trauma-bonding of victims to their traffickers, similar to Stockholm syndrome of victims to their captors, often exist and require explanation to the jury.<sup>40</sup>

Prosecutors may have a difficult time bringing successful charges against an alleged perpetrator of domestic violence because victims may refuse to testify, suffer from memory loss, or recant their testimony.<sup>41</sup> In order to overcome these issues, the Rules of Evidence need to be more accepting of expert testimony in human trafficking cases and trial judges need to be better educated on the benefits of having an expert’s testimony, especially in terms of “explain[ing] potentially puzzling behavior or testimony” from the victim.<sup>42</sup> Federal Rule of Evidence 702 can be used in federal court to permit expert testimony “if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.”<sup>43</sup> Expert witness testimony on the topic of battered-woman syndrome, which is comparable to the experience of human trafficking victims, has been permitted in a number of courts so long as the expert’s “knowledge, skill, experience, training, or education” allows for such testimony.<sup>44</sup> Additionally, utilizing the testimony of social workers that have experience and training with victims of human trafficking can be helpful to further educate the jury on the effects of human trafficking on the demeanor and behavior of victims. The prosecution must remain aware that without credentials or qualifications to

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<sup>37</sup>*Id.*

<sup>38</sup>*Id.*

<sup>39</sup>*Id.*

<sup>40</sup>“Human Sex Trafficking”; Amanda Walker-Rodriguez and Rodney Hill. Federal Bureau of Investigations; March 2011.

<sup>41</sup>*Id.*

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

<sup>44</sup>*Id.*

diagnose the victim the defense's experts can counter such testimony. Therefore, testimony from these sources should be used to supplement and corroborate claims made by expert witnesses.<sup>45</sup> When the victim's credibility is called into question due to inconsistencies, expert testimony is permitted to provide the jury with possible explanations.

A recent federal human trafficking case, U.S. v. Campbell, No. CR 12-40039 2012 WL 6050585 (D.S.D. Oct. 23, 2012), out of the United States District Court for the District of South Dakota, provides a good example of how jury instructions should be written and illustrates what improvements can be made at the state level to simplify the complexities of human trafficking crimes. In Campbell, the jury instructions included a section entitled "Impeachment Instruction" that focused on the credibility of witnesses, including alleged victims. Two particular subsections instructed the jury to take into account that the "witnesses testimony may have been influenced by their desire to please the government or to strike a good bargain with the government about their own situation" and that a witness received a payment and "whether or not [a victim-witness] information or testimony may have been influenced by receiving such benefits."<sup>46</sup>

It is expected for defense counsel to challenge the statements made by any and all witnesses, and the "Impeachment Instruction" section accomplishes this goal. However, without explaining that victims are hesitant to reveal every detail during the initial investigation in the jury instructions, the ability for jurors to appreciate the victim-witness's testimony will be limited. The Sixth Amendment to the United States Constitution ensures that the defendant is able to confront any accuser. However, due to the very nature of the alleged human trafficking offense, victims may not be able to testify. Therefore, human trafficking jury instructions need to find a middle ground when addressing victim-witnesses to provide the victim with some level of protection on the stand while still preserving the defendant's right to a fair trial.

### **Guidance from Federal and Parallel Cases**

Federal human trafficking jury instructions are useful resources for states to develop their own legal framework, particularly for educating jurors about the coercive methods used by traffickers to control victims. This element is difficult for juries to understand especially when the defense claims that the victim had opportunities to run away or call law enforcement. The state of Florida has recognized that even when violence or lock-and-key situations are not present in

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<sup>45</sup>*Id.*

<sup>46</sup>Jury Instructions from U.S. v. Campbell, No. CR 12-40039 2012 WL 6050585 (D.S.D. Oct. 23, 2012).



human trafficking cases, less obvious methods of controlling victims may be used to keep them compliant and hidden.<sup>47</sup> For this reason, it is essential that coercion is defined in states' jury instructions and that examples are provided to juries, such as in the Eleventh Circuit human trafficking jury instructions.<sup>48</sup> One of the most important elements to include as directives for the jury's consideration is that they each consider the victim's background and circumstances as to whether they think his/her actions or lack of action was reasonable or not.

“‘Serious harm’ means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.”<sup>49</sup>

This will be addressed in the recommendations section on the use of expert testimony to help support these directives as well as combat defense attempts at discrediting the witness due to the victim's emotional or psychological behaviors. In United States v. Farrell, 563 F.3d 364 (8th Cir. 2009), the court held that even when a victim is physically absent from a trafficker, this fact does not negate coercion when “reasonable belief” would lead a person to act or fail to act because they would suffer harm if they did not comply with the exploitation.<sup>50</sup> This emphasizes the need to communicate the difference to the jury that freedom of movement does not necessarily equal freedom of choice. The Farrell decision, which was upheld by the United States Court of Appeals for the Eighth Circuit, established that mere statements of physical force without the action of physical force were coercive enough to prove the traffickers maintained control over their victims even when the victims left the country and subsequently returned to the work required by the traffickers in the United States. The voluntary nature of the employment is not determined by the perceived freedom of movement.<sup>51</sup> The threats regarding the United States legal system were also considered by the court to qualify as threats of physical force, designed to maintain compliance of the victims.<sup>52</sup>

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<sup>47</sup>Fla. Stat. § 787.06(1)(c). (2013).

<sup>48</sup>18 U.S.C § 1591(a)(1). Sex Trafficking of Children or by Force, Fraud, or Coercion.

<sup>49</sup>*Id.* (emphasis added).

<sup>50</sup>United States v. Farrell, 563 F.3d 364 (8th Cir. 2009).

<sup>51</sup>*See* United States v. Veerapol, 312 F.3d 1128, 1131-32 (9th Cir.2002).

<sup>52</sup>Farrell at 364.

It is crucial to convey to the jury the methods of control and violence used by traffickers in order to address questions or misunderstandings they may have regarding victim experience and testimony. A victim may return to her pimp even if he has not physically restrained her, because he has threatened her with what could happen if she left and did not return. A victim may not enjoy having to engage in sex acts with multiple men per night or weekend, but because she has seen the pimp beat another victim for not making enough money she will continue to engage in commercial sex. Similarly, a trafficker can use the threat of arrest for offenses like prostitution, drugs, or theft in order to force the victim to continue to work. It is also important to note that threats towards a person or persons other than the victim, such as family or a child, also serve as coercion.

The recent conviction in United States v. Fields, 2013 WL 5278499 (M.D. Fla. Sept. 18, 2013), serves as precedent for the use of drugs and the exploitation of an addict's drug habit as qualifying conditions for coercion in human trafficking.<sup>53</sup> The Fields case exemplifies several critical elements which go to the jury's fact-finding and decision-making duty. Some of the victims came and went from the defendant's trailer home, but the actual freedom of the victims was severely constricted by the threat of harm. Fields, the trafficker, used threats of allowing the victims to become "pill sick," or suffer from the violent withdrawal symptoms of addiction, to coerce the victims into engaging in commercial sex and, thus, furthering the addiction. Additionally, Fields enforced debt bondage of money owed for the pills he would provide the victims even if they expressed wishes to enter a rehabilitation program. Victims were only able to pay down this "debt" by carrying out commercial sex acts for which Fields controlled the arrangement, transportation, and payment.<sup>54</sup>

In determining whether "physical or legal coercion or threats thereof could plausibly have compelled the victim" to engage in the work or acts at issue, the jury is entitled to consider "evidence of other means of coercion, or of poor working conditions, or of the victim's special vulnerabilities."<sup>55</sup> This again goes to the need for prosecutors to demonstrate the objective requirements and definitions within the human trafficking law, as well as explanations of the subjective elements of individual victims' situation or circumstances. Special vulnerabilities in the Fields case included victims who recreationally used drugs and were vulnerable to becoming addicted; victims who were working in the strip club industry or already engaging in prostitution; and, victims who had few options for employment, housing, transportation, and financial means of supporting

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<sup>53</sup>Department of Justice Office of Public Affairs. "Lutz, Fla., Man Convicted on Drug Distribution and Sex Trafficking Charges." <<http://www.justice.gov/opa/pr/2013/November/13-crt-1189.html>>. Nov. 6, 2013.

<sup>54</sup>*Id.*

<sup>55</sup>United States v. Kozminski, 487 U.S. 931, 952-53 (1988).

themselves. These are frequently occurring vulnerabilities that traffickers look for to target and recruit individuals for commercial sexual exploitation.

The U.S. v. Calimlim, 538 F.3d 706 (7th Cir. 2008), case is instructive on conveying the subjective element of coercion to the jury. This case further defines “special vulnerabilities” in that once a trafficker identifies that aspect for a particular victim, he/she is able to zero in on that factor as a means of control without needing to resort to violence or physical restraint. The traffickers knew that, to this particular victim, being prohibited from sending money home to her family constituted “serious harm.”<sup>56</sup> When coupled with the threats of the legal system (in her case, deportation), this inability to act served to keep the victim enslaved without any physical force or threat of violence.

In conjunction with illustrating coercive elements to the jury, the prosecutor must establish that there is no affirmative duty to escape on the part of the victim, even despite potential opportunities for escape.<sup>57</sup> Once coercion is proven beyond a reasonable doubt, the prosecutor should then establish that the fear of harm to the victim prevents them from leaving or severing ties with the trafficker, regardless of whether there was an opportunity to escape.<sup>58</sup> Even making the assumption that there are realistic points of escaping the trafficker’s control, the Farrell and Fields cases affirm that a rational jury could conclude that a victim’s employment was “involuntary for at least some portion of [the time]. And that involuntary portion would suffice to sustain the conviction.”<sup>59</sup>

### **State Cases and Pandering Charges**

State prosecutors have frequently charged pandering on cases that have the elements to be charged under human trafficking. Therefore, it is useful to look to court interpretations and jury instructions from pandering or similarly-charged cases and apply them in order to prosecute a human trafficking charge. There are parallels to human trafficking cases in the nature of pandering as a crime, as well as the level of proof for commercial sex acts from the human trafficking standpoint.

A California case, People v. Tillis, 2011 WL 5117721 (Cal.App. 4 Dist.), provides a good example of bringing both human trafficking and pandering charges when the facts of the case and the state’s laws align. In this case, while an initial act of violence served to deprive the victim of personal liberty and recruit her for

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<sup>56</sup>Calimlim at 711.

<sup>57</sup>See United States v. Bibbs, 564 F.2d 1165, 1168 (5th Cir.1977).

<sup>58</sup>*Id.*

<sup>59</sup>United States v. Djoumessi, 538 F.3d at 552-53.

purposes of sex trafficking, there was no subsequent physical force or violence but only coercive threat.<sup>60</sup> Despite the victim not actually completing commercial sex acts while under the traffickers' control and not being forced to turn over any financial proceeds the human trafficking conviction was affirmed.<sup>61</sup> The fact that the victim had initially entered the street environment with the intent of being a willing prostitute served to establish her own vulnerability for coercion under the definition of human trafficking in addition to satisfying the "encouraging" element of the pandering statute.<sup>62</sup>

California criminalizes pandering as any conduct that "by promises, threats, violence, or any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute."<sup>63</sup> It acknowledges the same types of behaviors traffickers employ for control. The California human trafficking statute reads: "Any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking."<sup>64</sup> The convictions were upheld on both the pandering charge and human trafficking charge as completed crimes, and not just attempts, despite the lack of financial gain on the part of the trafficker. Similarly, in addition to someone who does benefit financially from forced labor or services, Florida criminalizes the specific intent to engage in human trafficking whether the exploitative act was actually completed or not.<sup>65</sup>

### **Applying Federal Law When State Law Fails**

While the federal government has a relatively effective legal framework to handle federal human trafficking cases, it will be greatly beneficial for states to create anti-trafficking laws as an added method of prosecuting trafficking crimes and to encourage politicians and the general population to become more aware of human trafficking. For example, while Campbell, No. CR 12-40039 2012 WL 6050585 (D.S.D. Oct. 23, 2012), was prosecuted under federal law and took place in federal court in South Dakota, the state itself received a Tier-Four designation from Polaris Project due to a lack of effective state anti-trafficking laws, insufficient human trafficking training for law enforcement officers, and

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<sup>60</sup>People v. Tillis, 2011 WL 5117721 (Cal.App. 4 Dist.).

<sup>61</sup>*Id.* at 3.

<sup>62</sup>Pen.Code § 266i, subd. (a)(2).

<sup>63</sup>*Id.*

<sup>64</sup>Pen.Code § 236.1, subd. (a).

<sup>65</sup> Fla. Stat. § 787.06(3)(a): "any person who knowingly engages or *attempts to engage* in human trafficking with the intent or knowledge that the trafficked person *will be* subjected to forced labor or services." (emphasis added).

inadequate assistance programs for trafficking victims.<sup>66</sup> This disconnect shows how ill-equipped some states are in their efforts to combat human trafficking.

South Dakota's human trafficking laws, S.D. Codified Laws § 22-49-1, 22-49-2, and 22-49-3 (2013), are troubling in their insufficiency. Specifically, S.D. Codified Law § 22-49-2 states that if a human trafficking act involves "committing or attempting to commit kidnapping" or supports "prostitution or procurement for prostitution" it is considered a first-degree human trafficking offense, which is only a Class 2 felony. A Class 2 felony carries a maximum twenty-five year sentence and possible fine of \$50,000.<sup>67</sup> However, under South Dakota's kidnapping statute, S.D. Codified Law § 22-19-1, kidnapping is defined as a Class C felony. Such an offense carries a maximum of life imprisonment and a potential fine of \$50,000.<sup>68</sup> Despite a kidnapping offense being included in the human trafficking law, the latter holds a lesser penalty, encouraging prosecutors to charge under the kidnapping statute rather than the trafficking laws because of its relative simplicity and harsher punishment.

Furthermore, the trafficking statutes themselves contradict one another in terms of punishing similar acts. In S.D. Codified Law § 22-49-3 the "recruit[ment], harbor[ing], and transport[ation] . . . of another person knowing that force, fraud, or coercion will be used to cause the [victim] to engage in prostitution" is a Class 4 felony, which carries a ten-year prison sentence and a possible fine of \$20,000.<sup>69</sup> Conversely, when prostitution is the result of a trafficking offense under S.D. Codified Law § 22-49-1 it is considered a Class 2 felony. If the laws are confusing from the start, the jurors cannot be asked to decipher such complex nuances, especially in a high-pressure situation no less.

In Campbell, the defendant was charged and convicted in federal court of one count of sex trafficking by force, fraud, or coercion; two counts of sex trafficking a child; one count of interstate transportation for prostitution; and, one count for obstruction of sex trafficking enforcement.<sup>70</sup> For these crimes, the defendant received three life sentences for each trafficking charge and twenty years for each of the obstruction and transportation charges.<sup>71</sup> The ability for the prosecutor to obtain such a verdict is due to the favorability of the federal law and,

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<sup>66</sup>Polaris Project, South Dakota State Report: State Ratings (2013).  
<[http://www.polarisproject.org/storage/documents/South\\_Dakota\\_State\\_Report\\_2013\\_08\\_01\\_17\\_29\\_41\\_033.pdf](http://www.polarisproject.org/storage/documents/South_Dakota_State_Report_2013_08_01_17_29_41_033.pdf)>

<sup>67</sup>S.D. Codified Law § 22-6-1(5) (2013).

<sup>68</sup>S.D. Codified Law § 22-6-1(3) (2013).

<sup>69</sup>S.D. Codified Laws § 22-6-1(7) (2013).

<sup>70</sup>U.S. Department of Justice: U.S. Attorney's Office for the District of South Dakota. "Illinois Man Found Guilty of Sex Trafficking." 11 Feb. 2013. <<http://www.justice.gov/usao/sd/pressreleases/SF-2013-02-11-Campbell.html>>.

<sup>71</sup>U.S. Department of Homeland Security: ICE. "South Dakota man sentenced to three life terms in prison for sex trafficking." 30 May 2013. <<http://www.ice.gov/news/releases/1305/130530siouxfalls.htm>>.

thus, the comprehensibility of the jury instructions. While the federal human trafficking law was useful in securing a conviction for offenses against a minor, South Dakota's laws would have fallen short because of the State's age designation for a "minor" as someone under sixteen years of age.

According to federal law, 18 U.S.C. § 2256, a minor is "any person under the age of eighteen." Applying this definition of "minor" to the federal human trafficking law, 18 U.S.C. § 1591, allows federal prosecutors to bypass having to satisfy the elements of force, fraud, or coercion when dealing with someone under the age of eighteen. On the other hand, S.D. Codified Law § 22-49-2 states that a first-degree human trafficking offense is committed when the victim is under the age of sixteen. This age difference makes it easier for human trafficking cases involving minors to be brought in federal court than in South Dakota state courts where state prosecutors have to take into account the more restrictive definition of a minor created by the state legislature. Interestingly, the South Dakota legislature defines a minor as being "natural male persons and natural female persons under eighteen years of age," which again shows the inconsistencies between the human trafficking laws and other criminal statutes.<sup>72</sup>

In order for human trafficking jury instructions to be practical, legislators at the state and federal levels need to pass comprehensive laws that courts will apply without hesitation. Such an example of the broad reaching effect of a trafficking law is seen in U.S. v. Jungers, 702 F. 3d 1066 (8th Cir. 2013).<sup>73</sup> In Jungers, the Eighth Circuit Court of Appeals upheld the sentences of two individuals who were convicted under 18 U.S.C. § 1591 for soliciting sex with minors. While the lower court granted the defendants' motions to acquit on the grounds that "customers" were not the focus of the statute, the Eighth Circuit stated that "the ambiguous text of 18 U.S.C. § 1591 makes no distinction between suppliers and purchasers of commercial sex acts with children, and [the] defendant[s] have failed to persuade [the Court that] Congress intended a supplier-only limitation or a purchaser exception in § 1591 that Congress never stated."<sup>74</sup> Due to the broad language of the statute the prosecutor was able to provide the jury with straightforward instructions and secured two significant convictions.<sup>75</sup> Federal law and developing precedent provide an excellent model for prosecutors to get creative with statutory language

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<sup>72</sup>S.D. Codified Law § 26-1-1 (2013).

<sup>73</sup>Johnson, Brendan. *U.S. Attorney's Office District of South Dakota Annual Report: 2012*. p. 31. <[http://www.justice.gov/usao/sd/docs/Annual\\_Report\\_2012.pdf](http://www.justice.gov/usao/sd/docs/Annual_Report_2012.pdf)>.

<sup>74</sup>Jungers, 702 F.3d 1066, 1075.

<sup>75</sup>The jury instructions used in Jungers, 702 F. 3d 1066 (8th Cir. 2013): "(1) Defendant knowingly recruited, enticed, or obtained a person whom the defendant knew would be caused to engage in a commercial sex act; (2) that the defendant believed that the person had not attained the age of eighteen years; (3) that the offense was in or affecting interstate commerce; (4) that the defendant intended to commit sex trafficking of a child and voluntarily and intentionally carried out some act which was a substantial step toward the crime."

and utilize laws in as many ways possible. For example, United States v. Bagley et al. was the first case to convict customers when the victim was an adult. In addition to the primary trafficker and his conspiring wife, four customers were sentenced to significant convictions and restitution requirements.<sup>76</sup>

## Conclusion

Human trafficking laws are enacted to protect vulnerable members of society from being exploited, punish the perpetrators of human trafficking when they are caught, and prevent any further harm from being caused once a trafficking network is identified. Unfortunately, the existing human trafficking laws do little to simplify the complex nature of the crime. While proper education of prosecutors and training for law enforcement officials are both essential to accomplishing these goals, the ultimate responsibility in rendering a verdict lies with the jurors. In order to ensure jurors are informed, the prosecution should make it a point of utilizing expert witnesses to explain the psychological effects human trafficking has on its victims. Additionally, when it comes time for the jurors to evaluate the victim-witness testimony, the jury instructions should explicitly state, preferably in a section entitled “Impeachment Instruction,” that re-emphasizes the potential psychological effects that can explain discrepancies in the victim’s statements. The jury needs to be made aware of the nuances of human trafficking if they are expected to render a fair verdict, and the most effective way of accomplishing this goal is by providing the jurors with clear and thorough jury instructions.

## Recommendations

The State Justice Institute has provided funding to form a Human Trafficking and State Courts Collaborative resulting in identification of four priorities necessary to address human trafficking in state court systems: 1) increase awareness and understanding of cases, victim issues, their families, and traffickers, 2) develop a method for assessing and testing the impact of human trafficking victims and defendants, 3) improve court services for human trafficking-related case processing demands, and 4) build effective national, state, and local partnerships for addressing human trafficking cases.<sup>77</sup>

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<sup>76</sup> United States Attorney’s Office Western District of Missouri; United States v. Cook, 2013 WL 3039296, W.D.Mo., June 17, 2013 (NO. 10-00244-02-CR-W-DW). <http://www.ksamtv.com/Global/story.asp?S=13132902>. United States v. Stokes, 2011 WL 1585601, W.D.Mo., April 25, 2011 (NO. 10-00244-04-CR-W-DW). Stokes plea agreement, Department of Justice: [http://www.justice.gov/usao/mow/news2012/stokes\\_plea.pdf](http://www.justice.gov/usao/mow/news2012/stokes_plea.pdf). James Noel and Dennis Henry were the other two customers sentenced.

<sup>77</sup>Lederach, et al. at 20.

## **Priority 1: Ongoing Training**

As previously discussed, training has a direct link to prosecutions. Specialized education on human trafficking and how to conduct these cases is needed for prosecutors. Many states, including Florida, have included the requirement of mandated training programs for law enforcement and prosecutors but have yet to enforce these mandates. To overcome their own bias and in order to properly explain exploitation to jurors, prosecutors must be trained on and sensitive to the victim experience and mindset. Prosecutors and law enforcement need to be able to share best practices, guidelines, and lessons learned that are specific to human trafficking cases. The International Association of Human Trafficking Investigators is currently the only worldwide organization made up of law enforcement and prosecutors who have worked human trafficking cases of all types and train other law enforcement and prosecutors on human trafficking. State leaders, such as Attorneys General, Governors, and State Attorney Offices should coordinate trainings through this organization and encourage attendance at their annual conference.

## **Priority 2: Assessment and Data-Collecting**

Advise states to look to other assessment tools from national leaders in human trafficking such as Polaris Project, Shared Hope, and state leaders to model their own local, district, or statewide system after existing models. As part of a training program that is developed and enforced for prosecutors and law enforcement, the outcomes could be tested through guidelines for cases and reported back to a central database. For example, Florida Department of Juvenile Justice is using the assessment tool developed by Shared Hope International to determine potential human trafficking victims coming through the juvenile detention and dependent system. Also in Florida, the Metropolitan Bureau of Investigations has started an initiative for collecting both quantitative and qualitative data from multiple agencies on victims/survivors, perpetrators, and “johns”. Their first data summary, although small, serves as the preliminary baseline for the beginning of Central Florida’s Data Gathering Mission.

## **Priority 3: Human Trafficking-Specific Units; Human Trafficking-Specific Courts**

What has been expressed by law enforcement and prosecutors alike is that if an officer or prosecutor does not dedicate the appropriate level of time and effort that such complex cases require victims will fall through the cracks and, ultimately,



cases will not be successful. Individuals or units who seek training and look for cases need to be assigned to human trafficking units or as a representative to the local human trafficking task force with agency funding dedicated to only human trafficking investigations for that specific area. For example, Pinellas County Sheriff Office has recently decided to dedicate a unit to domestic minor sex trafficking investigations; Clearwater Police Department since 2006 has dedicated at least one full time investigator to the Clearwater/Tampa Bay Area Human Trafficking Task Force; the Tampa office of Homeland Security Investigations has a full-time investigator dedicated to human trafficking investigations as well as collaboration with the Task Force. A similar structure exists in Central Florida with Orange County Sheriff Office, Metropolitan Bureau of Investigations, and the Greater Orlando Area Task Force on Human Trafficking. When resources, training, and collaboration are focused specifically on victim-centered human trafficking investigations, the outcomes are more successful. Furthermore, the “New York Model,” which utilizes specific courts to handle human trafficking cases, as well as prostitution and pandering-type offenses, is another option states can use to best address their human trafficking concerns. This model is focused on identification and recovery of human trafficking victims, ensuring that criminal charges they gained while under the coercion of the trafficker are dropped or vacated, and also offering services and avenues out of prostitution for those who choose to take it.

Whatever structure is selected by a state, guidelines and preparations for qualified expert testimony should also be implemented. Experts are often an essential part of explaining to juries the world of human trafficking—one that is completely foreign to the world the average citizen is accustomed. As discussed in detail above and throughout cases, such as in the Tillis case, experts can be useful in connecting the slang, rules, and behavior of trafficking with the statutory elements such as coercion, which is more difficult for jurors to grasp than violence or physical restraint. For example, victims being on “automatic”, “autopilot”, or “auto” means that they continue to abide by the rules of the trafficker even when he is not physically present. This classic example of the power of coercion connects to the prior discussion that freedom of movement does not always equal freedom of choice, and can only be effectively explained by victim testimony and corroboration such as by an expert. On the cutting edge of this aspect is the first survivor-created and survivor-informed model for training and certifying human trafficking survivors to serve as expert witnesses and reinforce the victim testimony when the survivor expert’s own experience in exploitation has parallels to the case at issue.

Other developments for this priority include the need for judicial training and implementing bench cards for quick and easily accessible information when a victim may be identified or assisted in court. General community training on

human trafficking issues and the ways in which this crime affects victims is also helpful, considering any citizen at any time could be called to be a juror on a human trafficking case.

#### **Priority 4: Web-based Network to Build Effective Partnerships**

A web-based prosecutorial network to share information, get advice, and collaborate with other prosecutors and human trafficking experts has been an explicitly requested need by state prosecutors, as previously noted. Currently, this exists through membership and private database with the International Association of Human Trafficking Investigators ([www.iahti.org](http://www.iahti.org)), and it is the only one available to connect law enforcement and prosecutors nationally and internationally to share case information, criminal intelligence, investigative and prosecutorial tactics, and lessons learned.

#### **Sample Human Trafficking Jury Instructions for Florida**

It is a felony crime in the state of Florida to [transport], [solicit], [recruit], [harbor], [provide], [entice], [maintain], or [obtain] a person by any means of [force], [fraud], or [coercion] for the purpose of [sexual exploitation] or [forced labor].

To prove the defendant is guilty of human trafficking, the State must prove beyond a reasonable doubt that:

< Element 1 - Action/Process >

< Alternative A) Transport. The defendant transported < victim >;

< Alternative B) Solicit. The defendant solicited < victim >;

< Alternative C) Recruit. The defendant recruited < victim >;

< Alternative D) Harbor. The defendant harbored < victim >;

< Alternative E) Provide. The defendant provided < victim >;

< Alternative F) Entice. The defendant enticed < victim >;

< Alternative G) Maintain. The defendant maintained < victim >;

< Alternative H) Obtain. The defendant obtained < victim >;

< Element 2 - Means >

< Alternative A) Force. The defendant used force against < victim >;

< Alternative B) Fraud. The defendant used fraud against < victim >;

< Alternative C) Coercion. The defendant used coercion against < victim >;

< Alternative D) Minor. If < victim > had not yet attained the age of 18 at the time of the offense. If the person subject to human trafficking is a minor, then the State need not prove force, fraud, or coercion.

< Element 3 - Purpose >

< Alternative A) Commercial sexual activity: any violation of Chapter 796 or an attempt to commit any such offense, including sexually explicit performances and the production of pornography;

< Alternative B) Forced labor, including any work of economic or financial value, or services.

< Element 4 - Knowledge >

< Alternative A) Knowledge. The defendant knowingly engaged in, or attempted to engage in, participation in a venture that subjected < victim > to human trafficking.

< Alternative B) Reckless Disregard of the Facts. The defendant, in reckless disregard of the facts, engaged in or attempted to engage in, participation in a venture that subjected < victim > to human trafficking.

< Alternative C) Financial Benefit. The defendant benefited financially by receiving anything of value from participation in a venture that has subjected < victim > to human trafficking.

< Alternative D) Minor Status: If the defendant had reasonable opportunity to observe < victim > who was subject to human trafficking, then the State

need not prove the defendant knew that < victim > had not attained the age of 18 years.

< Impeachment Instruction >

< It is the responsibility of you, the jury, to weigh the truthfulness and credibility of a witness.

< A witness's testimony can be discredited or refuted based on the evidence, or lack of evidence, presented at trial. It is up to you to assign whatever weight you think each witness's testimony deserves.

< Witnesses may have admitted to being involved in criminal activity. It is up to you to determine if that witness participated in such crimes based on their own free will and judgment, or if they suffered from any psychological effects caused by human trafficking during the commission of said crimes. It is up to you to decide if the witness testified in an attempt to gain favorable treatment from the prosecution and/or with the hope of avoiding punishment.

< Evidence has been presented that a victim-witness received government assistance before and during this trial. It is your responsibility to determine if the victim-witness's testimony was manipulated or influenced based on such assistance. Federal law requires that alleged victims of human trafficking receive support and it is the responsibility of the investigators and prosecution to ensure this assistance does not taint any evidence.

***Plain meaning definitions, and statutory definitions of elements***

“Transport”: to carry (someone or something) from one place to another; to transfer or convey from one place to another.

“Solicit”: to make petition to; entreat; to approach with a request or plea; to urge (as one's cause) strongly; to entice or lure especially into evil; to try to obtain by usually urgent requests or pleas.

“Recruit”: to find suitable people and get them to join a company, group, or an organization; to form or build (a group, team, army, etc.) by getting people to join; to persuade (someone) to join you in some activity or to help you; to secure the services of.

“Harbor”: to hold or contain.

“Provide”: to make (someone/something) available; to supply (someone/something that is wanted or needed); to give someone/something wanted or needed to (someone or something); to supply; to say that something will or should happen; to make it certain or possible that something will happen or be done.

“Entice”: to attract (someone) especially by offering or showing something that is appealing, interesting, etc.; to attract artfully or adroitly or by arousing hope or desire.

“Maintain”: to cause (something) to exist or continue without changing; to continue having or doing (something); to keep in an existing state.

“Obtain”: to gain or get (something) usually by effort; to continue to be accepted or in use; to gain or attain usually by planned action or effort

“Force” includes:

- confinement;
- physical restraint;
- beating, slapping, punching, grabbing, pushing, or strangling;
- sexual assault, rape and/or gang rape;
- beatings or rapes with objects (bats, tools, chains, belts, hangers, canes, cords, etc.);
- burning with cigarettes or other items.

“Fraud” includes:

- false promises;
- deceit;
- lies or misrepresentations about working conditions;
- lies or misrepresentations about a “better life” or promising a “dream”;
- trickery;
- duress;

- debt bondage.

“Coercion” includes:

- threat of physical force against any person;
- use of physical force against any person;
- restraining, isolating, or confining; threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- causing or threatening to cause financial harm to any person;
- enticing or luring any person by fraud or deceit;
- providing a controlled substance as outlined in Schedule I or II of s. 893.03 to any person for the purpose of exploitation of that person.

“Sexually explicit performances”: act or show, whether public or private, that is live, photographed, recorded, or videotaped, and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

“Services”: any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

# **Human Trafficking Investigations, Implications of Apathy and Inaction, Recommended Solutions**

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## **Introduction**

Human Trafficking (HT) is both a global and national epidemic and yet, it has not truly touched the hearts and minds of the Canadian population at large. For example, to date, neither law enforcement/justice training nor investigation is on par with gang violence, drugs, or even prostitution. So the questions I wish to explore in this paper are:

- Why such apathy?
- How does it get changed?
- Why does the Canadian population at large not have even a working knowledge of the epidemic of HT?
- Why do members of the criminal justice system (police, lawyers, judiciary etc.) not have a detailed understanding of or resources to fight and prosecute HT offenses?
- Why do elected representatives at all levels, from municipal to federal, fail to grasp the seriousness of the problem, offering cursory commitments and minimal assistance to victims and investigators alike?
- Why is Canada not yet living up to the provisions of the United Nations (2000) protocol on HT?
- What price can we attach to the battle against slavery in a country where slavery was not only outlawed but, historically, viewed as a safe haven (Rosemary Sadler - President n.d.)?

## **Human Trafficking in Canada**

Human Trafficking is a crime that is only recently starting to come into the consciousness of the Canadian public. Although it is an active crime occurring worldwide, it has traditionally been seen as a third world problem. Due to a combination of several high profile cases, extensive advocacy work from non-

governmental organizations (NGO's), and recent amendments to the criminal code of Canada, HT is slowly being exposed as a global organized crime problem (Interpol 2012). It is also, more specifically, a Canadian organized crime problem (Government of Canada 2011). In my opinion, the single greatest cause of Canadians' lack of knowledge of this horrendous crime is "NIMBY" or the Not In My Back Yard view permeating people's attitudes. Canadians as a whole generally do not believe such things can happen in this country and if it does happen, they are convinced it cannot possibly happen in their town or province. It is this attitude that needs to change. This is something that can be done only through enhanced awareness, intensive law enforcement action, and education by credible subject matter experts. The term "Human Trafficking" for the purposes of this essay is defined both within the Criminal Code of Canada and within the United Nations Convention (United Nations Assembly, 2012; United Nations, 2000). More accurately, however, it should (Collins English Dictionary 1991, 1994, 1998, 2000, 2003) be understood in terms of its most true and basic meaning: "SLAVERY" (Not For Sale 2009-2012).

Human Trafficking is defined as "the organized criminal activity in which human beings are treated as possessions to be controlled and exploited (as by being forced into prostitution or involuntary labour)" (Merriam-Webster Dictionary n.d.), compare this to the definition of slavery which is "the state or condition of being a slave; a civil relationship whereby one person has absolute power over another and controls his/her life, liberty and fortune" (Collins English Dictionary 1991, 1994, 1998, 2000, 2003) and the nexus between the two are clear. HT has no boundaries in terms of victimology (male, female, children, ethnicities, religions etc.). However, my practical experience and expertise were developed while working with young female sex-worker victims, other law enforcement officers and NGO's in the field of human trafficking.

Organized crime has the strongest, most pronounced foothold in the industry of selling human beings. The primary reason for this is that tremendous sums of money can be made from the sale and exploitation of victims. HT is an international industry valued at up to \$32 billion per year (Freethem anti-human trafficking organization n.d.). From a policy perspective, it has proven extremely difficult to draft legislation that makes the trafficking of human beings less lucrative. Canadian laws are limited in both their weight and effectiveness, primarily due to the Criminal Code's inclusion of "fear" as an essential element of the offense (Government of Canada 2013). The sentencing structure available to the courts has also been shown to be woefully inadequate. While sentences appear to be high, in fact the applicable case law is extremely limited and the sentence tariffs judges rely on are deficient (Cherry 2009).



In my experience, members of the Canadian justice system are a significant part of the problem due to their lack of knowledge, awareness, and education on HT related offenses. There is both a lack of experienced/dedicated investigators and crown attorneys as well as an historic lack of communication/cooperation between law enforcement agencies. More importantly, there remains a pervasive attitude within policing culture that this is an issue of negligible importance. After all, the victims are “just hookers.” For example, only in the past year and a half has the Canadian Police College begun to include an HT investigators course in its curriculum. Additionally, the Ontario Police College, tasked with educating the majority of police officers in the province, still does not offer specific HT training to either senior officers/investigators or new recruits. This omission from formal police training is at best counter-productive. The United States Department of Justice offers extensive training to law enforcement and was in fact the organization that facilitated my introduction to Human Trafficking in 2010. Prior to that time I had no knowledge that this was even an issue, let alone the prevalent criminal activity that I know it to be today.

On the bright side, this police-training gap is slowly starting to change. Early in February 2012, the Human Trafficking National Coordination Centre (HTNCC) based in Ottawa launched a voluntary basic training course to policing agencies through an online portal known as the Canadian Police Knowledge Network (CPKN). This course was developed at the HTNCC with input from experienced HT investigators across Canada, including myself. The Toronto Police Service, York Regional Police Service, Niagara Regional Police Service, Peel Regional Police Service, and several others have also hosted Human Trafficking Awareness Training courses (1-3 days in length). These courses are voluntarily attended and are typically the brainchild of an already invested officer, rather than a concerted effort by police agencies to fully educate the rank and file. While these are all positive steps to addressing the police training void, the numbers being reached are very small.

On the other side of the criminal justice system, crown attorneys and judges are also inadequately trained. They have little knowledge or experience in this unique type of crime with its complex dynamics typically hinging on circumstantial evidence and the word of the victim. Prosecutors I have dealt with in the past are hesitant to base their case on such shaky foundation unless there is something more substantive that can be brought to the table. With that said, I will leave it to experts in the area of the justice system to offer their perspective on the matter.

The lack of HT training offered to law enforcement begs the question: how are these crimes being investigated, offenders caught, and victims rescued? The answer is that a handful of dedicated investigators ultimately take it upon

themselves to seek out any kind of available training, and/or teach themselves and each other through trial and error.

Detective Thai Troung of the York Regional Police Service is one of these officers. He is, in my opinion, one of the best investigators in the field of domestic HT in the country. Thai is pretty much self-taught and created an approach that like-minded investigators have since adopted as “best practice”. It is a victim centred approach that places their wellbeing and safety ahead of all other considerations. Proactive rapport building with victims is an integral part of the process, creating a personal connection and genuine approach is the mainstay of this best practice. He started in this field of investigation unwillingly. An accomplished undercover and drug enforcement investigator, Thai was transferred into the Vice section under protest. There he was given the book “Somebody’s Daughter” (Jessome 1996) by his supervisor and told to read it before making a final decision. Thai states that when he finished reading the book he was furious (a sentiment I deeply share) and came back to his supervisor eager to take on this new mission. To better educate himself on the issue of HT, Thai travelled to Las Vegas, Nevada on his vacation and at his own expense. There he worked informally with the Las Vegas Police Department (LVPD) Vice Team, learning from them and, more importantly, from the girls and women they interacted with in the sex industry. Upon returning to the York Regional Police, Thai attacked his job with a renewed vigor and purpose. It is his work, along with other pioneers in the field, that has shaped the current operating procedures of Canada’s small pool of HT investigators.

The culture of policing is both simple in its structure and complex in its nature. Based on the hierarchical framework of the military, it is essentially a paramilitary culture. Within the clear boundaries of such a culture, complexity occurs when politics becomes the mainstay and motivator for decision-making. Politics in policing has an adverse impact on what might be considered “pure” policing. Such politics govern not only what gets done, how it is funded, and what resources are dedicated to the endeavor, but also where credit is placed for successes and where blame is placed for failures.

Inter-jurisdictional rivalries also play a role in preventing HT cases from being more effectively investigated. Failure to “play nice in the same sand-box” is an issue that plagues law enforcement agencies everywhere. There are also budget constraints, political ambitions, professional development, salary, and personal issues to consider. Such systemic constraints leave offenders the ability to cross-jurisdictional boundaries with virtual impunity, knowing that inter-jurisdictional cooperation and information sharing are not readily accomplished. To circumvent this problem, a group of committed investigators took it upon themselves to create informal cross-jurisdictional working groups and proactively share information. I

was a member of one such group while working as a Human Trafficking investigator. No one there cared who received credit for a case. Our sole concern was that victim(s) were rescued and offender(s) apprehended.

Non-Governmental Organizations (NGO's) have also responded to the need for investigators and NGO's themselves to share information and resources. The Chrysalis Anti-Human Trafficking Network (Chrysalis) is one such example. Chrysalis founder, Jacqui Linder, is an accomplished educator, clinical psychologist, traumatologist, and outreach worker among her many accomplishments. I specifically booked off work and took my vacation days to attend a training course where she was speaking. Her presentations each day were enthralling. In one talk, Jacqui identified the key problem facing HT investigators; we were uncoordinated and largely working in isolation without an effective, non-bureaucratic forum in which to communicate. So .... she created the National Law Enforcement teleconference for HT investigators across Canada. Because Jacqui does not answer to any funders or police agencies, the program is completely free from undue political influence. It has been a wonderful success from the start, with the prospect for unlimited future potential. The conference call is attracting new investigators every month who share information relating to HT trends in their respective jurisdictions. Participants also share information on offenders, suspected victims, interprovincial transit pattern, best practices, and effective problem solving strategies.

The Royal Canadian Mounted Police (RCMP) have a reported 184 officers tasked with HT investigations under the "Passport and Immigration Section" (Royal Canadian Mounted Police n.d.). While this may sound like a large number, one must take into account the enormity of the HT problem. When one factors in the scope of the issue along with the inter-jurisdictional rivalry and politics, it becomes clear that HT investigations remain woefully undermanned. I believe this problem could be better addressed with official joint task forces in which municipal and provincial policing agencies combine efforts and resources. Not only would such an approach ease the financial and personnel burdens faced by individual agencies, but it would also prevent traffickers and their victims from slipping through holes in the investigative net. To reduce potential rivalry between agencies, task force investigators could report to a dedicated crown attorney outside the regular police chain of command. This would nullify jurisdictional or ego-based rivalries and involve crown attorneys in the investigative process from beginning to end. Such an approach would create both "buy in" from the crown as well as ensure that a prosecutable case is brought before the courts.

On the political level the term "human trafficking" is what can be termed as a sexy political word. Politicians love to throw it around because it is good press and makes them appear as if they are working on the issue. As with most things

political, however, this sound bite is nothing more than smoke and mirrors. Legislation adding Human Trafficking offenses to the criminal code came into effect in 2006. As far back as 2000, Canada committed to the United Nations “Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime” (United Nations 2000). Knowing that, one would expect a concerted response on the issue and yet, at the beginning of 2014, Canada still does not have an effective national strategy for dealing with HT. In late 2012, the federal government announced a new capital investment of \$25 million dedicated solely to anti-human trafficking investigations and initiatives (Government of Canada n.d.). To date, none of those funds have been made available to any of the individuals, departments, or organizations leading Canada’s anti-HT movement.

It is widely believed by anti-HT leaders and even some investigators that the \$25 million investment announced by the government is, in fact, a “ghost” number marketed as “new” money when it was actually existing money repurposed under the HT label. While such announcements generate considerable political mileage, new money is desperately needed by: 1) police agencies for investigations and training; 2) NGO’s so that they can keep helping victims; 3) the judicial system to fund specially trained prosecutors and trial expenses; and 4) social service groups providing housing, psychological counseling, re-training/education etc. This is not a time for political shell game financing. It is a time for direct and intensive action. I do not believe that we as a nation are meeting our obligations and commitments to the UN protocol. As a direct result of the slow political train, victims continue to be victimized, NGO’s are being financially starved, dedicated investigators are being re-assigned, and cases are not being investigated due to lack of funding.

### **Rapport Building**

HT investigation (particularly domestic sex trafficking) is a complex, frustrating, emotionally exhausting, liability-filled area to work in. It is also the most rewarding, uplifting police work I have ever done. Unfortunately it is so under-staffed, under-funded, and under-appreciated within the policing culture that it is often dismissed as an unimportant or overly risqué. The result ends up being pimps operating with impunity selling the sex, dignity and innocence of young girls and women. The profits are vast while the pimp’s actual labour is minimal at best.

Rapport building with both potential victims and “independent” sex workers is a crucial aspect of working in this field. Without strong rapport and trust with the victim, investigators will never move beyond initial contact and cannot be successful in their work. A genuine, non-judgmental approach towards these

women and girls is essential to building this bridge of trust. Investigators must constantly remain aware of the fact that victims want the same things any daughter, spouse, or female friend wants; to be treated as a human being who matters and deserves respect. It really is that simple.

In their initial approach, investigators need to be genuine, open and honest about who they are, what they are doing, and what they can offer. Take the time to talk with a potential victim, not at them. Lying, embellishment, and false promises will be picked up almost immediately; as will revulsion or attraction. These women have been through a lot and their ability to read body language and mannerisms is better than most mental health professionals.

### **Conclusion**

Human trafficking is slavery. This fact needs to be brought to the forefront of everyone's consciousness. It needs to have a dedicated, unwavering response from elected officials as well as the criminal justice system. In Canada, sound policies based on practical, proactive solutions need to be created and implemented immediately. These policies need to include input from victims, NGO's, crown attorneys and experienced field investigators. Inter-jurisdictional cooperation between policing agencies needs to be mandated. Finally, substantive funding must be dedicated not just to the criminal justice system but to the NGO's (without whom we would be lost) providing these victims with care. The culture of policing and its associated attitudes around HT need to change from their traditional viewpoint. Only through the combined effort of police, NGO's and crown (in that order) can victims of modern day slavery be rescued from captivity, healed from their physical/psychological trauma, and their traffickers brought to justice. It will take tremendous political will to accomplish these tasks. We as a nation need to live up to our commitment to the United Nations protocol and implement policies that will ensure success. Unless these challenges are met, victims will continue to suffer and slavery will continue to exist within our borders. We must always remember that these victims are human beings. They are not disposable, they are somebody's daughter; maybe my daughter, maybe your neighbor's daughter, maybe your daughter.

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# **Funding and Capacity Building Fuel Cooperation: A Case Study of Counter-Force Networks Fighting Sexual Exploitation and Trafficking in India**

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## **Abstract**

Historically, organizations combatting trafficking for sexual exploitation in India have struggled to cooperate. Due to the multifaceted demands of protecting vulnerable populations and confronting criminal networks, a lack of cooperation can lead to interventions that are ineffective or detrimental. Multiple case studies have indicated that there are three interrelated challenges that hinder cooperation: complex political landscapes, limited vision and funding dedicated to inter-organizational relationships, and a lack of expertise in particular disciplines. One case study indicated that coordinated funding and capacity building fueled sustainable cooperation to form a counter-force that can more effectively combat sexual exploitation and trafficking in India.

## **Introduction**

The author worked in the sector combatting trafficking for sexual exploitation in India for almost two years, and was surprised at how little organizations worked together. Despite good intentions, organizations functioned independently and cooperation was challenging. “Feedback from a multiplicity of non-government organizations (NGOs) working on various issues of anti-trafficking...presents a picture of a lack of inter-agency understanding and appreciation.”<sup>1</sup> This is not surprising. Any form of public action or intervention in a complex multi-actor environment is political and contested.<sup>2</sup>

For example, while the author was in Bangladesh, an Indian organization was in the process of repatriating over twenty Bangladeshi survivors of trafficking for sexual exploitation to two Bangladeshi NGOs. At the border, an argument linked to funding arose between the Bangladeshi organizations over who would receive the survivors into their care. This situation not only hurt the cooperative

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<sup>1</sup> Sen, S & Nair, P. (2003) *A Report on Trafficking in Women and Children in India 2002-2003*, Institute of Social Sciences, New Delhi, pp. 361, 366.

<sup>2</sup> Dreze, J. and Sen, A. (1989) *Hunger and Public Action*, Clarendon Press, Oxford.



relationship between the NGOs, but also the survivors seeking assistance. The author also observed an organization in India providing institutional care suddenly deny social workers from another organization access to the survivors they helped rescue. There was no communication or attempt at solving any problem when the decision was announced; therefore, trust in the inter-organizational relationship was undermined.

While the author witnessed a few examples of cooperation in situations of necessity, proactive and trust-based cooperation remained elusive. Cooperation was simply a superficial concern amongst many more pressing concerns. Unfortunately, due to the complex and sensitive nature of protecting vulnerable women and children and confronting powerful criminal networks, a lack of cooperation can lead to interventions that are inefficient, ineffective, or even harmful.

### **The Building Blocks of Cooperation**

“If trafficking is an organized crime; it requires an equally organized counter-force to fight it.”<sup>3</sup>

Trafficking for sexual exploitation in India is embedded within highly organized criminal networks that exist across national, regional, professional, cultural, and ethnic boundaries. These networks are in the “exploitation business” to make money on anything that contributes to the vulnerability of people, such as poverty, unsafe migration, gender discrimination, weak law enforcement, lack of education/awareness, and weak social support systems. Estimates claim 15 percent (around 350,000) of India’s 2.3 million sex workers are children.<sup>4</sup> The magnitude of the numbers captures the power and footprint of these networks.

Confronting a criminal network and protecting women and children at this massive scale is too much for one organization. The only way to confront such organized and well-funded criminal networks is an organized and well-funded counter-force likewise existing across national, regional, professional, cultural, and ethnic boundaries.

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<sup>3</sup> HAQ Centre for Child Rights (2008) *Compendium of Best Practices on Anti-human trafficking by NGOs*, UNODC and the Government of India, New Delhi.

<sup>4</sup> ECPAT International (2006) *Global Monitoring Report on the Status of Action Against Commercial Sexual Exploitation of Children: India* [online], ECPAT International, Thailand, <http://www.ecpat.net/sites/default/files/India%201st.pdf> (Accessed 24 April 2014).

## **The Key Actors of a Counter-Force Network**

International donors - Private foundations, and multi-lateral and government entities that provide funding to International Non-Government Organizations (INGOs) for anti-trafficking initiatives.

INGOs - Organizations usually based in the developed world or north, utilising funding from international donors and other streams to directly provide operational anti-trafficking efforts and/or partner with organizations in the developing world or south through the funding and monitoring of anti-trafficking initiatives.

Destination Area Organizations - Organizations based in urban areas where women and girls are trafficked to. Their interventions include: advocacy, legal services to support prosecution of alleged traffickers, rescue through law enforcement assistance, institutional care-recovery and rehabilitation services to survivors post rescue, and coordination with various State offices for survivors' return to their families.

Transit Area Organizations - Organizations based in urban areas that are transit points usually at the state capital of a region where people who are trafficked come from. Their interventions include transitional care through shelter homes and case management rehabilitation.

Source Area Organizations or Community Based Organizations - Organizations located at the district level of a region, usually rural, where those who are trafficked come from. Their interventions include development focused preventative approaches, detection in missing persons, early warning/interception through law enforcement assistance, and re-integration strategies using case management rehabilitation.

For these diverse actors to confront criminal networks, they must voluntarily cooperate or coordinate in order to prevent unhealthy competition and duplication. "Cooperation based on trust, or the confidence that partners will not act opportunistically, is also associated with the idea of people and organizations working together voluntarily and for mutual benefit...[and a] common purpose."<sup>5</sup> Coordination on the other hand, "is about control through authority, but this can be imposed or agreed. Coordination mechanisms can emerge reflecting the capacities,

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<sup>5</sup>Robinson, D., Hewitt, T & Harriss, T. (2000) 'Conclusions to Part 3 & 4: Key Concepts and Principles of Co-ordination and Co-operation', in Robinson, D., Harriss, T, and Hewitt, T. (eds.) *Managing Development: Understanding Inter-organizational Relationships*, London, Sage Publications in association with the Open University, pp. 271.

legitimacy and expertise of the different parties involved, or they can be pre-designed and imposed.”<sup>6</sup> One of the most basic reasons for coordination is to help to minimize duplication.

To summarize, a counter-force of cooperative/coordinated inter-organizational relationships requires:

- a) Clear organization into cooperative/coordinated inter-organizational relationships based on trust
- b) Mutual benefit
- c) A clear and common purpose
- d) Complementary capacities or strengths
- e) The minimizing of duplication
- f) Funding

However, this framework is not new. Counter-force networks of public and civil society actors are already built and funded. In 2011, Google gave \$11.5 million towards anti-trafficking efforts in India. “The grant will be shared by newly formed coalitions of international anti-trafficking organizations. The bulk of the donation, \$8 million, will go to two coalitions led by International Justice Mission in India, with about half going toward direct intervention and government-led rescue operations, and half toward advocacy and awareness projects.”<sup>7</sup>

Action against Trafficking and Sexual Exploitation of Children (ATSEC) India is an example of an older counter-force network. According to one perspective, “ATSEC is the first network in South Asia to come up exclusively against trafficking. Today it is a formidable army of NGOs supported by several international agencies that fight human trafficking through extensive networking on prevention, prosecution and protection work.”<sup>8</sup> However, in the opinion of one prominent anti-trafficking activist in Kolkata, “restricted to state capital cities, ATSEC is in danger of becoming political platform for organizations rather than an example of services implemented effectively in cooperation/coordination.”<sup>9</sup>

These contesting views indicate that building a counter-force is complex and challenging. A network of organizations is not guaranteed to confront trafficking networks more effectively. Uncovering the specific challenges can help develop

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<sup>6</sup>Ibid., pp. 215.

<sup>7</sup>CNN Freedom Project (2011) *Google Joins the Fight Against Slavery* [online] <http://thecnnfreedomproject.blogs.cnn.com/2011/12/14/google-joins-fight-against-slavery/> (Accessed 11 November 2013).

<sup>8</sup> HAQ Centre for Child Rights (2008) *Compendium of Best Practices on Anti-human trafficking by NGOs*, UNODC and the Government of India, New Delhi.

<sup>9</sup> Interview, Roop Sen, Sanjog, Kolkata, India, 16 February 2013. Sanjog ([www.sanjogindia.org](http://www.sanjogindia.org)) was nominated in 2013 as a member of the Central Advisory Committee on Combating Trafficking in Women and Children, an inter-ministerial and NGO committee constituted by the Ministry of Women and Child Development, Government of India.

strategies to empower each actor to play its role in improving cooperation/coordination, leading to better interventions that protect vulnerable women and children.

## **Challenges to Building an Effective Anti-Trafficking Counter-Force**

### **Multiple Case Study Research**

The author conducted primary research on inter-organizational relationships and networks in India, hoping to uncover the specific challenges involved in building counter-force networks and find methods to strengthen these networks to ultimately help combat trafficking more effectively.

As part of a collaborative multiple case study framework, the author applied semi-structured interviews with individuals and focus groups in the USA, UK, and India in the period January-March 2013. The organizational levels of management, field staff, and survivors, connected to various “types” of organizations, were included in the interviews to try and capture a wider picture of the situation. Some interviews were conducted in Bengali/Hindi through a translator.

#### **Types of Organizations**

Institutional donors:

INGOs:

Destination Area Organizations:

Destination/Transit Area  
Organization:

Source Area Organizations:

#### **Participating Organizations**

European Commission (India)

Tearfund (*Ireland*), Tearfund (*UK*),  
Oasis Global (*UK*), Geneva Global  
(*USA*), Groupe Developement (India,  
former director)

International Justice Mission (IJM)  
(*Kolkata, India*), Rescue Foundation  
(*Mumbai, India*), Oasis (*Mumbai,  
India*)

Sanlaap (*Kolkata, India*)

Goranbose Gram Bikash Kendra  
(GGBK) (*South 24 Parganas, West  
Bengal, India*)  
Barasat Unnayan Prostuti (BUP)  
(*North 24 Parganas,  
West Bengal, India*)

The semi-structured interviews revolved around the Feyerherm Framework<sup>10</sup>, which can be broken down into the following themes for the research: perceptions of rehabilitation and freedom, how “success” is defined and evaluated, the purpose and process of inter-organizational relationships, roles of actors in the network, challenges and opportunities of coordinated/cooperative relationships towards more effective interventions, and power relations.

## **Limitations of the Research**

Limitations of the qualitative data included the dependence on the interviewee’s situational factors, subjectivity, honesty, and the ability to be self-critical. In qualitative research, there is often the desire of the interviewee to “tell the interviewer what they think they want to hear.” However, triangulation methods were employed to ensure rigor in the data collected. For example, a transit/destination area organization claimed to work well with other organizations. Other actors who worked with this organization, however, did not agree. This demonstrated that certain responses should be received with skepticism, due to actors being subjective rather than objective.

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<sup>10</sup> The Feyerherm Framework argues that a strong inter-organizational relationship needs to have clarity and agreement around these elements: “purpose, process, characterization, interests, positions, stakes, and judgment criteria.” Feyerherm, A. (1994) *Multiple paths for inter-organizational journeys*, paper prepared for the Workshop on Multi-organizational Partnerships: Working Together across Organizational Boundaries, European Institute for Advanced Studies in Management, Brussels, September 19-20.

## Research Results

| <b>Challenges to building an effective counter-force</b>   | <b>Negatively impacted elements of cooperative/coordinated relationships</b>  |
|--|---|
| <p>1. A complex and limiting institutional and political landscapes, which results in:</p> <ul style="list-style-type: none"> <li>a. Structure and agency complexities that hinder cross-cultural or cross-class communication</li> <li>b. Difficulty aligning macro, meso, or micro level interventions hindering the ability to define common purposes for cooperation</li> <li>c. Contested meanings of various values and approaches to anti-trafficking efforts leading to misunderstandings and breakdowns of trust</li> </ul> | <p>1. This challenge creates a coercive environment that fails to minimize duplication.</p>   |
| <p>2. A lack of funding and vision dedicated to fostering cooperative and coordinated inter-organizational relationships, especially between urban-based destination area organizations and rural-based source area organizations.</p>   | <p>2. This challenge undermines the ability to clearly organize into cooperative/coordinated inter-organizational relationships based on trust, mutual benefit, and a common purpose.</p> |
| <p>3. A lack of capacity or adequate expertise in realms like psychology/ counseling, fundraising, leadership, or monitoring/evaluation</p>  | <p>3. This challenge hinders the building of complementary capacities or strengths, and creates a feedback loop that intensifies the limiting institutional landscape.</p>                |

## **Challenges to Building an Effective Counter Force Network**

### **1. Institutional and political landscapes**

In the historical institutional landscape of anti-trafficking work in India; organizations based in destination, transit, and source areas of trafficking have functioned independently.<sup>11</sup> These weak inter-organizational relationships contribute to fragmented rescue and case management rehabilitation systems that do not adequately prevent trafficking or prepare survivors of sexual exploitation to face trauma, economic, and social challenges.<sup>12</sup> “The linkages between source, transit and destination organizations need to be much more strengthened, with a focus on regularizing communication among them. Coordinated linkages between source and destination organizations would allow case management to be scaled up as an integrated approach, covering case sourcing to reunification and rehabilitation.”<sup>13</sup> However, there are many structural challenges between destination and source area organizations that hinder the ability to work together.

#### **(a) Institutional landscapes – structure and agency complexities**

Both the dynamics of external social structures and individual conviction are involved in the behaviour of a given situation.<sup>14</sup> The limitations and opportunities of urban and rural contexts are examples of structures that impact inter-organizational relationships by reinforcing cultural norms and prejudices. Urban areas contain larger amounts of money and influence, while rural areas lack infrastructure. In addition, source area organizations from rural areas are simply not represented at conferences, workshops, or trainings.<sup>15</sup> “Potentially, destination area organizations have more influence because the rescue work they do is more dramatic,” said a program director from Tearfund Ireland. “Source area organizations probably have more technical expertise in terms of preventing trafficking and providing re-integration support, yet their voice may not be as loud.”<sup>16</sup> One source area NGO manager stated, “No one wants to fund source

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<sup>11</sup> Sen, S & Nair, P. (2003) *A Report on Trafficking in Women and Children in India 2002-2003*, Institute of Social Sciences, New Delhi, pp. 375.

<sup>12</sup> Banerjee, P (2010) *Where have all the flowers gone? An evidence-based research into the sex trafficking of girls, Andhra Pradesh and West Bengal*, Sanjog, Kolkata.

<sup>13</sup> Ibid., pp. 71.

<sup>14</sup> Giddens, A. (1997) *Sociology*, 3<sup>rd</sup> Edition, Cambridge, Polity Press.

<sup>15</sup> Interview, Roop Sen, Sanjog, Kolkata, India, 16 February 2013.

<sup>16</sup> Interview, Markus Koker, Tearfund, Ireland, India, 6 February 2013.

area organizations, because in destination areas they have hundreds of girls in one place. It is easier for the donor to feel they are getting results.”<sup>17</sup> Even if urban and rural areas desire to cooperate, these cultural, class, caste, and geographical divides are not easy to cross.

### **(b) Institutional landscapes – macro/meso/micro tensions**

On the macro level, a weak public sector creates a vacuum that is best filled by a strong NGO sector. Instead of improving, the public sector can tend to depend more on the NGO sector. The US Department of State’s annual report on trafficking in persons has observed that, “the Government of India does not fully comply with the minimum standards for the elimination of trafficking.”<sup>18</sup> It is clear in many cases that the NGO or civil society sector is taking on state responsibilities, including facilitating rescue and rehabilitation, with little to no exit strategy. This creates tensions when NGOs are focused on state responsibilities at the micro level, while others operate at a more macro level seeking state structural transformation or public and civil society cooperation.

### **(c) Institutional landscapes – contested meanings**

Each interrelated facet of anti-trafficking theory and practice contains debates regarding the nature of prostitution, trafficking, social work, criminal justice, migration, poverty reduction, and development. Actors build meaning within these contexts and debates, and therefore see things differently. This contributes to misunderstandings and contradictions that “signify both a potential basis for change and a potential barrier preventing planned interventions.”<sup>19</sup>

When organizations attach too much meaning to one particular approach as the “best way”, it limits honest dialogue and learning necessary for stronger inter-organizational relationships.<sup>20</sup> For example, destination area organizations argue that their legal support for rescued survivors helps bring structural change

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<sup>17</sup> Interview, Source Area Organization, Kolkata, India, 3 February 2013.

<sup>18</sup> US State Department (2012) ‘India’, *Trafficking in Persons Report*, [online] <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm> (Accessed 12 December 2012).

<sup>19</sup> Engberg-Pedersen, L. (1997) *Institutional contradictions in rural development*, European Journal of Development Research, vol. 9, no. 1, pp. 198.

<sup>20</sup> Robinson, D., Hewitt, T & Harriss, T. ‘Conclusions to Part 3 & 4: Key Concepts and Principles of Co-ordination and Co-operation’, pp.272.



towards a decrease in crime.<sup>21</sup> Even if this is accurate, this system alone does not address the more powerful factors like gender discrimination and poverty that affect the agency of rescued survivors in India.

Another example of contested meanings is when organizations view “rehabilitation” differently. Destination area organizations tend to view rehabilitation as survivors not running away from their shelter homes, returning to their native place one day, and then never returning to the destination point.<sup>22</sup> This is linked to the funding responsibilities and value system of their particular approach, and does not take into consideration the large economic, social, and psychological challenges that face survivors. Source area organizations, on the other hand, tend to view rehabilitation as effective re-integration in their home community. One source area social worker said, “rehabilitation is a survivor being accepted and taken care of by her family and community.”<sup>23</sup> For survivors’ point of view, trafficking is often seen as just one unfortunate incident among many others.<sup>24</sup> Source area organizations identified that the “rehabilitation” and “vocational training” received from destination area organizations does not adequately prepare survivors for the economic challenges and social stigma of village life. Source area organizations and destination area organizations also struggle to find comprehensive ways to equip survivors to deal with trauma long term.<sup>25</sup>

Both of these views of rehabilitation have limitations and contradict one another, limiting scope for inter-organizational relationships. To make things more difficult, to try and change or improve these views would be difficult because it is altering “meaning” for those actors.

## 2. Funding and Vision

Not only does the institutional landscape limit inter-organizational relationships, but individual vision can be limiting as well. “Everyone is for coordination but no one wants to be coordinated.”<sup>26</sup> In other words, though

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<sup>21</sup> Jones, A. Schlangen, R. & Bucoy, R. (2010) *An Evaluation of the International Justice Mission’s Project Lantern: Assessment of Five-Year Impact and Change in the Public Justice System*, International Justice Mission [online] <http://www.ijm.org/sites/default/files/resources/120610-Project-Lantern-Impact-Assessment-AJ.pdf> (Accessed 4 April 2013).

<sup>22</sup> Sanjog (2012) *Sanyukt: A regional case management program with survivors of trafficking, a summary report of the project context, design, and learnings*, in partnership with the European Commission and Acting for Life, Kolkata.

<sup>23</sup> Interview, Social Worker, Kolkata, India, 13 February 2013.

<sup>24</sup> Banerjee (2010), pp. 36.

<sup>25</sup> Interview, Source Area Organization, Kolkata, India, 3 February 2013.

<sup>26</sup> Robinson, D., Hewitt, T & Harriss, T. ‘Conclusions to Part 3 & 4: Key Concepts and Principles of Co-ordination and Co-operation’, pp.218.

organizations will attend conferences and say how important cooperation/coordination is, they mostly care only about their own initiatives and survival. It takes a particular vision of what could be accomplished with a unified network to motivate inter-organizational relationships. But vision is not enough, dedicated funding is a necessity.

The results of the research suggested that INGOs, in compliance with institutional donors, are in the best “macro level” position to foster cooperation by coordinating a network of destination, transit, and source area organizations through dedicated funding and capacity building. The inclusion of source area organizations is essential to building a stronger counter-force because of the crucial role they play in addressing factors like prevention, rehabilitation, and re-integration. Geneva Global as an INGO coordinated their network of destination and source area organizations in this way, and confirmed the ability of this model to help foster cooperation and prevent and/or improve coercive inter-organizational environments.<sup>27</sup> Organizations from destination and source areas are willing to engage in a network and be coordinated if there is funding dedicated to it.

An alternative perspective argues that an urban-based destination area organization is in better position than an INGO to fund and provide capacity building to source area organizations, since they are closer to the culture and context. However, it was clear from this research that no destination or transit area organization wanted the responsibility of coordinating source area organizations. Funding/monitoring from INGOs or other donors was the means that provided the avenue for coordination and the provisions of necessary capacity building initiatives to make coordination and cooperation effective.

### **3. Capacity building**

Capacity building is necessary to mitigate the challenges of inter-organizational relationships, but not every funder or consortium leader is in a position to implement capacity building effectively, especially with rural, “grassroots”, or source area organizations.<sup>28</sup> Without capacity building, each organization relies more on their own intuitions and good intentions. This leads to contested meanings, breakdowns in communication, and poor programming. The research suggested that source/transit/destination area organizations interviewed would benefit from further training on psycho-social therapies, counseling, fundraising, leadership, practice based on rigorous research and

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<sup>27</sup> Interview, Gene White, Geneva Global, Mechanicsburg, PA, 1 March 2013.

<sup>28</sup> Interviews, INGO and Destination Area Organization, Kolkata, 19 & 20 February 2013.

evidence, and equipping survivors for the informal sector through entrepreneurship training and vocation or employment programs. This kind of capacity building helps to build shared meanings necessary for organizations to improve their programs, communicate about important issues, and work together to benefit the survivors long term.

Often, capacity building is seen as linked to funding, which can structurally inhibit learning and agency.<sup>29</sup> One way around this is for an INGO to fund and coordinate a local technical resource or capacity building organization that can accurately assess the strengths and weaknesses of all the partners in the network, provide a long term relationship and support, and empower continual improvement.

### **Cooperation in the Water, Sanitation, and Hygiene (WASH) Sector**

The argument for institutional donors or INGOs to specify parts of their funding towards cooperation costs and initiatives is not new, yet the three interrelated challenges hinder cooperation in anti-trafficking networks. In cases like this, it is sometimes helpful to compare with other sectors like WASH. This sector was chosen as an example due to the author's current connection with some of the key foundations in providing WASH in developing contexts, and the example of the WASH sector defining clearer outcomes to unify partners.

The USAID Water and Development Strategy 2013-2018 promotes “increasing partnerships” and “building USAID comparative advantage on capacity building and governance by emphasizing policy reform, strengthened enabling environments and institutions, participatory governance, and innovative financing.”<sup>30</sup> The WASH Senior Manager at World Vision USA commented to the author that, “institutional donors are requiring inter-organizational relationships more and more. The Hilton Foundation, among others, started requiring cooperative relationships with universities and other WASH organizations around 25 years ago. The common purpose was to create a multi-disciplinary team and create an environment for learning with an evaluation every three years.”<sup>31</sup> With the funding provisions of the Hilton Foundation of around 2-3% of the overall budget towards stakeholder workshops and 2-3% towards evaluations, World Vision was able to foster connection and trust even

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<sup>29</sup> Taylor, J. and Soal, S. (2003) *Measurement in developmental practice: from the mundane to the transformational*, Paper presented, March, Community Development Resource Association.

<sup>30</sup> USAID (2013) *Water and Development Strategy 2013-2018*, Washington D.C., pp. 2.

<sup>31</sup> Interview, Randy Strash World Vision USA, Grand Rapids, MI, 29 October 2013.

between faith-based and secular institutions, the Desert Research Institute, and the Messiah College Collaboratory.<sup>32</sup>

Institutional donors are also beginning to cooperate in the WASH sector. Braimah Apambire, a Director at the Desert Research Institute, indicates, “The Hilton Foundation, Bill and Melinda Gates Foundation, Rockefeller Advocacy, and the Buffet Foundation have cooperated to form a platform<sup>33</sup> of funding to minimise duplication and foster more effective networks to provide clean and safe WASH facilities.”<sup>34</sup> They practically achieve strengths-based cooperation by providing a small percentage of the overall budget to setting up coordinating agencies, like the West Africa Water Initiative, responsible for holding stakeholder meetings, providing monitoring and evaluation, and providing a shared identity and voice of the partnership to the public sector. “There are always challenges,” Dr. Apambire continues, “but more has been accomplished through coordination and cooperation.”

The clarity and unity of vision around WASH as expressed in Target 7.C in the Millennium Development Goals could be a factor in the ability for the WASH sector to better fund and foster cooperation.<sup>35</sup> Yet, if the WASH sector is benefiting from international donors and INGOs setting up funding that fosters cooperation, then the same can be accomplished in the anti-trafficking sector if the specific challenges that hinder cooperation can be addressed. The Google funded consortium led by IJM is an example of a step in this direction. Though IJM could be classified as a destination area organization due to the nature of their strategy and interventions, their global presence and operations in multiple Indian urban centers also classify them as an INGO with capacity for coordination. According to a briefing from IJM, the Google-funded effort “trained six other organizations in India from 2012-2014 [and] rescued more than 2,000 people in slavery.”<sup>36</sup> Another encouraging step is the institutional donors Humanity United, Walk Free Foundation, and Legatum Foundation banding together as the Freedom Fund to cooperate towards anti-trafficking interventions and research. “Efforts to combat modern day slavery have

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<sup>32</sup> Interview, Dr. Ray Norman, Messiah College, Mechanicsburg, PA, 28 October 2013. With funding from the Hilton Foundation, Messiah College partnered with World Vision to provide resources, training, and design research and development for people with disabilities in relation to WASH in a project called The Africa WASH and Disabilities Study. This is an example of a strengths-based inter-organizational relationship fueled by funding, vision, and capacity building.

<sup>33</sup> [washfunders.org](http://washfunders.org)

<sup>34</sup> Interview, Braimah Apambire, Desert Research Institute, Mechanicsburg, PA [phone], 11 November 2013.

<sup>35</sup> <http://www.un.org/millenniumgoals/envirom.shtml>

<sup>36</sup> International Justice Mission, *The Justice Briefing Spring 2014*, IJM, 2014, p.4, [online] <http://www.ijmuk.org/sites/default/files/documents/Final%20Justice%20Briefing%20Spring%202014%20Web.pdf> (retrieved 4 April 2014).

traditionally been driven by individual actors and organizations with limited funding, relative to the scale of this significant problem,” said CEO of Humanity United. “[The] goal with the Freedom Fund is to unite those working in isolation in order to create scalable, lasting change for the estimated 21 million people living under this oppression of modern slavery.”<sup>37</sup>

### **Recommendations to Develop Counter-Force Networks that Fight Trafficking**

The following recommendations are based on one case study of Sanyukt. Sanyukt was “a project to build a coordinated system between NGOs in source and destination points of trafficking towards rescue and rehabilitation efforts.”<sup>38</sup> In 2009, the European Commission (EC) & Groupe Developpement (GD) funded Sanyukt a €1.7 million maximum budget, with EC covering 80%. GD was the extension of a French organization that later changed its name to Acting for Life, and eventually closed its India operations in 2012. GD was the lead implementer in Sanyukt.

The budget breakdown was:

|                |  |
|----------------|--|
| € 0.45 million | Setting up systems to help with coordination: workshops, research, and evaluation (34% of total) |
| € 0.89 million | Funding the 16 partner organizations (66% of total, 4% average per organization):                |
| € 0.74         | Salaries   |
| € 0.15         | Workshop travel expenses   |

Total: € 1.34 million<sup>39</sup>

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<sup>37</sup> PR Newswire (2013) ‘\$100 million Freedom Fund to Combat Modern Slavery,’ [online] <http://www.prnewswire.com/news-releases/100-million-freedom-fund-to-combat-modern-day-slavery-225397722.html> (Accessed 20 November 2013).

<sup>38</sup> Europe Aid (2007) *Migration and Asylum Programme: Thematic Programme on Cooperation with Third World Countries in the Areas of Migration and Asylum*, [online] [http://ec.europa.eu/europeaid/what/migration-asylum/documents/migration\\_and\\_asylum\\_2007-2008.pdf](http://ec.europa.eu/europeaid/what/migration-asylum/documents/migration_and_asylum_2007-2008.pdf), pp. 55 (Accessed 1 October 2013).

<sup>39</sup> Interview, former GD coordinator Anustoop Bhattacharya, 27 November 2013. This funding was dedicated to specific activities to foster cooperative inter-organizational relationships: “10/11 monitoring visits to 16 organizations, 8/9 exchange visits, three regional consultations on case management, 9/10 care givers workshop for improving care standards and methods, and several coordination meetings between partners.”

In 2013, almost a year after funding had ended, the author conducted semi-structured interviews with the following network actors: the former director of GD South Asia, an official of the European Commission based in India, one destination area organization, and two source area organizations. The results of the research indicated that the inter-organizational relationships and the case management rehabilitation system developed through GD coordination continued even though the funding had ended almost a year prior, indicating that the funding and capacity building provided was successful in fueling sustainable cooperation.

In this case, coordination was not based on control, but was done in a way that builds capacity and allows for what Robinson, Hewitt, and Harris have called “building some shared meaning and constituencies for certain forms of action”, such as evidence-based practice or stronger cooperation with other organizations.<sup>40</sup> INGOs like GD function at the macro level, and are therefore able to provide different actors the funding and capacity building necessary to participate in a cooperative/coordination network, establishing best practice principles and standardized processes to link organizations, while also allowing for flexibility.<sup>41</sup> “For the [multi-agency partnership] to function effectively, trust must be established between the different stakeholders, emphasizing transparency while avoiding bureaucracy.”<sup>42</sup> Though not without weaknesses, Sanyukt’s capacity building strengthened these cooperative relationships by building shared meanings, organizing macro/meso/micro level strategies that also cooperated with the public sector, and increasing the ability of organizations to overcome cultural/structural limitations.

### **Funding Seven Capacity Building Elements to Fuel Cooperation**

The research suggested that INGO funding/monitoring of a network should include seven capacity building elements to fuel combinations of cooperative/coordinated relationships at different macro, meso, and micro levels:

- 1) Leadership/staff/systems development
- 2) Shared identity and platforms for partners to build trust
- 3) Research/learning processes towards evidence based practice

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<sup>40</sup> Robinson, Hewitt, & Harriss, ‘Conclusions to Part 3 & 4: Key Concepts and Principles of Co-ordination and Co-operation’, pp. 218.

<sup>41</sup> Stahl, C. Svensson, T. & Ekberg, K. (2011) *From Cooperation to Conflict? Swedish Rehabilitation Professionals’ Experiences of Inter-Organizational Cooperation*, Journal of Occupational Rehabilitation, Sep. 2011, Vol. 21, Issue 3, pp. 441.

<sup>42</sup> UNGIFT (2008) *The Vienna Forum report: a way forward to combat human trafficking*, United Nations Global Initiative to Fight Trafficking, New York.

- 4) Formative evaluation structure for learning
- 5) Development of project cycles that build up public sector capacity
- 6) Financial security and sustainability training to prevent unhealthy competition
- 7) Accountability through an evaluators appointed by donors

### **1) Leadership development**

Leadership development can help build the trustworthiness of character and competency necessary for building trust within organizations and beyond.<sup>43</sup>

### **2) Shared identity and platforms for partners to build trust**

The Feyerherm Framework is a useful tool to manage expectations of cooperation/coordination. The dedicated funding for platforms like workshop travel and collective governance fosters an identity of “shared power and meanings” where different strengths, faiths, cultures, and perspectives are increasingly appreciated and unified through building “mutual respect”, understanding, “positive relationships”, and “a collective commitment to the common good.”<sup>44</sup> Important in this process is the suspending of one’s preexisting organizational entity to work toward a new, shared identity, which is the first step in maximizing functioning and productivity in a new organizational union.<sup>45</sup> GD demonstrated this by encouraging all partners, including funders, to develop the shared identity of “Sanyukt” based around cooperative and strategic principles.

### **3) Research/learning processes**

Each of the Sanyukt partners had experienced positive results from the capacity building they received, and it helped foster cooperation by helping to build “shared meanings” and evidence-based practice. For capacity building and platform to continue improving, fostering “participation” is essential to increase “ownership”, mutuality, and understanding of best practices and local knowledge/contexts. “Effective participation requires giving people access to information on which to base deliberation or to mobilize to assert their rights and

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<sup>43</sup> Covey, S. (1990) *Principle-Centered Leadership*, Free Press, New York, pp. 60.

<sup>44</sup> Patel, E. (2013) *Toward a Field of Interfaith Studies*, Liberal Education, Fall 2013, Vol. 99, No. 4.

<sup>45</sup> Clayton, P. H., Bringle, R.G., Hatcher, J.A. (2013) *Research of service learning: Conceptual frameworks and assessment*, Volume 2B: Communities, institutions, and partnerships, Virginia, Stylus Publishing LLC, pp. 585-586.

demand accountability. To do so requires active engagement in nurturing voice, [and] building critical consciousness.”<sup>46</sup>

#### **4) Formative evaluation for learning**

The formative evaluation structure celebrates double loop learning whether it is positive or negative. Double loop learning seeks not only learn from the ability to meet or not meet a goal, but also learn to question or modify that goal in light of the experience. This helps foster reflective or self-learning for each actor, especially those in situations of power. “Measurement must promote consciousness, openness, honesty and depth... [and] must build confidence through facing failure, celebrating success and learning from both.”<sup>47</sup> Research and formative evaluation addresses the organizational assessment need for improved learning systems, and promotes learning and knowledge sharing important for healthy inter-organizational relationships.<sup>48</sup>

#### **5) Public sector cooperation and development.**

Developing strategies to cooperate with and equip the public sector is important to provide macro level structural transformation towards sustainable change. Often, it begins with the network starting as an “adversary”, and moving towards becoming a “collaborator, then a mentor.”<sup>49</sup>

#### **6) Financial security and sustainability training to prevent unhealthy competition**

In addition, financial security and sustainability training was requested by all southern partners in the research case study. It is important to them because it would help prepare them to transition from dependence on the INGO to a mutually learning and beneficial relationship. Often, southern NGOs partner with more than one funding INGO, so managing these networks is also an important skill. The Keystone Performance Survey of over 1000 southern NGOs summarizes, “[Southern] respondents want northern NGOs’ help to become

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<sup>46</sup> Cornwall, A. (2002) *Making spaces, changing places: Situating participation in development*, IDS Working Paper 170, Brighton, IDS, October, pp. 1-6, 10-17, 26-29.

<sup>47</sup> Taylor, J. and Soal, S., *Measurement in developmental practice: from the mundane to the transformational*.

<sup>48</sup> Dutta, D. (2012) *Inter-Organizational Relationships and Firm Performance: Impact on Complementary Knowledge and Relative Absorptive Capacity*, Journal of Management Policy and Practice, Vol. 13 Issue 2, p46-55.

<sup>49</sup> Interview, Sanjog, Kolkata, India, 16 February 2013.



strong, independent and influential organizations. They contrast this with being contracted to implement northern NGOs' projects and priorities."<sup>50</sup>

## **7) Accountability**

Tearfund stated in their interview, "we have found it helpful to have an accountability organization that independently interviews us and our partners in order to get an objective viewpoint of the health of our inter-organizational relationships." However, in their view, "external evaluations were effective only when the accountability partner understands the network well."<sup>51</sup>

## **Conclusion**

The funding and capacity building elements of leadership development, shared identity, research, formative evaluation, and public sector development were coordinated by GD. The partners still continuing relationships and case management rehabilitation systems without additional funding demonstrate the design's effectiveness. According to the interviews, adding the capacity building elements of financial security/sustainability and accountability would have further strengthened the network. Funding a separate technical resource organization to support each capacity building element and/or provide accountability is also recommended, because it allows the technical resource organization to understand and support the entire network.

Though not without challenges, GD was able to foster cooperation because it anticipated the three interrelated challenges to anti-trafficking network building in India; complex institutional and political landscapes, a lack of vision and funding for inter-organizational relationships, and a lack of expertise in specific disciplines. At the same time, GD was also able to include the requirements for cooperation and coordination: clear organization into cooperative/coordinated relationships based on trust, mutual benefit, complementary capacities or strengths, minimizing duplication, a clear and common purpose, and funding.

Any actor can follow these frameworks for cooperation and coordination to help improve their inter-organizational relationships. Successful examples of funding and capacity building, such as WASH, encourage movements in this

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<sup>50</sup> Keystone Accountability (2011) *NGO Partner Performance Survey 2010 Public Report*, in association with BOND, NIDOS, InterAction [online] [http://www.keystoneaccountability.org/sites/default/files/Keystone%20partner%20survey%20Jan2011\\_0.pdf](http://www.keystoneaccountability.org/sites/default/files/Keystone%20partner%20survey%20Jan2011_0.pdf) (Accessed 18 March 2013).

<sup>51</sup> Interview, Tearfund, UK, 3 February 2013.

direction. While institutional donors and INGOs set the agenda for cooperation through funding, organizations in destination and source areas also have the power to collectively influence vision, funding, and capacity building agendas.<sup>52</sup> “The skills of leading a network are going to become as important as those of leading an organization.”<sup>53</sup>

With the appreciation of institutional landscapes and the provision of vision, funding, and capacity building, INGOs and other donors can nurture cooperation by coordinating a newly designed network of destination, transit, and source area organizations. Such a counter-force network has the potential to improve prevention, awareness, advocacy, arrest and prosecution of traffickers, and the empowering of survivors facing mental health, economic challenges, and social vulnerabilities.

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<sup>52</sup> Interview, Randy Strash World Vision, Grand Rapids, MI, 29 October 2013.

<sup>53</sup> Middleton, J. (2007) *Beyond Authority: Leadership in a Changing World*, Palgrave Macmillan, Houndmills, Basingstoke, Hampshire.

# **Au Pair Scheme: Cultural Exchange or a Pathway to Slavery?**

**by Tina Davis**

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## **Abstract**

There has been a change in the use of the au pair scheme in the past fifteen years that has created a shift from its original intention as a cultural exchange program. Socio-economic change in societies in the South and East has led to a new wave of female migrants seeking legal work opportunities in European countries, and change in the North has led to an increase in demand for domestic workers. The au pair program has become a means to cover these needs. Yet the use of the au pair institution as a temporary domestic work system creates challenges that not only contradict its intention, but also fail to offer labor rights and protection to the migrant women who enter the program to earn money. This article examines the au pair system in Norway, a country known for social and gender equality and a strongly developed welfare system based on social democratic ideals of solidarity. The article focuses in particular on how the au pair scheme is being misused as a temporary domestic work system by both the host families and the au pairs, and the exploitation and human trafficking cases that have emerged as a consequence in recent years.

## **Introduction**

The au pair institution, originally intended to be a cultural exchange program, has undergone big changes since the beginning of this century. From being a system created for cultural education of young persons, the program today operates more as a managed migration system for domestic labor in several European countries. Initially established as an opportunity for young middle-class Europeans to travel and learn another language, it has now largely become a means by which young women from countries such as the Philippines, Ukraine and Russia can migrate legally to earn money, young women who otherwise would not be able to work in the European Schengen zone. One country that is upholding the program with its ambiguities and contradictions is Norway. Internationally recognized for its egalitarianism, social welfare system and strong emphasis on gender equality as well as its international leadership in areas of development and human rights, Norway holds on to the au pair institution despite an emergence of

exploitation cases and human trafficking cases in recent years. This article asks why.

This descriptive and analytical article is based on the circumstances of the au pair system in Norway and its development over the past fifteen years with a particular focus on the risk factors for exploitation and human trafficking. The article investigates (1) changes in the socio-economic sphere of Norwegian society that has led to a recent significant increase in demand for au pairs from developing countries to perform domestic work; (2) the inherent traps of the au pair system in Norway that put au pairs in a vulnerable position and subsequently create a climate where exploitation, forced labor and domestic slavery can occur; and (3) it presents findings from semi-structured qualitative interviews with the first Filipina au pair who won a human trafficking case in Norwegian courts. The article concludes with suggestions on how to re-structure the au pair system to provide safe migration pathways, decent work conditions, and equal labor rights for au pairs.

### **The au pair system then and now**

The au pair system became a way to both offer and control the mobility of youth after the Second World War.<sup>1</sup> Young European women could travel to another country, stay with a family who offered board and lodge and learn about culture and language. In return they had to do light housework. The young women were seen as temporary guests of host families. The purpose of staying with a host family was to offer the youth a certain protection and for them to integrate into families during their stay.<sup>2</sup> This is illustrated by the title of the scheme, ‘au pair’, a French phrase that literally means ‘on equal terms’.<sup>3</sup>

In 1969 the European Council saw the need to establish an individual regulation for the many young women who travelled as au pairs, known as The European Agreement on “Au Pair” Placement.<sup>4</sup> As the au pair model carried similarities to both the student category and the worker category it was important

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<sup>1</sup> C. Øien, “On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme”, FAFO Report 2009, 29; Oslo, [www.faf.no](http://www.faf.no); C. Calleman, “Cultural Exchange or Cheap Domestic Labour?; Constructions of ‘au pair’ in four Nordic Countries”, in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>2</sup> M. Bikova, “The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway”, in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>3</sup> C. Øien, “On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme”, FAFO Report, 2009, 29; Oslo, [www.faf.no](http://www.faf.no); JURK (Legal Advice for Women) “Au Paire i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]”, Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au %20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf).

<sup>4</sup> C. Øien, “On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme”, FAFO Report, 2009, 29; Oslo, [www.faf.no](http://www.faf.no)

to create a framework to protect the young persons from exploitation.<sup>5</sup> The agreement was ratified by Norway in 1971.<sup>6</sup> At that time au pair mobility would happen between countries with similar economic standards.<sup>7</sup> In the agreement the Au Pair Placement was defined as:

the temporary reception by families, in exchange for certain services, of young foreigners who come to improve the linguistic and possibly professional knowledge as well as their general culture by acquiring a better knowledge of the country where they are received. (Article 2, Council of Europe 1969).<sup>8</sup>

European societies have undergone major changes since the agreement was established in 1969.<sup>9</sup> Gender equality, family structure and globalization of the labor market are some factors that have significantly influenced this change, yet the au pair agreement has not been sufficiently amended to keep up with the new realities.<sup>10</sup>

In the late 90s, the nature of au pairing started changing rapidly in rhythm with the increase in international labor migration flow as a result of economic globalization.<sup>11</sup> From being mainly a sending country of au pairs to other European countries, Norway increasingly became a destination country.<sup>12</sup> In 2000 there were

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<sup>5</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.faf.no](http://www.faf.no)

<sup>6</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.faf.no](http://www.faf.no)

<sup>7</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.faf.no](http://www.faf.no); C. Calleman, "Cultural Exchange or Cheap Domestic Labour?", Constructions of 'au pair' in four Nordic Countries", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>8</sup> Council of Europe, "The European Agreement on Au Pair Placement", European Treaty Series No. 68, Strasbourg, 24. November 1969, Strasbourg 1972.

<sup>9</sup> C. Calleman, "Cultural Exchange or Cheap Domestic Labour?", Constructions of 'au pair' in four Nordic Countries", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>10</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [http://www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

<sup>11</sup> M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010; C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009; J. Grugel and N. Piper, "Global governance, economic migration and the difficulties of social activism", *International Sociology*, 2011, 26:435.

<sup>12</sup> M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

only a total of 691 au pairs in Norway. Seventy-eight of these were from the Philippines, twenty from Ukraine and seventy-six from Russia.<sup>13</sup> In 2008 there were a total of 2860 au pairs in Norway. 2090 of the au pair visas were granted to Filipinas, 157 visas were granted to women from Ukraine, and 74 to women from Russia.<sup>14</sup> The increase in au pairs from the Philippines can also be seen in other Nordic countries such as Denmark, who issued 21 visas to Filipinas in 1999.<sup>15</sup> By contrast, in 2008 they issued 2165 visas to Filipina au pairs.<sup>16</sup> Thus the au pair system is today perceived as a loophole that allows young women from poor countries mainly in the South, who would not otherwise be able to work in Norway due to its selective labor immigration policies, to come and participate in a culture exchange program that covers a demand for domestic workers.<sup>17</sup>

The au pair scheme is governed by the Norwegian Directorate of Immigration (hereafter called UDI). It is clearly stated that the purpose of the scheme is culture exchange. As an au pair a young person can enhance her linguistic skills and learn more about Norway and the Norwegian society by living with a Norwegian family. In return, the au pair will contribute with light domestic chores and child-care for the family. UDI grants au pair visas for up to two years.<sup>18</sup> The person who applies must be over eighteen years and not yet turned thirty.<sup>19</sup> Work hours cannot exceed five hours per day and thirty hours per week. The au pair is entitled to have one day off per week, and should have the opportunity to

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<sup>13</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.fafo.no](http://www.fafo.no).

<sup>14</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.fafo.no](http://www.fafo.no).

<sup>15</sup> H. Stenum, "Au Pair Migration and New Inequalities; The transnational production of corruption", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>16</sup> H. Stenum, "Au Pair Migration and New Inequalities; The transnational production of corruption", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>17</sup> C. Calleman, "Cultural Exchange or Cheap Domestic Labour?, Constructions of 'au pair' in four Nordic Countries", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010; M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010; JURK (Legal Advice for Women) "Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf); GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaaww.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaaww.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

<sup>18</sup> UDI (Norwegian Directorate of Immigration), "Skal Søke Au Pair Tillatelse [Applying for Au Pair Permit]", [www.udi.no/skal-soke/au-pair-tillatelse](http://www.udi.no/skal-soke/au-pair-tillatelse), 2014.

<sup>19</sup> UDI (Norwegian Directorate of Immigration), "Skal Søke Au Pair Tillatelse [Applying for Au Pair Permit]", [www.udi.no/skal-soke/au-pair-tillatelse](http://www.udi.no/skal-soke/au-pair-tillatelse), 2014.

attend a Norwegian course paid for by the host family, as well as being able to engage in other leisure activities. Included in the agreement is pocket money/salary of 5000 NOK (\$845) per month together with free lodge and board.<sup>20</sup> The au pair has to pay tax to the Norwegian state, and is not allowed to work for anyone else besides the host family. So although the au pair is not defined as a worker, the person nevertheless has to contribute to the welfare state by paying tax.<sup>21</sup> The host family, on the other hand, has to pay insurance and cover the costs of the return ticket for the au pair. Guidelines also state that the host family should treat the au pair as a family member.<sup>22</sup>

The au pair scheme can be an appealing system for a young person who wants to take a year out to travel, learn a new language and experience something different. There are au pairs today who do travel with the intention of participating in a culture exchange in Norway. However, research shows that this group has become largely outnumbered by women from the Global South, more specifically the Philippines, whose intention it is to enter the au pair program as a way to gain a livelihood.<sup>23</sup> That the women send their income home as remittance illustrates this point.<sup>24</sup> UDI's contradiction in the public information offered about the au pair scheme shows the ambiguity of the program. While emphasizing that the purpose of the system is for cultural exchange, the immigration authorities outline restrictions on the amount of work hours the au pair can perform per week, and state in the guidelines that the au pair is not allowed to have other employers. The money the au pair earns is termed both pocket money and salary.<sup>25</sup>

### **Au pairing - the Norwegian context**

Several complex and challenging issues occur in this new landscape where the au pair scheme has become a gendered form of labor migration in the informal

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<sup>20</sup> UDI (Norwegian Directorate of Immigration), "Skal Søke Au Pair Tillatelse [Applying for Au Pair Permit]", [www.udi.no/skal-soke/au-pair-tillatelse](http://www.udi.no/skal-soke/au-pair-tillatelse), 2014.

<sup>21</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

<sup>22</sup> UDI (Norwegian Directorate of Immigration), "Skal Søke Au Pair Tillatelse [Applying for Au Pair Permit]", [www.udi.no/skal-soke/au-pair-tillatelse](http://www.udi.no/skal-soke/au-pair-tillatelse), 2014.

<sup>23</sup> M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>24</sup> R. Sollund, "Regarding Au Pairs in the Norwegian Welfare State", *European Journal of Women's Studies*, 2010, 17:143.

<sup>25</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

sector, such as domestic work.<sup>26</sup> The Norwegian welfare state is known for its advanced policies that aim to create equal opportunities for families to participate in the workforce while sharing domestic chores and care. This is reflected in several women friendly legislations concerning family welfare.<sup>27</sup> The parental leave legislation offer working parents a total of 49 weeks leave with full income compensation or 59 weeks with 80% income compensation.<sup>28</sup> 14 of these weeks are allocated for mother's leave, 14 weeks are allocated for fathers leave, and the additional weeks can be shared between the two.<sup>29</sup> There is also a strong public child-care system that in 2011 covered 90 percent of children between the ages of 1 and 5 years in kindergarten.<sup>30</sup> Families can also choose to receive a cash benefit for children between one and two years if they decide to not place them in public child care. If families follow this option they will receive 6000 NOK (\$1000) per month for a maximum period of 11 months.<sup>31</sup> This can compensate for the loss of income if parents choose to stay home or use it to finance private child-care solutions. Some families use the state cash benefit to hire au pairs.<sup>32</sup>

The OECD survey "Balancing paid work, unpaid work and leisure" reveals that Norwegian men do the most housework amongst the OECD member countries with 180 minutes per day.<sup>33</sup> The Norwegian women perform 210 minutes of housework per day, and they also rate number one on the list of time spent on relaxing and entertaining, which amounts to 367 minutes per day.<sup>34</sup>

Why then is there an increasing demand for au pairs in a climate where domestic help contradicts public norms of gender and equality, and who are the users of the au pair scheme? Although gender equality is politically encouraged,

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<sup>26</sup> R. Cox, "Domestic Workers and Au Pairs", in B. Anderson and M. Keith (Eds.), *Migration: A Compass Anthology*, Oxford: Compass, 2014.

<sup>27</sup> R. Sollund, "Regarding Au Pairs in the Norwegian Welfare State", *European Journal of Women's Studies*, 2010, 17:143.

<sup>28</sup> NAV (The Norwegian Labour and Welfare Administration), "Foreldrepenger ved Fødsel [Parenting Benefits in Relation to Birth]", [www.nav.no/Familie/Svangerskap](http://www.nav.no/Familie/Svangerskap), 2014.

<sup>29</sup> NAV (The Norwegian Labour and Welfare Administration), "Foreldrepenger ved Fødsel [Parenting Benefits in Relation to Birth]", [www.nav.no/Familie/Svangerskap](http://www.nav.no/Familie/Svangerskap), 2014.

<sup>30</sup> SSB (Statistics Norway), "Barnetilsynsordninger 2010 [Child-Care Schemes 2010]", [www.ssb.no/utdanning/statistikker/kontantstotte/hvert-2-aar](http://www.ssb.no/utdanning/statistikker/kontantstotte/hvert-2-aar), 2011.

<sup>31</sup> NAV (The Norwegian Labour and Welfare Administration), "Foreldrepenger ved Fødsel [Parenting Benefits in Relation to Birth]", [www.nav.no/Familie/Svangerskap](http://www.nav.no/Familie/Svangerskap), 2014.

<sup>32</sup> R. Sollund, "Regarding Au Pairs in the Norwegian Welfare State", *European Journal of Women's Studies*, 2010, 17:143.

<sup>33</sup> OECD, "Balancing Paid Work, unpaid Work and Leisure", [www.oecd.org/gender/data/balancingpaidworkunpaidworkandleisure.htm](http://www.oecd.org/gender/data/balancingpaidworkunpaidworkandleisure.htm), 2014.

<sup>34</sup> OECD, "Balancing Paid Work, unpaid Work and Leisure", [www.oecd.org/gender/data/balancingpaidworkunpaidworkandleisure.htm](http://www.oecd.org/gender/data/balancingpaidworkunpaidworkandleisure.htm), 2014.



there is still a certain gap between sharing the responsibilities in the homes. This may cause conflicts between spouses, especially if gender conservatism exists.<sup>35</sup> Hiring an au pair may ease the tension and allow for greater harmony between the partners. As such, gender equality among some couples is achieved by outsourcing the domestic chores to an au pair who then becomes responsible for performing the basic cleaning and care work in the house.<sup>36</sup> The middle-class woman is liberated from the domestic chores and can therefore focus on ensuring gender equality in the labor market.<sup>37</sup> As such, the au pair system becomes part of the transnational redistribution of care system whereby women from disadvantaged countries migrate to the North in search for a livelihood to improve living conditions for themselves and their families in the South.<sup>38</sup> Women who migrate for labor can improve their lives by doing so. However, their vulnerability can also increase due to precarious migration arrangements and exploitative working conditions in the destination countries.<sup>39</sup>

The majority of the families who employ au pairs are middle-class and upper middle-class dual earners who seek greater flexibility in their daily lives.<sup>40</sup> Hiring an au pair becomes a strategy to manage a challenging and fulfilling career and social life. The cultural exchange aspect of the au pair scheme is seldom the reason why a family hires an au pair. What they seek are professional domestic workers who are employed to cover the need for housework and care work. This can be reflected in the high percentage of Filipinas who today are hired as au pairs in Norway.<sup>41</sup> Women from the Philippines are known for being professional and hard working. They are also perceived to be pleasant, helpful and discreet,

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<sup>35</sup> M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>36</sup> R. Sollund, "Regarding Au Pairs in the Norwegian Welfare State", *European Journal of Women's Studies*, 2010, 17:143.

<sup>37</sup> L.W. Isaksen, "Introduction: Global Care Work in Nordic Societies", *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>38</sup> H. Stenum, "Au Pair Migration and New Inequalities; The transnational production of corruption", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>39</sup> N. Piper, "Gender and Migration", Global Commission on International Migration, [www.gcim.org](http://www.gcim.org), 2005.

<sup>40</sup> M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010.

<sup>41</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013; C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.fafo.no](http://www.fafo.no)

characteristics that make them attractive in-house domestic workers.<sup>42</sup> Many apply for the au pair visa from a transit country such as Hong Kong or Singapore after having completed contracts as domestic workers there.<sup>43</sup> The only legal migration route they have to work in Norway are through the au pair scheme, and the pocket money/salary they receive there is higher than the wage they would earn in Hong Kong or Singapore. When the two-year au pair visa limit expires, some will leave for South Europe where they can migrate legally as domestic workers.<sup>44</sup>

As the Norwegian authorities do not consider the au pair scheme a work program, the au pairs are left without any overall system of inspection and control in accordance with standard labor protection laws.<sup>45</sup> This makes it difficult for au pairs to respond to exploitation and, in worst cases, human trafficking. Host families hold the power over their means for survival, such as food and housing, as well as their pay and ability to create a social life. The program's inherent contradiction of the au pair being part employee and part family member leaves them in a vulnerable position. The official institutions that are responsible for their protection during their stay in Norway are the immigration authorities and the police. This is problematic as the majority of au pairs today come from countries where there is a general fear and lack of trust towards these authorities due to corruption (LO 2009). Holding on to the official image of au pairing as a culture exchange program allows for the work to be minimally regulated and therefore weakens the au pair's control over their employment situation.<sup>46</sup>

The au pair's visa is bound to the contract they sign with the host family. If the family decides to cancel the contract, the au pair has to find a new host family and apply for a new visa. Not only does she in this case lose her job, but also her temporary home.<sup>47</sup> She cannot challenge a cancellation of the contract legally as

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<sup>42</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.fafo.no](http://www.fafo.no); H. Stenum, "Au Pair Migration and New Inequalities; The transnational production of corruption", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010; R. Sollund, "Regarding Au Pairs in the Norwegian Welfare State", *European Journal of Women's Studies*, 2010, 17:143.

<sup>43</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.fafo.no](http://www.fafo.no).

<sup>44</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaawt.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaawt.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013

<sup>45</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaawt.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaawt.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013

<sup>46</sup> S. Hess and A. Puckhaber, "'Big Sisters' are better Domestic Servants?!; Comments on the booming au pair business, *Feminist Review*, 77, 2004.

<sup>47</sup> JURK (Legal Advice for Women) "Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf)

she is not eligible for protection under the national labor standards in Norway. Further, she has to pay 2500 NOK (\$425) to apply for a new visa if she can find a new host family, a large sum for someone on a low income.<sup>48</sup> If a cancellation of the contract occurs the au pair herself has to find a new host family within 3 weeks or she has to leave the country.<sup>49</sup>

### **Exploitation, domestic slavery and human trafficking**

There are 52.6 million domestic workers worldwide, a number that is likely to be an underestimate by tens of millions according to the International Labour Organization (ILO).<sup>50</sup> 83 percent of these are women. 29.9 percent of these are excluded from national labor legislation.<sup>51</sup> The ILO Convention on Domestic Workers (No. 189) was established in 2011 and entered into force in 2013 as an instrument to improve the work and living conditions of millions of workers who are working in the domestic sphere worldwide.<sup>52</sup> So far, the Convention on Domestic Workers (No. 189) has been ratified by 14 ILO member states, and the two European countries that have ratified the instrument are Italy and Germany.

The Convention 189 does not cover the au pair system, although au pair's situation correlates with domestic workers. As such, governments can use the convention as a guideline to eliminate vulnerability and secure the rights of workers in the domestic sphere.

The ILO report "Domestic Workers Across the World" states:

Live-in domestic workers are particularly vulnerable to exploitation since they are often paid a flat weekly or monthly rate irrespective of hours

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<sup>48</sup> JURK (Legal Advice for Women) "Au Pairer i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf)

<sup>49</sup> UDI (Norwegian Directorate of Immigration), "Skal Søke Au Pair Tillatelse [Applying for Au Pair Permit]", [www.udi.no/skal-soke/au-pair-tillatelse](http://www.udi.no/skal-soke/au-pair-tillatelse), 2014.

<sup>50</sup> International Labour Organisation, "More Than 52 Million Domestic Workers World-wide", [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_200937/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_200937/lang--en/index.htm), 2013.

<sup>51</sup> International Labour Organisation, "More Than 52 Million Domestic Workers World-wide", [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_200937/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_200937/lang--en/index.htm), 2013.

<sup>52</sup> International Labour Organisation, "C189 – Domestic Workers Convention, 2011 (No. 189)", [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189), 2014.

worked. In practice it means that a domestic worker is available whenever needed.<sup>53</sup>

A continuum of exploitation exists where decent work is at the one end of the spectrum and forced labor and slavery is at the other. Domestic slavery is the extreme form of labor exploitation. Whereas other forms of slavery and forced labor may involve a profit-seeking motive by the slaveholder, in the case of domestic slavery the perpetrators are robbing the worker of services. A domestic slave can be kept at a minimum cost and made to work for years. There are many ways to become caught in domestic slavery. Women may become domestic slaves through legal channels by immigrating on a legitimate visa. Once under the roof of the perpetrator a life in slavery begins. What characterizes this form of slavery is the control of body and mind. This is normally gained through physical, psychological, and/or sexual abuse. By instilling fear in the slave she soon becomes dependent and incapable of leaving. Out of sight from the rest of the world, the slave is on constant call from the employer to perform work.<sup>54</sup>

In the case where the work relationship has developed into slavery there may be several reasons why the enslaved person does not escape or contact the authorities. Fear is the most prevalent one. The perpetrator has most likely exercised threats and physical abuse. A migrant live-in domestic worker may feel completely alienated from the new world outside the home. She might experience an overwhelming sense of isolation due to language barriers, the foreign culture, and the lack of geographical orientation. This combined with carrying a fear of police from her home country can make it seem impossible to escape. The perpetrator may lead the victim to believe she will be deported if she contacts the authorities. Threats of retribution towards her family are also used to keep the stronghold. Trapped and confused, the victim tends to believe that the circumstance she finds herself in is all her own fault.<sup>55</sup>

Where sexual abuse is involved, a strong feeling of guilt and shame develops. Working excessive hours may mean that the victim has a minimum of sleep and rest. A combination of self-loathing, exhaustion, depression and confusion make it hard for the victim to see beyond the day. She is usually completely engrossed in performing the tasks expected of her in fear of further

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<sup>53</sup> International Labour Organisation, "More Than 52 Million Domestic Workers World-wide", [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_200937/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_200937/lang--en/index.htm), 2013.

<sup>54</sup> K. Bales and R. Soodalter, "The Slave Next Door; Human Trafficking and Slavery in America Today", Berkeley, Los Angeles, London, University of California Press, 2009; T. Robsahm and T. Davis, "Modern Slavery", [www.speranza.no](http://www.speranza.no), 2009.

<sup>55</sup> K. Bales and R. Soodalter, "The Slave Next Door; Human Trafficking and Slavery in America Today", Berkeley, Los Angeles, London, University of California Press, 2009.

abuse and punishment. Another reason for staying is often the children. The victim tends to feel a strong responsibility for the children she is looking after and the thought of leaving them behind unprotected with her abuser becomes unbearable. All of these elements combined can keep a person trapped in domestic slavery for a long time. The government may have helped facilitate her enslavement through the type of visa she is given. Without offering any active form of protection through initiatives such as labor inspection, a migrant in-house domestic worker is pretty much left to fend for herself.<sup>56</sup>

The National Coordinating Unit for Victims of Trafficking (KOM) in Norway reported that 319 persons were identified as potential victims of human trafficking in 2010.<sup>57</sup> They state that the actual scope of human trafficking in Norway is likely to be higher.<sup>58</sup> 16 potential victims from the Philippines were identified in 2010.<sup>59</sup> 13 of these were women and 3 were men.<sup>60</sup> The KOM annual report for 2010 finds it reasonable to believe that the sudden increase in potential victims from the Philippines could be due to the rise in cases of au pairs experiencing labor exploitation and sexual exploitation.<sup>61</sup> So far, there have been nine prosecution cases for human trafficking involving au pairs from the Philippines.<sup>62</sup> JURK (Legal Advice for Women) frequently see au pairs being forced to do a certain amount of work and perform certain tasks. They argue that it is very hard to get cases involving exploitation of au pairs investigated by the Norwegian authorities.<sup>63</sup>

### **From au pair to sexual slave**

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<sup>56</sup> K. Bales and R. Soodalter, "The Slave Next Door: Human Trafficking and Slavery in America Today", Berkeley, Los Angeles, London, University of California Press, 2009.

<sup>57</sup> KOM (Norwegian National Coordinating Unit for Victims of Trafficking), "Report 2010", [www.politi.no/vedlegg/lokale\\_vedlegg/politidirektoratet/vedlegg\\_2516.pdf](http://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/vedlegg_2516.pdf), 2011.

<sup>58</sup> KOM (Norwegian National Coordinating Unit for Victims of Trafficking), "Report 2010", [www.politi.no/vedlegg/lokale\\_vedlegg/politidirektoratet/vedlegg\\_2516.pdf](http://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/vedlegg_2516.pdf), 2011.

<sup>59</sup> KOM (Norwegian National Coordinating Unit for Victims of Trafficking), "Report 2010", [www.politi.no/vedlegg/lokale\\_vedlegg/politidirektoratet/vedlegg\\_2516.pdf](http://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/vedlegg_2516.pdf), 2011.

<sup>60</sup> KOM (Norwegian National Coordinating Unit for Victims of Trafficking), "Report 2010", [www.politi.no/vedlegg/lokale\\_vedlegg/politidirektoratet/vedlegg\\_2516.pdf](http://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/vedlegg_2516.pdf), 2011.

<sup>61</sup> KOM (Norwegian National Coordinating Unit for Victims of Trafficking), "Report 2010", [www.politi.no/vedlegg/lokale\\_vedlegg/politidirektoratet/vedlegg\\_2516.pdf](http://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/vedlegg_2516.pdf), 2011.

<sup>62</sup> NRK (The Norwegian Broadcasting Corporation), "Dømt for menneskehandel av au pairer [Sentenced for human trafficking of au pairs]", new article, <http://www.nrk.no/fordypning/domt-for-au-pair-menneskehandel-1.10992668>, 2013.

<sup>63</sup> JURK (Legal Advice for Women) "Au Pairer i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf)

In 2010 and 2011 I conducted several qualitative semi-structured interviews with “Eleanor” [not her real name] who was one of two victims in the first human trafficking case involving au pairs that was brought before the court in Norway. Eleanor was sampled through her lawyer. The interviews took place in locations of Eleanor’s choice at her lawyer’s office and a nearby cafe. Public court documents from Eleanor’s case are also used as a source in this section.

Eleanor had come to Norway from the Philippines to earn money to support her parents back home. She and another young woman were informally recruited in Manila at the beginning of 2009. The host “father” who recruited them is a chiropractor who owns a clinic in Oslo and has ownership interest in another clinic in Manila, which is where the interviews took place. He interviewed several girls and ended up hiring Eleanor and another young woman. As you are not allowed to have more than one au pair per family he arranged for the second au pair to be hired by an acquaintance.<sup>64</sup>

The host “father” had shared about him and his partner’s sexual interests during the interview, which involved sex with other parties, but failed to mention that he expected to have sex with them. Eleanor was desperate for the job. The host “father” kept her waiting for a while before he formally hired her. In online chats between the two during this time she begs him to help her with a job or put her in contact with someone who can. She explains that she can’t afford to keep a membership with the online au pair agency. Once the job is confirmed they stay in touch via online chats to organize all the practical aspects of her trip to Norway.<sup>65</sup>

During this time the host “father” started using sexual innuendo in the online chats. This gradually became more explicit. He for instance expressed that for his birthday he would like to have sex with his partner and Eleanor together, and asked if she thought she would like this. Eleanor’s response was “no”. The host “father” kept returning to this several times in the coming month until she finally said “yes”. A couple of days later she wrote in a online chat to him that she didn’t need sex, but a job. He underlined in his response that he had chosen her because she wanted to live as him, and he emphasized that he received up to 20 applications weekly from girls who wanted an au pair job. Eleanor decided to ignore the

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<sup>64</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

<sup>65</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

warning signs out of desperation, and hoped the host family would respect her “no”.<sup>66</sup>

Eleanor in Norway in September 2009. The host “father” reminded her of what he perceived as the “deal”, and had sex with her already on the first night. She got a room in the basement where he also slept most nights. At this time his partner was pregnant. Eleanor opposed the sex several times, especially in the beginning. The host “father” told her she could not refuse as he was the boss. He had two children from a previous marriage and two younger children with his current partner. He and his partner had hired a total of 12 au pairs over the years. Seven of them were from the Philippines. His partner was well aware of his nightly activities with Eleanor.<sup>67</sup>

Eleanor felt forced to have sex with him. The host “father” would threaten to contact his colleague at the clinic in Manila, who would speak to her family about their sexual relationship if she didn’t obey him. The thought of this heightened the shame she was already feeling. He also threatened that if she went to the police she was the one who would be punished. She was scared of the police in the Philippines, so she didn’t perceive the police in Norway as a potential form of protection. He further threatened that she would have to pay her return ticket home, which she was not in the financial position to do. Already before she left the Philippines the host “father” had expressed in his online chats that he wanted her to spend all her time with his family. Once under his roof, he restricted Eleanor from having a social life by exercising control. He was also checking all her online communication.<sup>68</sup>

After some months she tried to persuade her host “parents” to let her work there without having sex with the host “father”. They refused. The host “mother” threatened Eleanor by saying that if she left she would have to not only pay for her return ticket home, but also pay back the money they had paid for the ticket to get her to Norway. She was exhausted and in total despair, and cried through most of the conversation. That same night she was again forced to have sexual intercourse

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<sup>66</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

<sup>67</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

<sup>68</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

and oral sex with the host “father”. Soon after this there was also an incident where she had to have sex with both the host “parents” at one time.<sup>69</sup>

Six months after Eleanor arrived in Norway the second au pair that was hired at the same time as her came to Norway. Sara [not her real name] had left two children behind in the Philippines, the youngest being only 3 months. She stayed in the same room as Eleanor where the host “father” also stayed most of the time. He now had sex with both of the au pairs. They were made to do work in the house as well as in the chiropractic clinic. Only three weeks after Sara arrived she was in the shopping mall where the clinic was located when another Filipina woman approached her and started chatting. A while into the conversation Sara told the other woman about the circumstances in the home where they were staying. When she heard about their situation the woman offered to help them escape. As a fellow Filipina she felt a responsibility towards the two au pairs, and she conveyed to them that their circumstances were a breach of Norwegian law. It took several conversations and days of persuasion before the au pairs agreed to leave the host family.<sup>70</sup>

Eleanor, who had developed a sense of dependency and loyalty towards the host “parents” over the six months she had stayed with them, was particularly reluctant to escape. She harbored great fear towards the host “father” and had strong qualms about leaving the children. When Jean and her Norwegian husband arrived in the middle of the day to help them escape, Eleanor had cleaned the whole house. She even ran back into the house after she had left, because she had forgotten to throw the garbage. Once in the car, both Eleanor and Sara broke down and cried hysterically. Jean and her husband drove the au pairs straight to the police. They let them stay in their house for a while. The au pairs were scared for a long period after they escaped. Both were diagnosed with post-traumatic stress disorder (PTSD) in 2011.<sup>71</sup>

A psychological assessment was made of Eleanor for the purpose of the court case. The psychologist states that she came from a culture where the family as a whole is in focus rather than the individual. Eleanor grew up with her parents and 7 siblings in a very poor slum area of Manila. She applied for financial education support through her Catholic congregation when she was 13 and got a

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<sup>69</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

<sup>70</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

<sup>71</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.



sponsor from Japan. Some years later when she was studying to become a teacher the Japanese sponsor wanted to marry her. Eleanor declined the offer and he cancelled the sponsorship. As a result, she had to quit her studies. At the time when she applied for the job in Norway she was unemployed. There was still an expectation for her to support her parents financially. The psychologist points out that Eleanor's work motivation was strongly driven by this expectation. Her behavior showed that she has great respect for authorities. And the psychologist further commented that in her culture it is difficult to express dissatisfaction and have an open conflict with your employer.<sup>72</sup>

Eleanor's story has all the characteristics of a typical domestic slavery case. The level of vulnerability in her case was very high, as it generally can be amongst women with similar backgrounds to hers. They can be easy targets to manipulate and abuse. The court documents from Eleanor's case state that the host "father" was aware that people from the Philippines in general are bound to tradition, are polite, very conscientious, and often have a subordinate nature. Eleanor is perceived by the court to fit these characteristics. Further, the court document states that the risk for exposing such crimes as the ones Eleanor was exposed to is low, especially when it happens under the legal circumstances of the au pair scheme and in a private home. The host family was only prosecuted on the grounds of sexual abuse for the human trafficking aspect of her case, and not for labour exploitation. Eleanor had worked from 6:00 AM in the morning till 11:00 PM at night, and then got a few hours of sleep before the host "father" would demand sex from her every night. She did not have any regulated work hours or control over her own time.<sup>73</sup>

Eleanor's case reveals the potential for abuse of the au pair scheme. Her situation illustrates numerous breaches of the guidelines set by the UDI. She worked extensively more hours than the au pair guideline permits. Although she was paid the "pocket money" rate in accordance with the guidelines, she worked far more than the five-hour daily limit. Eleanor didn't get a separate bedroom. She was denied the opportunity to attend a Norwegian course. She very rarely got to attend any leisure activities. And she was never treated as part of the family. The host family also made her work in their chiropractor clinic. Eleanor's intention was never to participate in a cultural exchange. Her motivation was to send remittance to her parents in the Philippines. In this case, the host family also breached the

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<sup>72</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), "Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), "09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

<sup>73</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), "Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), "09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

guidelines by illegally hiring two au pairs. The host “father” was sentenced to two years in prison for three offenses, including human trafficking for forced sexual exploitation. His partner was convicted for two offenses, none related to human trafficking. The couple were both sentenced to compensate Eleanor with the sum of 130,000 NOK (\$22,000).<sup>74</sup>

The verdict for the human trafficking crime in Eleanor’s case was based on the vulnerability aspect in the penal code 224. However, it is outlined in the court document that her case is not in the heartland of the human trafficking penalty code 224 as it does not include organized crime, no third person was dealing in the victims, and no one had achieved financial profit. The advantages achieved were in the form of sexual benefits. This limited definition thus illustrates the potential difficulties in prosecuting and sentencing domestic slavery, including severe exploitation in au pair cases, in Norway. In 2012, JURK (Legal Advice for Women) issued a report on au pairs in Norway. It states:

The penal code section 224 concerning trafficking and forced labour must be changed in order to cover the complex situations of compulsions that au pairs and other domestic workers are subject to.<sup>75</sup>

### **Structural weaknesses of the au pair system**

Norway has adopted a Plan of Action that is overseen by the Inter-Ministerial Working Group against Human Trafficking. One of the key areas in The Plan of Action for 2011-2014 is to strengthen the legal framework. The Plan of Action discusses the risk for au pairs to be subjected to human trafficking. In 2012 the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concerns about the lack of monitoring of the au pair scheme in Norway due to its potential for exploitation.<sup>76</sup>

The UDI made certain changes to the regulations and procedures in 2012 as a response to the growing problem of host families and au pairs viewing the au pair

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<sup>74</sup> Borgarting Lagmannsrett (Borgarting Court of Appeal), “Sentence 0204.2013:Case No. 12-063028AST-BORG/03, [www.lovdato.no](http://www.lovdato.no), 2013; Høyesterett (Supreme Court), “09.10.2013 Case No. HR-2013-2115-A-Rt-2013-1247, [www.lovdato.no](http://www.lovdato.no), 2013.

<sup>75</sup> JURK (Legal Advice for Women) “Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]”, Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf)

<sup>76</sup> GRETA, “Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway”, [www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2013\\_5\\_FGR\\_NOR\\_with\\_CMNTS\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_5_FGR_NOR_with_CMNTS_en.pdf), 2013.

scheme as regular paid work.<sup>77</sup> The intentions with the reforms were to strengthen the cultural exchange aspect. Some of the key areas are; women with children in their home countries can no longer receive a residency permit as an au pair in Norway, and host families who have misused the au pair scheme will be given a quarantine period before they can hire an au pair again if they are caught severely breaching the regulations.<sup>78</sup> This practice has not yet been implemented. An au pair center, financed by the Ministry of Justice and facilitated by The Norwegian People's Aid and the Norwegian Union of Municipal and General Employees, was also opened in late 2012. The center offers advice, tips, legal assistance, and information to au pairs and host families.<sup>79</sup>

There are, however, several aspects of the au pair scheme that still open up for potential exploitation. As it stands, there are no regulations for the recruitment of au pairs. This happens through social networks, international au pair agencies, national au pair agencies, brokers and online au pair agencies. According to Philippines' regulations, an au pair contract employment should not be initiated through the use of agents or brokers, as there are no licensed au pair agencies in the Philippines. It is expected that the Filipina au pairs find their host families through direct hire. Recruiters and host families alike can exploit the lack of regulated ways to find au pair employment in Norway. Women may pay fees for fictive employment deals, enter a debt relationship with agents that may develop into debt bondage, or be hired by persons with the intention to severely exploit, which happened in Eleanor's case. Norwegian authorities have no control over whether the migration route is a safe one or not.<sup>80</sup>

Today the au pair visa is tied to the employer based on the duration of the contract. If the contract is cancelled, the visa will also automatically be cancelled.<sup>81</sup> The au pair can be in Norway for a period of two years in total. If she for some reason needs to change host family during this time, she also has to re-apply for a residency permit and pay a renewal fee of 2500 NOK that may add a financial

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<sup>77</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

<sup>78</sup> JURK (Legal Advice for Women) "Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf)

<sup>79</sup> Au Pair Senteret, "General information", [www.npaid.org/our-work/Asylum-and-integration/Au-Pair-Center](http://www.npaid.org/our-work/Asylum-and-integration/Au-Pair-Center), 2014.

<sup>80</sup> C. Øien, "On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme", FAFO Report, 2009, 29; Oslo, [www.fafo.no](http://www.fafo.no); GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

<sup>81</sup> GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

burden that is hard to manage.<sup>82</sup> In cases of exploitation the au pair may find it difficult to leave the family due to the effect it may have on her residency status. She may also find it difficult to refuse to perform work that exceeds the 5 hour per day limit or 30 hours per week limit, and she has no way of claiming more pay for the extra hours she may have been forced to work. This system puts the au pair in a vulnerable position with the host family and it does not offer much protection.<sup>83</sup>

There is also no monitoring of the au pair scheme in place. Au pairs living in-house with their employer risk being isolated and exploited by the host families.<sup>84</sup> The chances that the relationship is a culture exchange just on paper can be high. Upon arrival in Norway the au pairs are not offered a formal information meeting by the authorities before they move in with the host family and start performing the tasks requested by their employer. They may not understand that they have certain rights according to the guidelines and are entitled to exercise these rights in their work relationship with the host family.<sup>85</sup> Not knowing the cultural context of the host country may also lead them to believe that they have to perform the job according to customs in their home country or customs in Hong Kong and Singapore where they may have worked prior to coming to Norway.<sup>86</sup> Without an initial introduction by the Norwegian authorities upon arrival the true intention of the au pair scheme may not be understood, nor the official view on exploitation and breach of the au pair program. Having such a system in place would create a trust in authorities that may be lacking in women who come from countries that are corrupt, who otherwise would not contact authorities when in need. Today there is no inspection system that monitors the au pairs living and

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<sup>82</sup> JURK (Legal Advice for Women) “Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]”, Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf)

<sup>83</sup> JURK (Legal Advice for Women) “Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]”, Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf); GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengesToSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengesToSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

<sup>84</sup> JURK (Legal Advice for Women) “Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]”, Oslo, 2012. Available at: [www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf](http://www.jurk.no/download/rapporter/Au%20pair%20rapport.pdf)

<sup>85</sup> JURK (Legal Advice for Women) “Au Pairs i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]”, Oslo

<sup>86</sup> C. Øien, “On Equal Terms? An Evaluation of the Norwegian Au Pair Scheme”, FAFO Report, 2009, 29; Oslo, [www.fafo.no](http://www.fafo.no).

working conditions once they are inside the host family's home. The chances of exposing exploitation are therefore low.<sup>87</sup>

A group of independent experts on human rights and human trafficking measures, GRETA, was established to monitor the implementations of the Council of Europe Convention on Actions against Trafficking in Human Beings. In 2013 they published a report concerning the implementation of The Convention by Norway. While complimenting Norway on the initiatives made to prevent and combat human trafficking, it also offered a series of recommendations. GRETA urges Norwegian authorities to upgrade the legal definition of human trafficking to include slavery, practices similar to slavery and servitude. Further, they recommend that Norway strengthen their efforts to discourage demand for victims of human trafficking for the purpose of sexual exploitation and labor exploitation in sectors at higher risk of human trafficking, such as domestic work.<sup>88</sup>

Although au pairs are not considered domestic workers by the Norwegian authorities, research findings show that the au pair scheme has in recent years become a loophole for hiring cheap domestic labor.<sup>89</sup> The ambiguity that exists at the root of the program that defines the au pair as part employee and part member of the host family opens up for potential exploitation in contemporary Norwegian society.<sup>90</sup> Recent steps have been made by the Norwegian authorities to bring the program back to its initial profile as a culture exchange scheme. However, the gaps that exist in the interpretation and practice of this system by its users reveal that the initiative to strengthen the guidelines and regulations does not eliminate the

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<sup>87</sup> JURK (Legal Advice for Women) "Au Pairer i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012; GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", "GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013.

<sup>88</sup> GRETA, "Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway", [www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2013\\_5\\_FGR\\_NOR\\_with\\_CMNTS\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_5_FGR_NOR_with_CMNTS_en.pdf), 2013.

<sup>89</sup> M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press; GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", 2010; GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013; JURK (Legal Advice for Women) "Au Pairer i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012; S. Hess and A. Puckhaber, "Big Sisters' are better Domestic Servants?!, Comments on the booming au pair business", *Feminist Review*, 77, 2004.

<sup>90</sup> M. Bikova, "The Snake in the Grass of Gender Equality; Au-pairing in women-friendly Norway", in Lise Widding Isaksen (Ed.), *Global Care Work; Gender and Migration in Nordic Societies*, Lund, Nordic Academic Press, 2010; R. Sollund, "Regarding Au Pairs in the Norwegian Welfare State", *European Journal of Women's Studies*, 2010, 17:143; GAATW, "AU PAIR: Challenges to Safe Migration and Decent Work", GAATW Working Paper Series, [www.gaatw.org/publications/AuPair\\_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf](http://www.gaatw.org/publications/AuPair_ChallengestoSafeMigrationandDecentWork.GAATW2013.pdf), 2013; JURK (Legal Advice for Women) "Au Pairer i Norge; Rettigheter og Rettighetsinformasjon [Au Pairs in Norway; Rights and Information About Rights]", Oslo, 2012.

possibilities for it to be misused. The au pair scheme still offers a potential risk for severe exploitation as seen in Eleanor's case that is too high.

## Conclusion

To truly reform the au pair system in today's climate where there clearly is a growing demand for domestic work would be the best way to offer proper protection for the au pairs and reduce the potential for labor exploitation in Norwegian society. This will allow Norwegian authorities to further strengthen its responsibilities as a party of the Council of Europe Convention on Action against Trafficking in Human Beings and as an ILO member state.

As such, it may be befitting to look to ILO's Decent Work Agenda as a guideline in this particular case of the au pair program. Norway is perceived as a strong partner in promoting the Decent Work Agenda by the ILO, which can make it both a relevant and familiar instrument to use in an evaluation and reform of the au pair institution.<sup>91</sup> The Decent Work Agenda was initiated to reduce poverty and secure a fairer globalization. Its main points are that work should deliver a fair income, security in the workplace, social protection for families, better prospects for personal development and social integration, and freedom for people to express their concerns, organize and participate in decision-making.<sup>92</sup>

Closing the opportunity for persons to participate in the culture exchange scheme would be counterproductive to the au pairs and host families who are genuine in their desire to embark on this mutual cultural experience. Bringing the au pair scheme back to its true intention not only in theory, but also in practice, does however require a more rigorous system. It would seem purposeful to lower the amount of work hours allowed per week, place a stronger emphasis on the study aspect, and implement an inspection system that would create a stricter sense of accountability for the au pairs and the host families.

There is also a clear need to address the increasing demand for domestic work in Norway. At the moment the au pair system is operating as a distraction from addressing the issues involved: (1) whether there is a local work force willing to do this type of job if the pool of professional au pairs is eliminated, (2) if the 'host families' currently using the au pair system to cover their need for a domestic worker are prepared to pay minimum regulated wages for domestic help, and (3) how to cover the work force gap if the au pair scheme is brought back to its origin

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<sup>91</sup> International Labour Organisation, "Norway – ILO Cooperation: Newsletter, [www.ilo.org/pardev/donors/WCMS\\_246031/lang--en/index.htm](http://www.ilo.org/pardev/donors/WCMS_246031/lang--en/index.htm), 06/2014.

<sup>92</sup> International Labour Organisation, "Decent Work", [www.ilo.org/global/topics/decent-work-/lang--en/index.htm](http://www.ilo.org/global/topics/decent-work-/lang--en/index.htm), 2014.

as a culture exchange program. A temporary migrant domestic work arrangement seems to be the most responsible way to meet the challenges with the au pair system. It will reduce all the vulnerability factors the au pairs are facing due to their current visa status. With a temporary domestic workers system the persons who are au pairing as a livelihood will be eligible to rights in accordance with Norwegian labor laws, which will secure them a wage far higher than the pocket money/salary they receive today. They will get a salary that rightfully reflects the amount of work they do, and they will be included in a framework of protection and rights. It will provide for a safer migration pathway when the visa is not tied to the employer, and they will be entitled to formal recognition for the work they perform. Lastly, the domestic workers will not have to live with their employer, which will significantly reduce the risk of abuse. Rather than upholding the ambiguity, contradictions and potential for exploitation that exist with the au pair framework, creating two separate systems will solve many of the existing problems. Further, it will give today's au pairs an opportunity to experience the true nature of what it means to be on equal terms in egalitarian Norway.

# **Human Trafficking NGOs in Thailand: A Two-Site Case Study of the Children Served in Education Programs**

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## **Abstract**

In this qualitative case study, two Thai Non-Governmental Organizations (NGO) shelters/schools working with human trafficking survivors and at-risk populations of children ages 5-18 were examined. This study takes the stance that the work of the NGOs needs to be understood through the first-hand perceptions and attitudes of NGO staff and the children they serve. Education is an intervention designed to achieve the mission of both NGOs. Education is treated as a means of preventing human trafficking and protecting human trafficking survivors from returning to exploitative situations, though the effectiveness of the intervention is unclear. This study sought an understanding of the perceptions and attitudes of the staff and children at the NGOs. Thematic findings explored cultural, social, economic and political issues impacting the children served at the NGOs. The issues of statelessness and poverty as well as secondary issues were explored through interviews with students, teachers and staff at the NGOs. NGO efforts to reduce the vulnerability of children are discussed, as well as the barriers that both children and NGOs face in vulnerability reduction efforts.

## **Introduction**

Little is known about how education is used by organizations that serve human trafficking survivors and at-risk youth, though understanding the connection between education and human trafficking prevention organizations is essential to comprehensively addressing the human trafficking problem (Jantraka 2001). Many organizations working in Southeast Asia to address human trafficking incorporate education into their intervention strategies. Education is widely considered to be a central element to preventing human trafficking and exploitation of disadvantaged populations by organizations world-wide. Knowledge and skills alone may not overcome barriers such as statelessness, poverty and a variety of social issues. Often, educational interventions targeting human trafficking focus largely on basic skills and knowledge without accounting for local, social, political and economic barriers that impede marginalized people's access to the formal economy and further educational opportunities such as higher education.



Scholars argue that Non-Governmental Organizations (NGO) working on the prevention of human trafficking and the protection of human trafficking victims need to be more closely examined for a better understanding of their work, their issues and needs, and the needs of those served by the organizations (Laczko 2005). Much of the contemporary literature on human trafficking focuses on national and international level data and policy or stories of the experiences of individual victims of human trafficking. However, little attention has been paid to the issues human trafficking victims after removal from trafficking situations, and little is known about the issues that at-risk populations face which exacerbate vulnerability and counteract the efforts of NGOs working to prevent their exploitation.

This study posits that the work of NGOs need to be understood through the perceptions and attitudes of NGO staff and the children they serve (Tedlock 2001). Much attention has been given to the details of victims' experiences while being trafficked. However, little is known about what happens to survivors of trafficking after removal from exploitation. Some survivors return to vulnerable situations only to be victimized again, although the scope of their return to exploitation is unclear (Batstone 2007). A significant gap exists in the literature on victims' and at-risk populations' perceptions and attitudes toward NGO human trafficking prevention work, and the voices of NGO staff and the children they serve are underrepresented in the field.

Understanding a continuum of vulnerability between human trafficking victims and at-risk populations is essential to effective prevention work. Vulnerability to human trafficking is impacted by a variety of factors, including global economic shifts and push-pull factors, local and regional political crises, immigration status of migrant laborers, cultural influences and social unrest. Further in-depth examination of the issues at work in NGO-run shelter-schools in Thailand is needed in order to more fully understand the human trafficking and education issues and the macro-micro relationships between governmental agencies, economic and social forces, and the grassroots actors working to address human trafficking (Valdiviezo 2013) within the local Thai context (Yin 2009). To better understand children and staff perceptions and attitudes on the important issues at work is to better understand the lens of the local context. This comparative two-site case study examined the issues faced by human trafficking survivors and at-risk populations, including hill-tribe minorities and undocumented or stateless minorities, being served by two Thai NGOs. The study also explored how staff and children perceive the NGOs' use education as a tool for the prevention of human trafficking, and how the work of the NGOs is affected by the obstacles that these children face.

## **Background on the Human Trafficking Issue**

For the purposes of this paper, human trafficking involves force or coercion as well as transport of people for the purposes of labor and other forms of exploitation. Despite the largely accepted definition of human trafficking put forth by the Palermo Protocol in 2000, disagreement over the definition of human trafficking at the international, national and local levels created inconsistencies in law enforcement (Bales 2004), policy implementation (Emmers, Greener-Barcham, & Thomas 2006), victim identification (Lainez 2009), perpetrator prosecution (Laczko 2005) and prevention programs (Arnold & Bertone 2007). Significant disconnections occur between macro-level policy established by national governments and international actors and micro-level realities of grassroots organizations in the fight against human trafficking regardless of international efforts to clarify the definition (Bales 2004, Valdiviezo 2013). The United States government has also taken steps to curb human trafficking world-wide with the Victims of Trafficking and Violence Protection Act (TVPA) in 2000 and the Trafficking in Persons (TIP) Report which is released annually and evaluates all national governments' anti-human trafficking efforts (United States Department of State 2013). Human trafficking continues at significant levels and Thailand remains a source, destination and transit country for trafficking victims worldwide (United States Department of State 2013).

Despite the growth in the field of human trafficking research, a lack of reliable and comprehensive data is still a major issue in the field, and there are many blind spots in the literature (Laczko 2005). Estimates of the size and scope of human trafficking worldwide are unreliable, in part due to the hidden nature of human trafficking (Bales 2004, Tyldum & Brunovskis 2005). Human trafficking as a field of research is in its early stages. Although much research on human trafficking focuses on the national and international level efforts, little is known about how grassroots actors in the field, such as NGOs, do their work and how these actors relate to macro-level policy (Laczko 2005). For example, although the Thai government has a policy allowing all school-age children, including undocumented migrants and hill tribes, access to Thai government schools, local school officials have considerable discretion regarding the number of these students allowed into the schools.

Limited and unreliable data on human trafficking also means that we have little understanding of realities and impact of grass-roots organizations working to address the issue (Laczko 2005). In Thailand, numerous NGOs operate with a variety of purposes including education and rehabilitation of rescued victims of trafficking, and the prevention of exploitation of at-risk populations (Arnold & Bertone 2007, Asia Watch 1993, Beyrer & Stachowiak 2003, Delaney 2006).

## **Framing the Study with Globalization and Education**

Globalization is a useful lens through which to understand the effectiveness of the work of NGOs to provide non-formal education to marginalized groups, and the issues that marginalized children face in Southeast Asia. The debate on globalization has shifted in humanitarian circles to a discussion about how to engage the processes of globalization to benefit the disadvantaged (Giddens 1999). I see education, particularly a combination of non-formal and formal education, as a potential means for transforming the lives of the disadvantaged and marginalized youth that can counter the negative effects of globalization and improve the incapacities of our formal institutions (Giddens 1999). Work related to non-formal education providers in crisis situations, such as conflict displaced refugees, has shown that in “extreme circumstances” (Chelapi-Den Hamer 2011 p. 73) international and non-governmental actors commonly fill educational gaps, yet the acceptance in the society-at-large of the credentials and certifications of these educational providers is inconsistent. NGOs in Thailand certainly fill the educational gaps for marginalized children but it is unclear what the long-term impacts of these non-formal education programs are, and whether these programs can counteract the social issues encountered by the children they serve.

Arnove’s (2007) framing of globalization and education helped me understand the educational disparities experienced by at-risk children at the organizations, and the disconnection between international Education for All goals and local realities. The global issues of informal migration, neo-liberal economic policies and discrimination have powerful negative effects on marginalized ethnic minorities in Thailand, particularly due to the historical legacies of ethnic minorities in Southeast Asia migrating across regions for generations, areas now crisscrossed by national and provincial borders (McCaskill, Leepreecha, & Shaoying 2008). Marginalized groups are more vulnerable to trafficking (Pothisan, Nantajak, Rittidet, & Saenyabud 2008), and understanding neo-colonial global pressures gives insight into the issues impacting local marginalized populations in Southeast Asia (Dirlik 2006). The use of Arnove’s (2007) dialectic of the global and the local, as well as zooming in and zooming out to understand macro-micro relationships (Valdiviezo 2013) informed my findings and improved my abstraction and conceptualization of the issues of statelessness, poverty and secondary issues such as migration. Though grass-roots NGOs operate at the micro-level within a local context, the negative effects of macro-level social issues, such as statelessness, on the children are powerful and must be understood on a broader scale.

## **Goals and Objectives**

The general goal of this study was to create a two-site case study on two NGOs in Thailand using a qualitative methods approach that develops an analysis of broad thematic issues (Creswell 2007), "...and draws cross-case conclusions" (Yin 2009 p. 20). My specific objective was to understand the issues that NGO teachers, staff, and the children they serve, face. Based on this goal and objective, I developed the following research questions: (1) How do the processes, interactions and issues at two human trafficking prevention and protection NGOs in Thailand impact the staff and the children being served, (2) What contextual factors impact children being served at the NGOs, and (3) How do these factors impact the children being served at the NGOs. This goal and objective necessitated a methodology that gained perceptions and attitudes of staff and children through interviews and observations.

## **Methodology**

The methodology emerged from the viewpoint that the work of the NGOs needed to be understood through the perspectives and attitudes of the NGO staff and children served by the NGOs (Tedlock 2001). The voices of micro-level, or grass-roots, actors in the fight against human trafficking are largely missing from the literature, and the first-hand accounts of children being served in these organizations are essential. Therefore, data collection at the two Thai NGOs combined interviews of staff and children, observational field notes, organization documents and photographs. After conducting a pilot study in 2010, the main study data collection took place in June and July of 2011 at the same two NGOs with both Institutional Review Board (IRB) and National Research Council of Thailand (NRCT) approval. I interviewed 31 students and nine staff across the two NGOs. Observational field notes consisted of observations of daily operations of the NGOs, including meal times, school start and release procedures, and field trips. Organizational documents used included case files of students being interviewed which included background information on students and their families, school schedules, brochures, reports provided by the organizations and information from NGO websites.

Using constant comparative method (Glaser & Strauss 1967), I simultaneously gathered and analyzed data, and the importance of themes that emerged from the data was determined through triangulation of themes across multiple instances within interview data, data type triangulation and research site comparison. I

analyzed my interview and field note data through several phases of coding consistent with Creswell (2009) and Patton (2002).

### **The Two-site Case of DEPDC and CPDC**

This study focused on two NGOs, the Development and Education Program for Daughters and Communities (DEPDC) located near Mae Sai in Northern Thailand, and the Children's Protection and Development Center (CPDC) located near Pattaya in Southeastern Thailand.

#### **DEPDC**

Originally called the Daughters Education Program, initially targeting girls but now including boys, DEPDC provides full time accommodations including meals, shelter, and clothing to human trafficking victims, orphans and at-risk children (DEPDC 2011). According to the DEPDC website, education, protection and development are the organization's "prevention tools" (2011). DEPDC has several programs and locations, although the central location of DEPDC for this study was the Patak Half-Day School in the small village of Patak on the outskirts of the city of Mae Sai. Patak is inhabited primarily by immigrants from Burma (Myanmar), particularly minority ethnic groups.

**Patak Half-Day School.** The Patak Half-Day School offers free education from kindergarten through grade six to local children considered at-risk for human trafficking, as well as human trafficking survivors living in the shelter component of DEPDC. The Patak Half-Day School provides non-formal elementary education in "Thai language, math, and social skills" (DEPDC 2006-2008a), each morning and vocational skills training each afternoon. Afternoon vocational training is offered in seven general areas: weaving, handicrafts, wood-carving, local and Thai desserts, chemistry in the kitchen, agriculture and computer skills. Students vary in age from approximately 5-18 years old. Many children live in the village of Patak; however there are children who travel from Burma, and various other hill tribe villages in the area (Oh & Van Der Stouwe 2008). Children who complete grade six at the Patak Half-Day School can also transition to local non-formal education programs, or local government schools, the cost of which is provided by DEPDC. However, DEPDC's grade six credential is not accepted at Thai government schools, and most children do not transition.

According to NGO documents (DEPDC in Detail 2004), the Patak Half-Day School served 217 children at the Mae Sai campus in 2003. 78 students lived at the facility as part of the Daughters Education Program. 139 students lived in the community. The student population was made up of 12 ethnic groups, with the

largest groups being Akha, Tai Lue and Shan. In Table 1, I provide the number of students for the years 2009, 2010 and 2011, adapted from the data provided by DEPDC's Director (personal communication February 6, 2012).

The Patak Half-Day School consistently served large number of kindergarteners and the number of students steadily decreased with each subsequent grade (see Table 1). As one staff remarked, "it depends on families, some families live in Burma and then they take the children to the aunt who live in Thailand. Later when the children grow up, the aunt wants the children to go to work" (Teacher 8, DEPDC, 7/14/2011). The number of girls was consistently higher than the number of boys in every grade and every year except first and third grade in 2009. Starting in 2009, kindergarten, first grade, second grade and third grade had 52, 37, 13, and 19 students respectively. I found by tracking this group through the next two school years revealed that the cohort became 26, 13, 8 and 10 students in first grade, second grade, third grade and fourth grade, respectively in 2010. Finally in 2011, the cohort became 21, 13, 5 and 9 students in second grade, third grade, fourth grade and fifth grade respectively. Only 50 % of the kindergarteners moved on to the first grade from 2009 to 2010. Only 35% of the first graders moved to the second grade in this time period, yet better than 50 % of the second graders and third graders moved up a grade from 2009 to 2010. Overall, enrollment at the Patak Half-Day School dwindled as students got older, and the organization consistently struggled to retain children through to the completion of their grades k-6 education program. As one staff noted, the situation is...

sad, depressing. Some students leave and work in prostitution willfully. See neighbors making money. Write and call from Bangkok or other cities to say they are doing great, but teachers know they are in prostitution. Some parents will tell their own daughters and sons, 'see other people go out and they come back and they have a big car and a nice house, why don't you go and do that', like push them and make them have really high hopes, like really high, big house, car, a lot of money. (Teacher 3 DEPDC 7/12/2011)

At the Patak Half-Day School, when students graduate grade 6 they are given a certificate of graduation, and the organization facilitates transition to further educational opportunities. This certificate is not accredited by the Ministry of Education and is not considered equivalent to grade 6 at a Thai government school, as this staff member discussed.

Children who graduate from 6<sup>th</sup> grade, we have a certificate for them, from DEPDC. But we want it to compare to government school outside. Like

give certificate from the government. Give it to students, so it looks like more stronger when you go outside or continue to school outside Now we can't do it, we still work on it, we want the government to accept our certificate, but we cannot work with the government, because of some politics. (Staff 7 DEPDC 7/20/2011)

In addition to the financial and social barrier to entering the Thai government schools, the disconnection between the credential offered by DEPDC and the academic skill level needed to enter the government schools created a barrier for further educational opportunities for children at the organization, an issue that has also appeared in the literature on refugees (Chelpi-Den Hamer 2011). The lack of accreditation of the education program at DEPDC was further exacerbated by issues of statelessness and poverty and many of the stateless children served at DEPDC do not have access to the Thai government school. As one staff member noted,

We have a law that says everyone can go to school as long as you want, to university, as high as you want. But the people, they not accept it. They not follow it. The children, statelessness, from Burma, will have to pay more than Thai. Because the government will support only thai, however some of the government schools try to share some of the money to the stateless. Everywhere is not the same. It depends on the principal, the school, the opinion. (Staff 7 DEPDC 7/20/2011)

Despite the educational opportunities provided up to and beyond grade six, most students who begin school at the Patak Half-Day School do not complete the Grades K-6 education program.

## **CPDC**

CPDC “aims to provide street children with protection, education and future perspectives” (Child Protection and Development Center). CPDC is located on the outskirts of Pattaya, Thailand, a notorious sex tourism destination. The organization provides a home, education, health care, and recreational activities for children who are living on the streets, abandoned, exploited, abused, or come from extreme poverty. The children served by the organization are also considered at high risk for human trafficking, and some children are prior victims of human trafficking. The number of children living at CPDC at one time varies from 35 to 40 children with the goal of the organization being to house and care for up to 60 children. CPDC serves children ages 6 to 18 and has over a 90% retention rate.

Children at CPDC are quickly transitioned into government schools and provided with educational support with homework and tutoring. Unlike DEPDC, most of the children served at CPDC are not foreign born, stateless or ethnic hill tribe minority, an important difference between the NGOs.

CPDC offered remedial courses, vocational training, IT training (basic computer skills), English lessons, life skills lessons, and courses on drug abuse prevention and sexual abuse prevention on weekends, during school breaks and in the evenings after school (Child Protection and Development Center). Gardening and agricultural training are provided by staff, and the children learn to grow vegetables and mushrooms, and raise chickens, pigs and catfish. CPDC is organized around a “four-step process model” (Child Protection and Development Center) which includes the permanent shelter where this research took place.

### **Thematic Findings**

Analysis of the data revealed two primary issues impacting the children in the study: statelessness and poverty. In addition, several secondary issues arose that further exacerbated the barriers faced by the children in the study, and convoluted the work of the NGOs. Beyond the issues faced by the children, staff and NGOs, benefits from the work of the NGOs for the children were evident in the data. Finally, the goals of the students being served, and the goals that the staff had for the students, provided a unique lens through which to view the perceptions of the children and staff. Table 2 illustrates the themes and the number of instances the themes appeared in the data.

#### **Statelessness as a potential, not absolute, barrier**

Statelessness emerged as a central issue to both the children and the staff at the organizations. Current Thai education policy allows stateless children into government schools in Thailand, but the policies are not used to the benefit of the children equally by both organizations (Zixin 2005). Although both NGOs served stateless children, CPDC served relatively few compared to DEPDC. The ability of CPDC to navigate within the changing political circumstances and adapt its educational focus has shown to be beneficial to the children that they serve, though the smaller number of stateless children at CPDC may have made government school collaboration easier. In the case of DEPDC, statelessness is a more pronounced issue in Northern Thailand, and therefore more challenging for the organization to collaborate with government schools because of local pressures and discrimination (Walker & Farrelly 2008).



Statelessness is one of the most powerful factors impacting the success of NGOs' efforts. The NGOs in this study navigated the political landscape differently, with implications for the success of each program. In Northern Thailand, the de-facto versus de-jure gap between policy and implementation is a barrier to hill tribe people engaging the citizenship and naturalization process. Access to government school education provided by recent policies is still not a reality for stateless people in Thailand (Brown 1994, McCaskill, Leepreecha & Shaoying 2008, Minorities at Risk Project 2004). The process of hill tribe people becoming Thai citizens remains difficult to access, expensive, and rife with corruption. DEPDC's accreditation issues and the barriers to government school access combine to create a difficult situation for the children at the Patak Half-Day School. Comparatively in the urban Southeast, CPDC more effectively navigated the legal and formal education systems and more likely made lasting impacts on the children they served.

Similarities exist between the issues that the hill tribes and other stateless groups encounter in Southeast Asia and the issues that undocumented immigrants face in the United States (Spires 2005). With aggressive immigration laws in several American states targeting undocumented immigrants, fear of deportation is a very real aspect of their lives (Johnson 2011, Varsanyi 2010), and this fear is comparable to the fear stateless children in Thailand face. As Varsanyi (2010) argued, the local context can be a decisive element in terms of anti- versus pro-immigrant policy implementation. In the case of DEPDC, local attitudes toward stateless children in Thai public schools undermine the national level policies allowing stateless children into the government schools. Negative social pressures on stateless and ethnic minorities are further exacerbated due to poverty issues, as many of these children also do not have economic resources to provide uniforms, books and miscellaneous school fees typical in Thai government schools.

### **Poverty in the Northern Thailand context**

Poverty as an important factor in human trafficking is not a particularly surprising revelation. However, the particular economic disparity between stateless or hill tribe minorities and mainstream Thai society along the northern border with Burma and Laos produces circumstances where exploitation of vulnerable at-risk youth is exacerbated. Despite the economic growth I witnessed in Mae Sai, or perhaps because of this growth, the continued influx of undocumented and stateless migrants into Northern Thailand provides human traffickers with a large vulnerable population of youth to exploit.

Stateless and impoverished children in Northern Thailand are pressured to work, which effects the low retention rate at DEPDC. The organization's lack of

accreditation offers no long-term educational alternative to the children and their families. The influence of poverty on the children is difficult to combat without concrete and commonly accepted credentials to offer the children for their educational efforts, as shown also with refugees in Africa (Chelapi-Den Hamer 2011).

Even though the Patak Half-Day School teachers and staff created a loving environment and provided practical skills-training for the children, based on my findings the organization cannot fully overcome the immediate economic needs of the children and their families. I also believe that the benefits gained from attending the Patak Half-Day School are too intangible to compete with the concrete realities of poverty. In contrast, children at CPDC have an official credential to work toward at the government school. The children at CPDC also obtain the intangible benefits of love and care, like those at DEPDC, but with the added, and immediate, benefit of a government school education recognized in the wider society.

## **Secondary Issues**

Statelessness and poverty emerged as primary issues in the data, however, a host of what I term secondary issues also emerged. As Table 2 illustrates, the secondary issues are as follows: family problems, family pressure to work, border issues, language issues, funding issues, community and social pressure to work, staff retention issues, mental health, behavior and learning issues, government accreditation issues and cultural barriers. Though these issues are intertwined with statelessness and poverty, distinct elements need to be delineated. A student described CPDC as a place that... “helps children who comes from broken families” (Student 25 CPDC 7/23/2011). Another described CPDC as “...a center that helps children whose families don’t have enough time to take care of them and abandon child” (Student 26 CPDC 7/23/2011). Single parent households and child abandonment were distinct family problems exacerbated by poverty.

An example of family pressure to work appeared in an interview where a student said, “people in Burma, some parents don’t want them to study because they want the children to work” (Student 7 DEPDC 7/12/2011). Another student clarified this point, “Parents, they are really poor, and that’s why they make the children go out to work, and they don’t know where they go” (Student 14 DEPDC 7/13/2011). A staff member at CPDC gave insight to this issue, pointing out that some family members “... want to gain benefit from that child, without thinking of any problem, or any social problem or anything. Just money sometimes...” (Teacher 9 CPDC 7/23/2011). Poverty is the primary motivator

behind this issue, but family pressure on children to work is distinct in the local context.

The term border issues refers to issues of migration and freedom of movement unique to the vulnerability of children in the border regions of Thailand. Immigration policy has important implications for the children at these NGOs, pushing them to more vulnerable positions (Goodey 2004). National level immigration policy often overlooks the interconnectedness of regional neighbors in terms of historically and culturally based informal migration (Emmers, Greener-Barcham & Thomas 2006). Rafferty (2007) discussed the complex nature of human trafficking in Southeast Asia, and Thailand's immigration policy overlooks the intertwined local factors such as the historical legacy of migration for hill tribes and the economic interdependence in border regions across national boundaries. For the children at DEPDC, migration is one of the few available options for accessing opportunity.

Mental and physical health of both staff and children emerged as a secondary theme. The lack of health care access for marginalized children increases their vulnerability to exploitation (Cosman 2005). The NGOs must also cope with mental health issues of the children they serve, as well as the teachers and staff, despite shortfalls in training and funding (see Table 2). Staff at both organizations needed training on dealing with behavior and learning issues with the children. Counseling of both children and staff was also a clear need at the NGOs, however both organizations lacked counseling expertise. Engagement and cooperation between these NGOs and governmental actors may help to address these health-related issues, which often expand beyond the scope of the NGOs' resources and capabilities.

Language of instruction was a significant barrier to student academic success for ethnic minority children and foreign-born stateless children, especially at DEPDC. Though Thai was the language of instruction at both organizations, children being served spoke primarily regional dialects and literacy skills were minimal. DEPDC and CPDC both have difficulty with recruiting and retaining any staff, but multi-lingual staff were especially needed. Retention of staff also relates to the emotionally, mentally and physically draining nature of work at the NGOs.

## **Benefits as Evidence of Protection and Postponement of Human Trafficking**

Temporary, or short-term, benefits were important for children at DEPDC (see Table 2). These benefits indicated the immediate protection and temporary postponement of human trafficking and exploitation that the NGOs provided for children. Children benefitted from temporary removal from volatile home environments, and the families experienced a financial reprieve with the child living at the shelter or with relatives. Health and hygiene were improved, which have long-term effects. Going on educational field trips and attending camps are among the positive educational experiences for the children. Having positive relationships with adults and other children were benefits perceived by staff and children.

It was unclear whether these NGOs provided temporary protection from exploitation, postponement of exploitation or prevention of exploitation for the children. DEPDC's Patak Half-Day School acts as an intervention to the vulnerability of the students, and as a temporary safe-house to children. However, long-term prevention of human trafficking and exploitation of these children cannot be predicted based on my findings. CPDC provided access to government education and was able to more successfully navigate the complex formal education and documentation process. Whether CPDC's efforts truly prevent human trafficking and exploitation of the children under its care is still not clear.

DEPDC and CPDC represent access to education and opportunity for a better life for the children that they serve. Both organizations provide something to disenfranchised children not readily available to them elsewhere. The work of these NGOs benefits the children by acting as temporary protection from exploitation, postponing exploitation and ultimately working towards prevention of exploitation.

## **Goals as Snapshots at the Micro-level**

Goals gave snapshots into the positive perceptions and attitudes of the staff and the students at these two NGOs and illustrated the personal aspects of the micro-level work done by these two organizations. Work, educational and altruistic goals constitute perspectives that are often absent from the literature on human trafficking and its prevention (Laczko 2005).

In terms of educational goals, students at both organizations had goals of graduating high school and going on to college. It is unclear how important the work of the NGOs was to introducing the children to the idea that high school and college education were possible, and attainable. Further investigation is needed to understand the impact NGOs have on broadening the educational outlook of

marginalized populations. Staff at DEPDC saw basic literacy as a major educational goal for the children, but they were far less optimistic in terms of further education beyond Patak Half Day School's grade six. Unfortunately, based on my data regarding poor student retention at the school (see Table 1), the staff were likely more accurate in their goals for the children.

Work goals of the children illuminated aspects of the children's world views. Children at DEPDC were aware of their need to support their families financially. Family obligation was an element that ran through all of the DEPDC interviews, even the children who lived at the shelter, and those who had experienced human trafficking. At CPDC, this was not the case, as these children were either abandoned by family, orphaned by parental death or trafficked at a young age, and had been living as street children. For children at CPDC, family connection was virtually non-existent and their work goals ranged from working in the hotel and restaurant industry to owning their own businesses.

Altruistic goals were the most evident of the influence of the NGO as a positive example in the children's lives. Children at both organizations expressed long-term goals of helping people, a goal that is likely influenced by the work of these NGOs and their staff. Both organizations create a sense of community among their children, teachers and staff and established a culture of caring about others and working for the collective good. These goals highlight some important blind-spots in human trafficking research (Laczko 2005), in particular, the human element.

### **Interwoven Threads in the Data**

Three interwoven threads - Change, Fear and Vulnerability - were concepts that permeated the data. DEPDC and CPDC are continually in flux, adapting to changing local cultural influences, political circumstances and economic pressures. Although aspects of this study are akin to a series of snapshots (Laczko 2005), I attempted to take into account the major changes that occurred at each NGO including facilities, staff retention and enrollment of students. I tried to account for different perspectives within the organizations, and although perspectives change over time, this study incorporated a broad collection of perspectives on the important issues.

Fear was an important thread in the lives of children outside of the NGOs: fear of government officials because of their stateless or ethnic minority status, fear of exploitation by adults, fear of violence from family members or others in the community. The prevalence of fear as a long-term effect of human trafficking experiences is a well-documented related issue (Bales 2004, Batstone 2007, Bowe, 2008).

A multitude of pressures push the children into more vulnerable positions and the NGOs are working to undo several of those key pressures, namely statelessness and poverty, through education. Meso- and macro-level assistance is needed to address pressures beyond the scope of the NGOs (Bales 2008). In keeping with the arguments of Chapkis (2003) and Derks (2000), without further assistance and support, some of these efforts may be in vain.

## **Discussion**

The Thai government is working to address many significant universal social issues, including poverty, gender discrimination, education and healthcare access disparities (World Bank 2010), as well as human trafficking (United States Department of State 2010). In addition to the work that the Thai government is doing, NGOs such as DEPDC and CPDC are also working on these issues, and increased collaboration would likely be mutually beneficial. Although improvements in Thailand have been made in many areas of the Millenium Development Goals, one area in need of improvement that is illuminated by this study is “Goal 8: to develop global partnerships for development” (World Bank 2010). Collaboration between DEPDC and the Ministry of Education could at once address international policy and practice goals for government agencies and could reduce barriers to success for the NGO. Further collaboration between NGOs providing non-formal education and formal educational institutions could also address Thailand’s education reform issues (Office of the National Education Commission Thailand 2002). As the situation at CPDC showed, cooperation between NGOs and public education in Thailand can work. The Thai Ministry of Education has taken up the provision of formal and non-formal education for all children to meet the “Education For All” goals for 2015 through its Office of Basic Education Commission and its Office of the Non-Formal Education Commission (Siltragool 2007). Policy mechanism are in place, but what remains is productive collaboration between governmental actors and NGOs. The issues related to the accreditation of DEPDC’s education program might be alleviated through collaboration with the local offices of the Ministry of Education.

Universal human trafficking and education issues need to be understood within the specific local Thai context (Arnove 2007). Many of the issues that the NGOs in my study face are common among other NGOs around the world (Tzvetkova 2002, Rose 2007) illustrating Arnove’s global to local continuum (2007). However, specific contextual influences such as proximity to an international border, cannot be ignored. NGOs that address human trafficking related issues must adapt to changes in funding models described by Riddell (1997), changes in education policy as described by Rose (2007), international policy on human trafficking

(Prevention of and Fight against Crime Programme 2008), and national and regional immigration policy (Park, et al. 2009), while coping with local community attitudes and dynamics.

Immigration and migration are universal elements prevalent in this study. Global actors such as the International Organization for Migration (IOM) consider the human trafficking issue an important element in the debate on migration, exhibited in their sponsorship of human trafficking research (Laczko & Gozdzik 2005). Immigration policy intended to strengthen national borders and reduce informal migration often conflicts with a nation's need for immigrants in the labor pool. A global paradigm shift toward national and international immigration policy alignment is occurring and the international community is currently struggling to reconcile nationalistic desires with economic realities (Renshon 2010). Informal migration of stateless and undocumented immigrants continues despite international policies and efforts to curb informal migration. Education For All goals illustrate the presence of significant undocumented populations world-wide and governments' attempts to address these realities through education (Siltragool 2008). However, these goals represent conflicting interests to that of nationalistic immigration policy. Thailand's efforts to provide education to marginalized groups are met with resource barriers, and NGOs often fill in the gaps that formal education cannot address (Trakulphadetkrai 2011).

The immigration policies of individual nation-states are also often contradictory to international development goals representing which represent important economic and social changes to the increasingly globalized world (United Nations 2007). The NGOs in my study function within these conflicting paradigms. Nationalistic immigration policies restricting informal migration are not able to stop informal migration, but create circumstances where undocumented immigrants and stateless people are further marginalized and vulnerable to exploitation. International education and development policies often ignore the need for protection from exploitation that these disadvantaged groups have. DEPD and CPD address this important need for these groups but need cooperation from the formal education sector.

The fundamental contribution provided by both NGOs is protection, particularly immediate protection for the children while they are served at the NGO sites. Both NGOs are also working to diminish vulnerability of marginalized children in a variety of ways which include education and care. CPD's educational shift from education providers to education facilitators through government schools illustrates a model of NGO/government collaboration that other NGOs may find useful. The struggles of these NGOs are likely the most generalizable, particularly the difficulties micro-level actors have in reconciling international development goals (Siltragool 2007) and broad human trafficking

policy (United Nations High Commission on Refugees 2011) within the local context, within the Thai context (Fry 2002, Ministry of Education Thailand 2008), and within the educational reform context (Office of the National Education Commission Thailand 2002, Office of the Education Council Thailand 2007).

## **Conclusion**

More action is needed to engage NGOs with formal education channels, either to create paths of transition, to address local inconsistencies, or to actively and formally accredit NGO education programs. More active collaboration between NGOs with education components and the Thai government will have positive, and mutually beneficial, effects in regards to several measures of progress: TIP Report, the UNHCR evaluations, and national government assessments of local and regional anti-trafficking efforts (United States Department of State 2006) and education goals (Siltragool 2007).

The struggles of the NGOs in this study have implications for other NGOs. The changing political landscape in Thailand and the international arena can greatly impact NGOs, though the work of NGOs can benefit the Thai government's efforts and development goals if coordination, collaboration and compromise can take place. However, more understanding of the work of human trafficking prevention NGOs in Thailand, and elsewhere is needed. We also need a clearer understanding of how these organizations fit within the work already being done by governments so that efforts are complimentary, not competing. Government agencies tasked with meeting global education goals (Siltragool 2007), development goals (World Bank 2010), or addressing human trafficking issues (United States Department of State 2010), would likely benefit from establishing more cooperative relationships with NGOs operating in their countries.

Human trafficking is a complex social issue with both global dimensions and local implications. The realities of globalization and informal migration indicate the growing importance of NGOs to meet social needs that formal institutions, including education, are becoming less capable of addressing. Local, national and international policies greatly impact the work of NGOs and may benefit marginalized groups, yet policy implementation is inconsistently enforced, particularly at the local level indicating a clear macro-micro disconnection. With comprehensive collaboration between NGOs providing education and formal institutions, increased positive impacts of NGO programs are likely, but collaboration needs to be mindful of accreditation of non-formal education programs, symbiosis between formal and non-formal education providers, and effective transitioning of children to accredited education programs. Collaboration and cooperation between NGOs and national governments need to be supported



financially and encouraged by the international community with real benefits for both if education is to truly become a tool to prevent human trafficking.

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| Year: 2009   |                |                 |                                      |
|--------------|----------------|-----------------|--------------------------------------|
| Grade        | Number of boys | Number of girls | Total number of students             |
| Kindergarten | 15             | 39              | 54 ( <i>3 kindergarten classes</i> ) |
| First        | 19             | 18              | 37                                   |
| Second       | 5              | 8               | 13                                   |
| Third        | 11             | 8               | 19                                   |
| Fourth       | 2              | 9               | 11                                   |
| Fifth        | 2              | 3               | 5                                    |
| Sixth        | 1              | 2               | 3                                    |
| Total        | 55             | 87              | 142                                  |
| Year: 2010   |                |                 |                                      |
| Kindergarten | 25             | 47              | 72 ( <i>2 kindergarten classes</i> ) |
| First        | 7              | 19              | 26                                   |
| Second       | 5              | 8               | 13                                   |
| Third        | 3              | 5               | 8                                    |
| Fourth       | 3              | 7               | 10                                   |
| Fifth        | 1              | 2               | 3                                    |
| Sixth        | 1              | 2               | 3                                    |
| Total        | 45             | 90              | 135                                  |
| Year: 2011   |                |                 |                                      |
| Kindergarten | 38             | 38              | 76 ( <i>3 kindergarten classes</i> ) |
| First        | 7              | 22              | 29                                   |
| Second       | 4              | 17              | 21                                   |
| Third        | 5              | 8               | 13                                   |
| Fourth       | 2              | 3               | 5                                    |
| Fifth        | 3              | 6               | 9                                    |
| Sixth        | 1              | 3               | 4                                    |
| Total        | 60             | 97              | 157                                  |

Table 1. The number of students in the Patak Half-Day School for 2009-2011 by grade



| <b>Theme</b>    | <b>Sub-Theme</b>    | Number of instances | Number of instances in   |
|-----------------|---------------------|---------------------|--------------------------|
| <b>Problems</b> |                     | 99 (total)          | 91 (total)               |
|                 | Statelessness       | 21                  | 6                        |
|                 | Poverty             | 6                   | 25                       |
|                 | Secondary Issues    | 72 (total)          | 62 (total)               |
|                 | Family problems     | 7                   | 14                       |
|                 | Family pressure     | 9                   | 11                       |
|                 | Border issues       | 4                   | 8                        |
|                 | Language issues     | 7                   | 8                        |
|                 | Funding issues      | 2                   | 5                        |
|                 | Community/          | 2                   | 0 (2 from translator)    |
|                 | Staff retention     | 8                   | 8                        |
|                 | Mental and          | 17                  | 4                        |
|                 | Government          | 13                  | 0                        |
|                 | Cultural barriers   | 3                   | 2                        |
| <b>Benefits</b> |                     | 83 (total)          | 142 (total)              |
|                 | Literacy            | 11                  | 14                       |
|                 | Learn life skills   | 22                  | 20                       |
|                 | Protection          | 9                   | 10                       |
|                 | Opportunity and     | 13                  | 57 (17 specifically used |
|                 | Care                | 3                   | 13                       |
|                 | Confidence          | 3                   | 1                        |
|                 | Free                | 22                  | 29                       |
|                 | Build relationships | 11                  | 12                       |
| <b>Goals</b>    |                     | 32 (total)          | 45 (total)               |
|                 | Education goals     | 7                   | 29                       |
|                 | Work goals          | 9                   | 11                       |
|                 | Altruistic goals    | 16                  | 5                        |

Table 2. Number of instances of themes and sub-themes

# **Economics of Child Mining Labor: Estimation of Corporation's Profits**

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

## **Abstract**

This article estimates the contribution of child labor to the production of mined minerals and calculates the profit made by manufacturers involved in the supply chains of child-labor minerals. Several thousands of children in the Democratic Republic of Congo (DRC) work in the artisanal and small-scale mines under dangerous conditions to extract a variety of minerals, including those used in the fabrication of modern electronics. But there is no detailed data on the scope of productivity of child-miners, the value of their production at the world market, and the profit made by those buying and using their minerals. The lack of data on this issue is occasioned by the quasi-secrecy surrounding the supply chains of child-labor minerals. The paper uses a simple method of estimation based on economic assumptions and available data to calculate the contribution of child-miners in the DRC to the cobalt production at the national and international level, and to estimate the profit made by electronic manufacturers that use cobalt tainted with child-labor in their products.

## **Résumé - Economie du travail des enfants dans les mines: Estimation des bénéfices des sociétés**

*Cet article évalue la contribution du travail des enfants à la production de minéraux et calcule les bénéfices réalisés par les manufacturiers impliqués dans les chaînes d'approvisionnement des minéraux émanant du travail des enfants. Plusieurs milliers d'enfants, en République Démocratique du Congo (RDC), travaillent dans des conditions dangereuses dans les mines artisanales et à petite échelle pour extraire plusieurs variétés de minéraux, en ce compris ceux utilisés dans la fabrication des appareils électroniques modernes. Cependant, il n'existe pas de données détaillées sur la portée de la productivité des enfants travaillant dans les mines, la valeur de leur production sur le marché mondial, ainsi que les bénéfices réalisés par ceux qui achètent et d'utilisent leurs minéraux. L'inexistence de données sur cette question est occasionnée par le quasi-secret qui entoure les chaînes d'approvisionnement des minéraux provenant du travail des enfants. Ce papier utilise une méthode d'estimation simple basée sur des hypothèses économiques et des données disponibles aux fins de calculer la contribution des enfants en RDC dans la production de cobalt sur le plan national et international, et d'estimer les bénéfices réalisés par les manufacturiers des appareils électroniques qui utilisent du cobalt entaché de la main-d'œuvre enfantine dans leurs produits.*

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## Introduction

The term “child labor” refers to work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.<sup>2</sup> The recent statistics from ILO reveals that there are about 162 million child-laborers in the world,<sup>3</sup> and more than half of them work in hazardous industries, such as mining.<sup>4</sup>

In the Democratic Republic of Congo (DRC), the prevalence of child labor is very high in the artisanal and small-scale mines. Although the lack of official data on the number of all child-miners in the country, local and international organizations working in the field of child protection estimate that children represent about 40% of laborers in artisanal mines.<sup>5</sup> This is the case in the cobalt artisanal mines in the DRC’s province of Katanga where out of 100,000 to 150,000 artisanal-miners,<sup>6</sup> 40,000 to 55,000 of them are children.<sup>7</sup>

The DRC ratified a number of international instruments protecting children against labor exploitation including the UN Convention concerning Minimum Age for Admission to Employment of 1973 (No 138)<sup>8</sup> and the Convention against the Worst forms of Child Labor of 1999 (No 182).<sup>9</sup> At the domestic level, the country also adopted laws and regulations prohibiting child labor and worst forms of child labor including the Law on the Protection of the Child of 2009, the Labor Code of 2002, and the Ministerial Order of August 2008 regulating the Working Conditions of Children in the DRC. The country’s Law on the Protection of the Child establishes the minimum age for employment at 16 years, and sets some restrictions concerning the nature of work to be performed by children.<sup>10</sup> Children

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<sup>2</sup>ILO, “Child Labour: A Textbook for University Students”, p.16. Available at: <http://www.ilo.org/ipec/facts/lang--en/index.htm> (last accessed 12 June 2014).

<sup>3</sup> ILO, “*Marking progress against child labour - Global estimates and trends 2000-2012*” (ILO-IPEC, 2013). Available at: <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm> (last accessed 11 June 2014)

<sup>4</sup> Ibid.

<sup>5</sup> World Vision, “Child Miners Speak: Key Findings on Children and Artisanal Mining in Kambove DRC” (March 2013), p.10. See also: R.C. Liwanga, “Child miners face death for tech”. Available at: <http://thecnnfreedomproject.blogs.cnn.com/2013/06/26/child-miners-face-death-for-tech/>

<sup>6</sup> S. Nordband and P. Bolme, “Powering the Mobile World: Cobalt Production for Batteries in the Democratic Republic of Congo and Zambia” (November 2007), pp.30-32.

<sup>7</sup> Ibid. See also: UNICEF, “In DR Congo, UNICEF supports efforts to help child labourers return to school”. Available at: [http://www2.unicef.org:60090/infobycountry/drcongo\\_62627.html](http://www2.unicef.org:60090/infobycountry/drcongo_62627.html).

<sup>8</sup> The UN Convention concerning Minimum Age for Admission to Employment of 1973 (No 138), ratified by the Democratic Republic of Congo June 20, 2001

<sup>9</sup> The UN Convention against the Worst forms of Child Labor of 1999 (No 182), ratified by the Democratic Republic of Congo on June 20, 2001.

<sup>10</sup> Article 50 of the Law 09/001 of January 2009 on the Protection of the Child. See also Article 6(2) of the Law 015-2002 of October 2002 on the Labor Code.

aged between 16 and 18 years old are prohibited from engaging in dangerous or unhealthy work.<sup>11</sup> The Ministerial Order regulating the Working Conditions of Children in the DRC lists mining work in the catalogue of dangerous activities for children.<sup>12</sup>

Despite the legal prohibition, numerous children are still involved in mining activities. This may be explained by the fact that the root causes of child mining labor in the DRC are mainly linked to poverty and a lack of free schools which together forces children to drop-out of school and begin working. Countless children work along with their family members or for themselves in the DRC mines while others work for mine-traders who supply them with cash advances or tools, and to whom they have to sell their mined minerals at very low prices.<sup>13</sup> The working conditions in the artisanal mines are dangerous and unhealthy for children, exposing them to the risk of fatal accidents and injuries. Child-miners in the DRC exploit a variety of ores, including coltan, cobalt, gold, diamond, and cassiterite, among others. Some of these minerals, of which the DRC possesses some of the world's greatest reserves such as coltan and cobalt,<sup>14</sup> are fundamental materials in the fabrication of modern electronics.<sup>15</sup> For instance, cobalt is used to produce batteries for smart-phones, laptop, tablets, electric hybrid vehicles and others.

While the supply chains of child-mined minerals can be mapped (from child-miners to intermediaries to smelters to export to world market to manufacturers), the scope of child productivity and the profit made by those buying and using child minerals are still unknown. The principal difficulty encountered with quantifying child production and estimating the profit made from child labor is that the quantity of minerals produced by child-miners in the DRC are not recorded and are often mixed with minerals not tainted by child labor before being indistinctly exported, processed or sold at the world market. This bundling of minerals from different production sources makes it almost impossible to disaggregate the minerals produced by child labor from the rest. Additionally, smelters or electronic/ automobile manufacturers, who source directly or indirectly from child-miners,

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<sup>11</sup> Article 54 of the Law 09/001 of January 2009 on the Protection of the Child.

<sup>12</sup> Article 13 of the Ministerial Order No 12/CAB.MIN/TPSI/045/08 of August 2008 regulating the Working Conditions of Children in the Democratic Republic of Congo.

<sup>13</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>>

<sup>14</sup> University of Michigan, "Computer Industry Impacts on the Environment and Society". Available at: [http://sitemaker.umich.edu/section002group3/coltan\\_mining\\_in\\_democratic\\_republic\\_of\\_the\\_congo](http://sitemaker.umich.edu/section002group3/coltan_mining_in_democratic_republic_of_the_congo).

<sup>15</sup> Ibid. See also: Amnesty International, "Exploitation in the DRC fuels mining trade: Apple, Dell look the other way". Available at: <http://blog.amnestyusa.org/business/exploitation-in-the-drc-fuels-mining-trade-apple-dell-look-the-other-way/>

never disclose data on the total revenue for the sale of their products or parts of devices tainted with child labor.

The knowledge of the child mining productivity in the DRC and the profit generated from using child-labor input is very important because it helps to persuade those unethically benefiting from child labor to change their policies, through tracing their supply chains, providing financial incentives to poor families to send their children to schools, and supporting local authorities to improve educational systems.<sup>16</sup> For that purpose, this paper assesses the economic profit of child mining labor in the DRC by: 1) estimating the quantity of minerals produced by child-miners and the value of child-miner's production at the world market, and 2) calculating the profit made by the smelters and manufacturers involved in the supply chains of child mined minerals. The paper uses a simple method of estimation based on available data and basic economic assumptions. In estimating the corporation's profits for using child mined minerals in their products, this study focuses its analysis on one type of ore [cobalt], one kind of electronic device [the smart-phone], and one electronic manufacturer [Apple]. The rationale for choosing cobalt is because cobalt ores are used to make batteries for smart-phones, which are some of the most popular consumer devices. Likewise, the preference for Apple as a case study is solely motivated by the availability of Apple's published data on the production of its smart-phones.<sup>17</sup>

This paper is divided into two sections. The first section relates to the understanding of the context of child mining labor in the DRC. It provides an overview of the mining industry in the DRC, tracks down the root causes of child mining labor, and assesses the consequences of mining activities on children. The second section deals with the financial side of child labor. It addresses the issues of child-miner's productivity, and calculates the profit made by electronic manufacturers involved in the supply chains of child mined minerals.

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<sup>16</sup> V Edmonds and N Pavcnik, "Child Labor in the Global Economy" (2005), Vol. 19, Num. 1, *Journal of Economic Perspectives*, pp.199-220.

<sup>17</sup> It is very important to mention that this paper is not intended to assert that Apple uses child labor or to show the amount of financial benefit that Apple receives from child labor. This study could also focus on any electronic or automobile manufacturers that use cobalt ores in all or part of their products.

## I. Understanding the context of child mining labor in the DRC

### I.1. Overview of the mining industry

The mining sector in the DRC currently accounts for about 12% of the country's GDP.<sup>18</sup> Before the adoption of the 2002 Mining Code, state-owned mining companies had a monopoly of mining exploitation in the country. With the adoption of the new Mining Code, the monopoly of state-owned companies was suppressed, and artisanal mining exploitation was legally recognized.<sup>19</sup> Consequently, the mining industry in the DRC is now divided into two sectors: industrial mining which is dominated by state-owned and private companies that use industrial and modern methods of mining exploitation; and artisanal mining that uses rudimentary methods to extract and process minerals, and dominated by cooperatives of artisanal miners.

Mining exploitation in the DRC is conducted in the mines and quarries owned by state-owned mining companies, private companies that have signed partnership contracts or joint-ventures with state-owned companies,<sup>20</sup> and cooperatives of artisanal miners having received artisanal mining zones (*zone d'exploitation artisanale*) from the government.<sup>21</sup>

With regard to the artisanal mining zones, the Mining Code stipulates that these zones should be created where mineral deposits are not suitable for industrial or semi-industrial exploitation but are still viable and lucrative for artisanal mining.<sup>22</sup> Not surprisingly, in the circumstances where some artisanal mining zones have geological problems, many artisanal miners (illegally) take over “abandoned” or “unexploited” mining lands belonging to industrial mining companies to conduct their mining activities. There are also cases where industrial mining companies authorized artisanal miners to extract minerals from their mining lands in exchange for selling their products to those companies.

As stated above, in addition to their poor level of mechanization and lack of minimum standard of health and safety, artisanal mines are characterized by the

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<sup>18</sup>Michigan State University, “The Democratic Republic of Congo: Economy”. Available at: <http://globaledege.msu.edu/countries/democratic-republic-of-the-congo/economy> (last accessed 11 June 2014).

<sup>19</sup> Article 109 of the Law 007/2002 of July 2002 on the Mining Code.

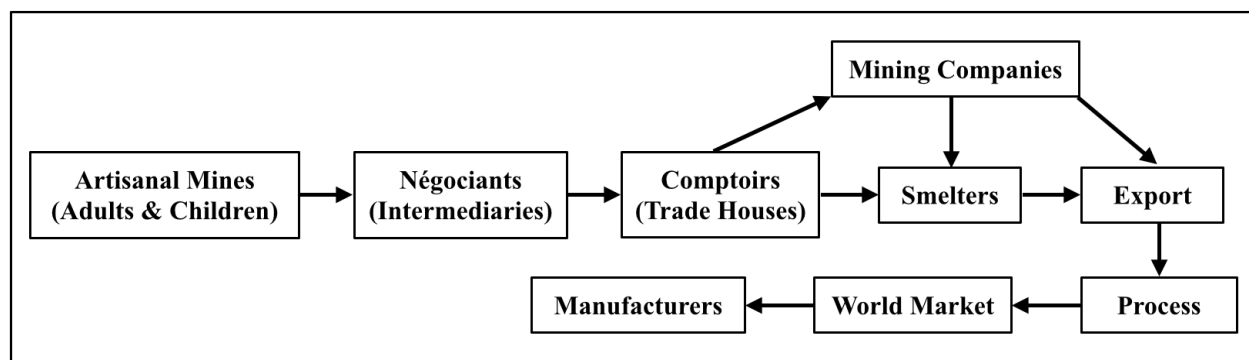
<sup>20</sup> With the liberalization of the mining exploitation in DRC, state-owned companies (such as Gecamines and MIBA) signed numerous partnership contracts or joint-ventures with private companies (Congolese and foreigners) in order to exploit deposits located within their mining concessions.

<sup>21</sup> The artisanal mining cooperatives are associations of artisanal miners that conduct artisanal mining exploitation in artisanal mining zones allocated to them by the Ministry of Mines. Unlike the public/private mining companies, artisanal miner's cooperatives are legally considered to be nonprofit organizations (Association sans but lucrative “ASBL”) rather than mining companies. Artisanal miners are free to join any cooperative of their choice. However, many artisanal miners have not adhered to cooperatives, and they work independently.

<sup>22</sup> Article 109 of the Mining Code.

large presence of children, aged between five and 17 years. There is no official data on the number of artisanal miners, both children and adults, operating in the DRC. The Mining Code requires adult artisanal-miners to hold valid cards authorizing them to conduct artisanal mining<sup>23</sup> but very few of them possess those cards, making their identification difficult. According to the World Bank, there are approximately two million artisanal miners across the DRC,<sup>24</sup> and child protection NGOs estimate that 40% of artisanal miners are children.<sup>25</sup> Child-miners are involved in all processes of mining exploitation, including digging, sifting, washing and transporting ores. Indeed, mining extraction in the artisanal mines is conducted by bare hands and feet, and with picks, shovels and buckets. Child-miners also use heavy metal tools to crush ores, which are transported on head or shoulder from the mines to the rivers, which serve as washing sites. Many child-miners interviewed said that they work more than 8 hours per day and earn between \$0.75 and \$3 per day.<sup>26</sup> These working conditions are dangerous and unhealthy for children and expose them to the risk of fatal accidents, injuries and sicknesses.

Even though the Mining Code distinguishes industrial mining from artisanal mining, both sectors are not separated in practice. Many industrial mining companies buy minerals from artisanal miners to supplement their production. The supply chains of minerals coming from the artisanal mines can be illustrated as below.



<sup>23</sup> Article 112 of the Mining Code.

<sup>24</sup> World Bank, “Democratic Republic of Congo Growth with Governance in the Mining Sector” (May 2008), Report No. 43402-ZR. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/8072/434020Revised010Box327409B01PUBLIC1.txt?sequence=2> (last accessed 11 June 2014).

<sup>25</sup> World Vision, “Child Miners Speak: Key Findings on Children and Artisanal Mining in Kambove DRC” (March 2013), p.10.

<sup>26</sup> R.C. Liwanga, “Child Miners Face Death for Tech”. Available at: <http://thecnnfreedomproject.blogs.cnn.com/2013/06/26/child-miners-face-death-for-tech/>

As illustrated above, artisanal- miners, including child-miners, extract raw ores and sell them to *négociants* (intermediaries), *négociants* re-sell the minerals to trade houses (*comptoirs*), smelters or mining companies purchase minerals from the *comptoirs*, and they then either slightly process the raw ores or export them to be (further) processed and sold on the world market.

After providing an overview mining industry in the DRC and the role of child-labor, the paper will now examine the reasons driving children to work in the mines.

## **I.2. Causes of child labor in the mines**

The principal reasons driving children into mines in the DRC include poverty, lack of educational opportunities, and lack of legal enforcement.

### **A. Poverty and socio-cultural factors**

The DRC ranks 228 out of 229 on the list of countries by GDP (gross domestic product) per capita,<sup>27</sup> and 73% of its active population is unemployed.<sup>28</sup> Additionally, the World Bank reports that more than 71% of the DRC's population is living on less than \$ 1.25 per day.<sup>29</sup> In this context of poverty, poor families living in the mining regions are forced to work in artisanal and small-scale mines as a principal source of revenue. Children are often encouraged to work to contribute to the household's income. Some children work along with their parents, while others work alone to take care of their own basic needs.

Community norms also influence the decision of children to work in the mines. Child labor has become a social norm in some mining regions in the DRC to the extent that society tolerates children's involvement in mining activities and non-worker children are sometimes subjected to derogative epithets. For example, in some communities in the DRC's province of Katanga, non-worker children are called *wabulé* (meaning derogatively a weak or useless person in the Swahili language), in contrast to *mwana-umé* (meaning a "brave child") which is used to

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<sup>27</sup> CIA, "The World Factbook" Available at: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last accessed 11 June 2014).

<sup>28</sup> AFDB/OECD 2012, "Congo, Democratic Republic" (2012) Available at: <http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/PDF/Congo%20Democratic%20Republic%20Full%20PDF%20Country%20Note.pdf> (last accessed 12 June 2014).

<sup>29</sup> Ibid.



describe children who work in the mines and contribute to the family's household income.<sup>30</sup>

## **B. Lack of educational structure**

The DRC Constitution guarantees free and compulsory primary education for every child.<sup>31</sup> Unfortunately, these constitutional provisions are not yet fully enforced. There are no schools in most remote mining areas, and where schools exist, primary education is often not free. Primary school-aged children are often required to pay school fees in both private and public schools, and if they cannot pay they are forced out of the school. Some child-miners try to both work in the mines and attend school. These structural issues with the education system have contributed to children to work in the mines and to a dramatic decrease in school enrollment in the country, falling from 90% in the 1980s to 58% in 2008.<sup>32</sup>

## **C. Lack of legal enforcement**

The Labor Code and the Law on the Protection of the Child prohibit children from engaging in dangerous and unhealthy work, including mining labor.<sup>33</sup> Articles 162 and 187 of the Law on the Protection of the Child respectively punish cases of child trafficking with imprisonment up to twenty years, and cases of the worst forms of child labor with imprisonment up to three years. Despite the existence of these legal provisions, no single prosecution has ever been initiated against child labor offenders.<sup>34</sup> Impunity of child labor offenders permits the persistence of child exploitation in the mines in the DRC. Three reasons explain the impunity of perpetrators of child mining labor offenses, namely: the inefficient training of law enforcement to investigate and prosecute cases of child labor offenses;<sup>35</sup> the corruption within the justice system;<sup>36</sup> and the conflict between the need to survive versus the application of the rule of law which leads law enforcement officers to

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<sup>30</sup> R.C. Liwanga, "Adopting an Anti-Human Trafficking Law in the DR Congo: A Significant Step in the Process of Combating Trafficking" (2014), Vol. 1, Iss.1, *Slavery Today Journal- A Multidisciplinary Journal of Human Trafficking Solutions*, pp.13-45.

<sup>31</sup> Article 43(5) of the Constitution of the Democratic Republic of Congo of 2006.

<sup>32</sup> UNESCO, "L'évaluation de l'éducation pour tous à l'an 2000 : République Démocratique du Congo". Available at: [http://www.unesco.org/education/wef/countryreports/congo\\_dem/rapport\\_2.html](http://www.unesco.org/education/wef/countryreports/congo_dem/rapport_2.html) (last accessed 12 June 2014).

<sup>33</sup> Article 53 of the Law on the Protection of the Child; Article 3 of the Labor Code.

<sup>34</sup> R.C. Liwanga, "Adopting an Anti-Human Trafficking Law in the DR Congo: A Significant Step in the Process of Combating Trafficking" (2014), Vol. 1, Iss.1, *Slavery Today Journal- A Multidisciplinary Journal of Human Trafficking Solutions*, pp.13-45.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

opt not to prosecute parents who exploit the labor of their own children for the best interest of the children.

### **I.3. Consequences of child mining labor**

Mining labor has negative physical, psychological and developmental effects on children. The worst working conditions in the mines expose child-miners to the risk of injuries, sicknesses and fatal accidents. Many children are killed due to soil collapses while extracting minerals underground.<sup>37</sup> Others are infected with pneumonia for inhaling dust in the mines, or dysentery or toxic diarrhea for drinking non potable water in the mines.<sup>38</sup> A report from PACT also revealed cases where child-miners were injured due to rock falls in the mines, which left some of them with physical deformation preventing them from the possibility of working again in the future.<sup>39</sup> Additionally, girl child-miners are often sexually harassed by men and boys in the mines, and are often infected with HIV and AIDS or undesired pregnancies.<sup>40</sup> Children working in mines often dropout school or have irregular school attendance when school fees cannot be paid, limiting the child-miner's hope for a better life.<sup>41</sup>

## **II. Financial side of child labor**

This section analyzes the economics of child mining labor. As previously mentioned, children are involved in the exploitation of numerous types of minerals in the DRC, but for the purpose of this study, the paper focuses exclusively on the exploitation of cobalt ores. This section seeks to answer the following questions: what is the estimate of the quantity of cobalt that child-miners produce in the DRC? And what is the approximate profit made by electronic manufacturers involved in the supply chains of cobalt produced by child-miners?

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<sup>37</sup> R.C. Liwanga, "Child miners face death for tech" CNN Freedom Project: Ending Modern-Day Slavery, June 26, 2013. Available at: <http://thecnnfreedomproject.blogs.cnn.com/2013/06/26/child-miners-face-death-for-tech/> (last accessed 26 June 2014).

<sup>38</sup> World Vision, "Child Miners Speak: Key Findings on Children and Artisanal Mining in Kambove DRC" (March 2013), pp.29-31. See also: J Sweeney, "Mining giant Glencore accused in child labour and acid dumping row". Available at: <http://www.theguardian.com/business/2012/apr/14/glencore-child-labour-acid-dumping-row> (last accessed 26 June 2014).

<sup>39</sup> PACT, "Breaking the Chain: Ending the Supply of Child-mined Minerals" (2013), p.24..

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

## II.1. Estimation of child cobalt productivity

In order to determine child's cobalt productivity in the DRC, the paper uses a simple method of estimation based on available data. It also assumes the child's daily production as a quasi-fixed factor.

### A. Facts

The World Production of cobalt in 2012 was estimated at 110,000 tons (T),<sup>42</sup> of which 60,000 tons were produced by the DRC alone (representing 55% of the World Production).<sup>43</sup>

According to the World Bank, about 75-80% of the DRC production of cobalt comes from artisanal mining.<sup>44</sup> Additionally, approximately 100,000 to 150,000 people work in the cobalt artisanal mines in the DRC,<sup>45</sup> of which 40,000 to 50,000 are children.<sup>46</sup>

### B. General assumptions

Assume that  $C_p$  represents the total quantity of 60,000 tons (T) of cobalt produced by the DRC in 2012, and that  $C_{pa}$  corresponds to 75% of the DRC production of cobalt coming from the artisanal and small-scale mines. If we multiply  $C_p$  by 75%, we can calculate the exact value of  $C_{pa}$ . The following equation calculations can be made:

$C_{pa} = C_p \times \frac{75}{100}$ . This implies  $C_{pa} = \frac{60,000T \times 75}{100} = 45,000T$  of cobalt produced by artisanal miners (Equation 1).

<sup>42</sup>U.S. Geological Survey, "Mineral Commodity Summaries" (2013). Available at: <http://minerals.usgs.gov/minerals/pubs/commodity/cobalt/mcs-2013-cobalt-pdf>.

<sup>43</sup> Ibid.

<sup>44</sup> World Bank, "Democratic Republic of Congo Growth with Governance in the Mining Sector" (May 2008), Report No 43402-ZR, pp.56-57. See also: E&MJ, "Mining in the Democratic Republic of Congo: A Journey to Africa's Mineral Heartland". January 2013, pp.4-5.

<sup>45</sup> S. Nordband and P. Bolme, "Powering the Mobile World: Cobalt Production for Batteries in the Democratic Republic of Congo and Zambia" (November 2007), pp.30-32.

<sup>46</sup> Ibid. See also: UNICEF, "In DR Congo, UNICEF supports efforts to help child labourers return to school". Available at: [http://www2.unicef.org:60090/infobycountry/drcongo\\_62627.html](http://www2.unicef.org:60090/infobycountry/drcongo_62627.html).

Assume  $e$  is the total number of 45,000 children working in the cobalt artisanal mines, and that each child-miner produces 0.5kg of cobalt per day  $(c / d)$ .<sup>47</sup>

Assume that  $C_{pe}$  is the quantity of cobalt produced by of each child-miner per year. If we multiply  $(c / d)$  by 365 (representing the number of days per year), we can calculate how many of  $C_{pe}$  there are. The following equation calculations can be made:

$C_{pe} = c / d \times 365 \text{ days}$ . This implies  $C_{pe} = 0.5 \text{ kg} \times 365 = \mathbf{182.5 \text{ kg}}$  per child per year (Equation 2).

Assume that  $Ct_{pe}$  is the total quantity of cobalt yearly produced by all child-miners ( $e$ ). If we multiply  $C_{pe}$  by  $e$ , we can calculate how many of  $Ct_{pe}$  there are. The following equation calculations can be made:

$Ct_{pe} = C_{pe} \times e$ . This implies  $Ct_{pe} = 182.5 \text{ kg} \times 45,000 = \mathbf{8,212,500 \text{ kg (or 8,212.5 T)}}$  (Equation 3).

Based on the above calculations, about 8,212.5 Tons of cobalt were produced by child-miners in 2012. This represents approximately 14% of the DRC's total production and 7.5% of the World total production of cobalt.

## II.2. Electronic manufacturer's profit from child labor

Under this section, the corporation Apple is used only as a case study to estimate the profit made by electronic manufacturers using child-tainted cobalt in the process of making their devices. It is understood that cobalt is used as the principal material to produce batteries for numerous electronic items; but in this case, the focus is made only on smart-phones. Therefore, Apple's total profit from

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<sup>47</sup> The 0.5 kg of cobalt is a quasi-fixed factor that one assumes as a daily production of each child-miner. This assumption is just to facilitate the calculus of the approximate cobalt production by child-miners; and it should not be understood that every child-miner only produces 0.5kg of cobalt per day. In fact, most of the child-miners that the author interviewed in artisanal mines in the DRC's province of Katanga between January and February 2013 alleged that their daily production of *heterogenite* (which is a mineral rich in cobalt and copper ores) is much higher than 0.5kg.

child's cobalt is estimated by using simple method of calculation taking into account the company's data on its total revenue for the sale of iPhones, the quantity of iPhones sold, and the assumption of the quantity of iPhones containing child's cobalt.

## A. Facts

The combined quarterly reports from Apple for the year 2013 reveal that the company sold about 150,257,000 iPhones and made about \$ 91,279 million revenue for the sale of those iPhones alone.<sup>48</sup>

According to Oeko-Institute, there are 6.3 grams (g) of cobalt in batteries per smart-phone (including iPhone).<sup>49</sup>

## B. General assumptions

### *Quantity of tainted materials used*

Assume that  $Q$  is the quantity of cobalt used by Apple in the batteries of its 150,257,000 iPhones ( $iP$ ), and that one iPhone's battery contains 6.3 g of cobalt ( $c_o$ ). If we multiply  $iP$  by  $c_o$ , we can calculate how many of  $Q$  are used. The following equation calculations can be made:

$Q = iP \times c_o$ . This implies  $Q = 150,257,000 \times 6.3 \text{ g} = \mathbf{946,619,100 \text{ g (or 946.6 tonnes)}}$  (Equation 4).

Assume that only 1% of the cobalt used by Apple for its iPhones' batteries was coming from the DRC ( $Q_1$ ). If we multiply  $Q$  by 1%, we can calculate how many of  $Q_1$  are used. The following equation calculations can be made:

$Q_1 = Q \times \frac{1}{100}$ . This implies  $Q_1 = \frac{946,619,199 \text{ g} \times 1}{100} = \mathbf{9,466,191 \text{ g}}$  (Equation 5).

<sup>48</sup> Apple, "2013 Unaudited Summary Data". Available at: <http://images.apple.com/pr/pdf/q1fy13datasum.pdf>. See also: <http://images.apple.com/pr/pdf/q2fy13datasum.pdf>, <http://images.apple.com/pr/pdf/q3fy13datasum.pdf>, and <http://images.apple.com/pr/pdf/q4fy13datasum.pdf>.

<sup>49</sup> Oeko-Institut e.V., "Recycling critical raw materials from waste electronic equipment" (2012), pp.38-39. Available at: <http://www.oeko.de/oekodoc/1294/2011-419-en.pdf>.

Assume that only 14% of the 1% of the DRC cobalt (used by Apple) was tainted with child labor ( $Q_2$ ). If we multiply  $Q_1$  by 14%, we can calculate how many of  $Q_2$  are used. The following equation calculations can be made:

$$Q_2 = Q_1 \times \frac{14}{100}. \text{ This implies } Q_2 = \frac{9,466,191g \times 14}{100} = \mathbf{1,325,266.7 \text{ g}} \text{ (Equation 6).}$$

Assume that  $iP_1$  represents the number of the tainted iPhones (which are produced with child labor's cobalt), and that one iPhone contains 6.3g of cobalt ( $c_o$ ). If we divide  $Q_2$  by  $c_o$ , we can calculate how many of  $iP_1$  are produced. The following equation calculations can be made:

$$iP_1 = \frac{Q_2}{c_o}. \text{ This implies } iP_1 = \frac{1,325,266.7}{6.3} = \mathbf{210.359.8 \text{ tainted iPhones}} \text{ (Equation 7).}$$

### ***Profit made with tainted iPhones***

Assume that  $R$  corresponds to the revenue of \$91,279 million that Apple made by selling all of its 150,257,000 iPhones ( $iP$ ) in 2013, and that  $Rm$  represents Apple's revenue for selling a single iPhone. If we divide  $R$  by  $iP$ , we can calculate the value of  $Rm$ . The following equation calculations can be made:

$$Rm = \frac{R}{iP}. \text{ This implies } Rm = \frac{\$91,279,000,000}{150,257,000} = \mathbf{\$607} \text{ (Equation 8).}$$

Assume that  $C$  represents Apple's costs in producing a single iPhone (including costs of parts, labor, distribution, intellectual property, and others), which is equal to 60% of the revenue made from selling one iPhone. If we multiply  $Rm$  by 60%, we can calculate the exact value of  $C$ . The following equation calculations can be made:

$$c = Rm \times \frac{60}{100}. \text{ This implies } c = \frac{\$607 \times 60}{100} = \textbf{\$364} \text{ (Equation 9).}$$

Assume  $Gp$  is Apple's gross profit for a single iPhone, and that  $Rm$  is Apple's revenue of \$607/iPhone and  $C$  represents the total costs for producing an iPhone. If we subtract  $Rm$  from  $C$ , we can calculate the value of  $Gp$ . The following equation calculations can be made:

$$Gp = Rm - c. \text{ This implies } Gp = \$607 - \$364 = \textbf{\$243 per iPhone} \text{ (Equation 10).}$$

Assume that out of all parts that comprise an iPhone (such as display screen, circuit board, keyboard, batteries and frame), the batteries ( $b$ ) alone represent 11 % of the value of the iPhone;<sup>50</sup> and that  $Gp_1$  is Apple's profit coming solely from the value of iPhone's batteries per iPhone sold. If we multiply  $Gp$  by  $b$ , we can calculate the value of  $Gp_1$ . The following equation calculations can be made:

$$Gp_1 = Gp \times b. \text{ This implies } Gp_1 = \frac{\$243 \times 11}{100} = \textbf{\$26.73 per batteries per iPhone} \text{ (Equation 11).}$$

Assume that  $P_e$  is Apple's profit for selling its 210,359.8  $iP_1$  (iPhones containing batteries made with cobalt tainted with child labor). If we multiply  $Gp_1$  by  $iP_1$ , we can calculate the value of  $P_e$ . The following equation calculations can be made:

$$P_e = Gp_1 \times iP_1. \text{ This implies } P_e = \$26.73 \times 210,359.8 = \textbf{\$5,622,917} \text{ (Equation 12).}$$

Based on the above calculations, Apple has made total profit of \$ 5.6 million in 2013 selling iPhones with parts tainted with child mining labor. This amount

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<sup>50</sup> The Apple's online store advertises that the batteries' replacement for an iPhone costs \$79. See: <http://www.apple.com/batteries/replacements.html> (last accessed 24 July 2014).

may seem to be insignificant given the company's total annual revenue which is evaluated in billions of dollars. Nevertheless, it should be noted that the above estimated profit made from child-labor input only relates to one type of device produced (iPhone) and one part of that device (battery). In other words, electronic manufacturer's profit coming from child mining labor may be much higher if one takes into account that 1) child-labor cobalt is also used to produce batteries for the rest of devices such as tablets, laptop and others; and 2) despite the use of cobalt for batteries, child-miners also extract coltan ores which are utilized to make other parts of electronic devices including the circuit boards for smart-phones.

## **Conclusion**

The purpose of this paper was to estimate the contribution of child labor to the production of mined minerals and calculate the annual profit made by manufacturers involved in the supply chains of child-labor minerals. This exercise was carried out using the simple method of estimation based on basic economic assumptions and available data on artisanal mining in the DRC.

According to the results, child-miners contributed approximately 14% of the DRC's total cobalt production and 7.5% of the world production of cobalt in 2012. The calculations also demonstrate that electronic manufacturers gain a yearly profit of several millions from the purchase of minerals tainted with child labor or for their use of child mined minerals in their electronic devices, such as smart-phones.

As earlier mentioned, the author chose to use Apple as a case study to estimate the profit made by electronic manufacturers using child-tainted cobalt in their products due to the wealth of data that the company provides to the public. Even though it is evidenced that child mined minerals are sold at the world market, it should not be understood that this paper suggests that Apple or its battery suppliers definitively sources all or parts of their cobalt ores from the DRC's artisanal mines where there is a prevalence of child labor. This paper only states that it is statistically likely, partly due to Apple's market share, that a significant amount of its raw minerals have been tainted in its production process.

The lack of transparency in the supply chains of child-labor minerals makes it difficult to determine the actual quantity of child minerals used by each electronic manufacturer. Therefore, all corporations involved directly or indirectly in the supply chains of child-labor minerals should adopt effective policies to map the origins of their materials, ensure that they are free from child labor, and encourage their competitors in the industry to do the same.



## **Book Review:** ***Enslaved: True Stories of Modern Day Slavery***

**Authors: Jesse Sage and Liora Kasten**

PALGRAVE MACMILLAN, 2008, 218 pages

**Reviewed by Benjamin Thomas Greer**

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Human trafficking is an abomination that decimates the lives of the trafficked, fracturing their families, and is an act which exploits their labor and bodies, treating them as a renewable resource. Trafficking in people is the fastest growing crime:<sup>1</sup> not only in the numbers of victims and profits, but in the world's consciousness.<sup>2</sup> According to the United States, State Department's 2010 report, there are over twelve million adults and children in forced labor, bonded labor, and forced prostitution worldwide.<sup>3</sup> As this emerging issue grows in awareness it is imperative to bear in mind that the victims are people and not just statistics.

*Enslaved: True Stories of Modern Day Slavery*, is a compilation of first-person heart breaking stories of human trafficking and enslavement. Authors Jesse Sage and Liora Kasten are directors of the American Anti-Slavery Group. Jesse Sage has appeared on National Public Radio, BET, Pacifica Radio, and has spoken widely across the country against slavery.

These stories are not told by an author summarizing their notes from interviews, rather they are the actual words of the victim themselves - their unvarnished words, written and translated in their own unique verbal dialects, using their own syntax. Telling their stories in this format allows the reader to gain

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<sup>1</sup> Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(b)(8) (2008) [congressional findings have concluded that "[t]rafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises" and "is the fastest growing source of profits for organized criminal enterprises worldwide."].

<sup>2</sup> See Donna Hughes, *The "Natasha" Trade: Transnational Sex Trafficking*, Nat'l Inst. of Just. J. 13 (2001) (citing Michael Platzer of the United Nations Center for International Crime Prevention), <<http://www.ncjrs.gov/pdffiles1/jr000246c.pdf>> accessed 30 November 2011).

<sup>3</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 341 (10th ed., 2010), <<http://www.state.gov/documents/organization/142979.pdf>> accessed 30 November 2011).

a deeper understanding of their victimization. As the reader quiets their mind, you are able to hear the voice of the presenter. Within their words you will find their hurt palpable, their anger tangible, and their confusion understandable. The authors have done a commanding job of allowing the victim to tell their own story.

Here are just three of the stories you will experience:

Jill Leighton, United States

“As a runaway at age fourteen, your old concerns quickly disappear and are replaced by new, life threatening ones.” (p. 62) Spotted in a mall Jill was quickly seduced by the flattery and attention of Bruce. His offer of a job as an actress and a place to stay with him was too enticing not to pass up. All she had to do was go with him to his office and audition for the job. Jill thought it odd that she be required to wear a blind fold on the car ride but was too embarrassed to question it. Hearing the sounds of a roll up garage door and being lead down wooden steps to a musty, moldy smelling basement – Bruce’s insistence that they were going to his basement audition room didn’t feel right. Now scared Jill began to cry enraging Bruce. Demanding to know why she was crying – especially when all he was trying to do was help her – Jill began to apologize. Bruce reapplied the blind fold, grabbed her hands binding them together and began whipping her. Jill passed out. When she awoke she realized that she was suspended by her hands above the ground. It had been three days.

Still arguing some veil form of employment, Bruce forced Jill to sign a contract. “The contract said explicitly that I was a sex slaved owned by Bruce. I would be available to him sexually anytime he desired in any way her desired. I would never deny him anything, never wear underwear, never escape and most important, at penalty of death, never tell a soul about my new status as a slave.” (p. 68) Before Bruce could sell Jill, he needed to teach her how to act appropriately. Jill endured what she calls the “training period.” Mistakes, as judged by Bruce, were punished with a cattle prodding or whippings. Bathing consisted off Jill holding her breath or being anally penetrated face-first under water. “I had been strangled with a rope until I passed out during sex enough times to understand that my life was completely in his hands. (p. 69) He took Jill to the hairdresser, forcing her to bleach her hair so many times it would fall out in clumps. Because customers would desire blonds and Jill’s hair was to fine to continue to bleach, Bruce saw this as noncompliance; her punishment – a stun gun to her breasts. When Bruce determined the “training” period was complete he arranged her first client. \$140 later the rental was complete.

For fun Bruce would hold card games with his friends where Jill would dress provocatively, wearing a short mini-skirt without panties as required under her contract. Bruce would show off to his poker buddies by lift her skirt and penetrate her in front of all. Bruce would monetize Jill by placing bets with her body. “At more than one poker party, a losing hand for Bruce meant another player got to ‘take a dip’ inside of me.” (p. 72)

Bruce’s crimes continued for almost three years. He attempted to perform an abortion on Jill after she became pregnant. “I had been hung from the ceiling by my wrists while Bruce shoved a broken, long-neck bottle into my vagina in an attempt to remove the fetus.” (p. 76) At one point Jill was tied to bumper of Bruce’s car and told that he was going drag her until she was nothing but hair and a grease stain.

Jill’s captivity came to an abrupt end. Bruce was arrested on unrelated charges and Jill was able to finally escape. Jill laments that the arresting officers gave her no support – despite finding her blindfolded and locked in a closet. Her requests for a female officer went unanswered and Jill herself was threatened with arrest. She grabbed whatever money she could find laying around and ran out the back door.

Jill summarizes her story by saying, “I write this story so that maybe someone who hears it will somehow be able to avoid the pain that was forced on me, and for others to know that things like I experienced really do happen – and they can happen to anyone’s daughter, sister, girlfriend, niece, or wife.” (p. 79)

### Beatrice Fernando, Lebanon

Offered a salary of two thousand rupees per month with free room and board, Beatrice saw an opportunity to better the life of her family. She left her home country of Sri Lanka to work a domestic housekeeper in Lebanon. Paying a fee to sign the contract was the start of her victimization. Landing at her destination the first order of business for the employer broker was to confiscate her passport. Displayed like trinkets and selected by a buyer Beatrice was whisked away in a luxurious car into the nearby mountains. At first the work difficult, but Beatrice managed. Towards the end of her first month she got sick, which enraged her employer. Without pay, Beatrice was snatched out of her bed shoved into a cab and left on the side of the road. Not knowing where to go Beatrice sought out the only person she knew - the employer broker.

Displayed like a trinket again, she was once again selected by an employer. This employer forced Beatrice to clean her menstrual stained underwear with her bare hands and would beat her in the head with her household cleaning tools. Locked in a house with no viable means of communication Beatrice was

effectively isolated. Starved, only being fed the table scraps from the children, Beatrice tried to continue her daily chores; however the abuse continued. “[N]ot a single day went by without a knock on the head, a sharp twist of the ear, a slap on the face, or a demanding insult...” (p. 105) A vain attempt of escaped ended with a beating and an order to the guards “to shoot me if they ever caught me outside the house.” (p. 106)

Fashioning a make shift rope out of saris, Beatrice attempted to repelled down off of a four story balcony. Because of her lack of strength she was not able to complete her escape. She crawled back into the house, staring up at the ceiling praying to God for help. “*Lisha is going to kill me.*” (p. 109) She vowed to make one final attempt, an attempt that would not stop in a half measure. Beatrice would jump from the fourth story, surviving the fall. She awoke in the hospital, paralyzed with most of her limbs broken. She was able to convince the employer broker (presumably because she no longer had value to him) to send her back home.

### Harry Wu, China

Human trafficking is often thought of as a street crime conducted by vicious predators or gangs. Often overlooked is institutional human trafficking – forced labor. While other victim’s story in this book focus on the physical or physiological pain they endured Mr. Wu story focuses on hunger. His daily struggle and search for food in the Chinese government labor camps.

Laogai<sup>4</sup> means “reform through labor” in Chinese. Laogai is a common tool used by which the Chinese government enforces many of its judicial rulings. These institutions are incredibly hard on the people sentenced there. They are forced to work in sub-human conditions while being starved. The Government has refused repeated requests of the Red Cross and the United Nations seeking access to check on the well being of the camps prisoners. Harry Wu was an inquisitive university student and was arrested without explanation after a group of fellow students held a meeting to criticize and denounce him. Wu was sent to a Laogai where he spent 19 years in 12 different camps, forced to dig trenches, harvest crops, and mine coal. The camp where his story takes place is Branch 583 located in the western zone of the Qinghe Farm. It held 1,800 prisoners, housed in twenty-plus rows of houses with toilets, the kitchen, solitary confinement and tool sheds surrounding the periphery. The prisoners sleep ten to a twenty-five-foot-long kang (a heated bed).

A centralized tool Mr. Wu uses to convey the systematic enslavement is the wotou bun. The wotou bun would provide short term sustenance and life, but also

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<sup>4</sup> Added to the Oxford English Dictionary in 2003.

would rob the consumer of long term nourishment at the same time. The chemical make-up would vary camp to camp but wotous are generally a sorghum flour based (sometimes ground corn cobs) roll that contained about fifty percent bran. (p. 119) Prisoners received these rolls two at a time, twice a day. The buns were often targets of sneak attacks by other prisoners looking to steal calories. Each person also received one ladleful of vegetable soup, which had a few leaves of yellowed greens and was salty. But the majority of the meal was the wotou. Some of the other camps would provide wotous that were more sorghum than brand which would cause severe and insufferable constipation. "Many of us had helped dig the lumps of feces from each other's anuses... eating the wotous made from sorghum flour, the feces would not come out. It was extremely painful. The digging caused many of their anuses to bleed, but they continued to dig." (p. 121) The struggle for food was not limited to the rations provided.

Much of the labor required on a daily basis demanded the digging of ditches. Mr. Wu was quickly schooled by other inmates that this digging could unearth valuable nutrition. He was told, when digging strike near existing holes in the ground. You may fortunate enough to uncover field mouse, frog or snake meat to eat. Apparently mice holes were the best. Mice had a habit of storing all sorts of grains in underground catacombs and uncovering one would unveil a treasure trove of food. Harry tells one story about coming across a massive mouse nest. Well, actually the nest was discovered by another prisoner who was excessively jubilant. One of the other prisoners discovered the hole and called for Harry to help dig. Harry dug furiously and when he was convinced of its legitimacy, he stopped and ordered the founding prisoner to leave the dig. "I found it! It was I who called you here. You helped me dig, so I can share some with you!" (p. 132) Food equaled survival. "Without the slightest hesitation, I took one step back, then summoned all of my strength and punched him. He fell onto the bank." (p. 132) Harry would claim this stash for myself – only to be shared with his trusted compatriots.

One day, while digging a trench another prisoner had uncovered several bones. Nobody was sure as to the origin of the bones, but recognizing that they could be used as soup stock he wrapped them up in his clothes and smuggled them back to the camp. The group had a discussion as to the likelihood of the bones being human or possibly from pigs or cows. In the end some were will to convince themselves that the bones were not human and bone soup was made.

A part of the labor duties was to plant freshly tilled fields. This created a difficult problem for the prison guards. Starving inmates will have ready access to grains. "Anyone who surreptitiously eats the wheat seeds will be locked up in solitary! All of the seeds have been soaked in pesticide. You decide if you want to live or die!" (p. 127) One cruel twist Mr. Wu recalled was, in his observation, the stronger a person was, the less able he was to withstand hunger. Most of those who

died were strong young men or the elderly, who “were like candles in the wind from the start.” (p. 129) He attributed the falling of the strong to their greater demands for fuel and energy. The institutional enslavement had found that careful balance of nourishment at which the ration needed to provide to continue the demanded labor without providing excess energy. Scientifically denying the strength required to attempt an escape. Harry and the other prisoners talked about escape but he relented – believing that escape was not a smart thing to do.

Escape, even in part, meant success for the prisoners. One of Harry’s friends was caught stealing and was summarily sentenced to time in solitary confinement. Preferring the infirmary to solitary, while being dragged to the hole he grabbed a “shovel and ferociously chopped off the little finger on his own left hand.” (p. 139) He shouted “F--- your mother!” and threw it over the wall. “It was as if part of him were free now.” (p. 139) Harry’s friend never recovered from the self inflicted wound and would die days later incoherently mumbling “F--- his mother!” “F--- his mother!” “F--- his mother!”

Mr. Wu was released in 1979, some 19 years after being seized at his university for criticizing the Communist Party. After teaching at the University of California at Berkeley, he established the Laogai Research Foundation.<sup>5</sup>

Slavery is a crime in almost every nation; yet, slavery exists in almost every nation. The trafficking and subjugation of another is not a new practice.<sup>6</sup> In a world where predators continue to disregard the human rights and physical wellbeing of their fellow man, the innocent and vulnerable will continue to be at risk of subjugation for the sole benefit of another. We cannot begin to formulate solutions for a problem that we are not intimately aware of. Traffickers thrive in and require a clandestine environment which cloaks their illicit conduct. If closely examined, exploitation and victimization *will* be found in almost every segment of our communities. *Enslaved: True Stories of Modern Day Slavery* provides an important first step in gaining a deeper understanding the victimization survivors endure.

As governments and service providers approach solving the issues and challenges this scourge presents, it is paramount that we maintain a strong understanding that the victim is a person, not a case number or a statistic. By the explicit sharing of these stories, the veil of secrecy begins to recede. If you think you might know of an enslaved person, you can call the Human Trafficking Information and Referral Hotline: 1-888-373-7888 (Within the United States).

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<sup>5</sup> [www.laogai.org](http://www.laogai.org)

<sup>6</sup> 22 U.S.C. §7101(B)(3) (West 2010).

**Recommendation:**

This book is well suited for a general introduction of human trafficking as it artfully describes the horrendous nature of this crime and the full impact survivors endure. These stories also serve as a strong reminder for academics, as to enormity of the issue and help translate the statistical analysis and data to have real and tangible affect.