

## A Project in the Americas

The first step in stopping the trafficking of women and children for sexual exploitation is to obtain and analyze data that more fully addresses the scope and nature of the problem. The International Human Rights Law Institute (IHRLI), in partnership with the Inter-American Commission of Women and the Inter-American Children's Institute, both of the Organization of American States (OAS), have chosen to begin this massive undertaking in the Americas as part of a worldwide study. The initial project focuses on fourteen countries that represent the linguistic and cultural diversity of the Americas. They are: Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Belize and Nicaragua. In each country, IHRLI has selected a local counterpart among non-governmental organizations to act as a partner. These partners will work with local civil society and state organizations, thereby providing an in-depth understanding of the cultural, socio-economic and political landscape of each country. In each country the Institute and its partners will:

- Interview government officials and make a diagnosis of each state's recognition, definition of and reaction to the problem;
- Assess national legislation regarding trafficking to determine the extent to which the practice can be prosecuted in each country and whether current legislation complies with the country's international obligations;
- Assess national enforcement policies and practices;
- Compile data from all available sources of the patterns and practices of trafficking and exploitation;
- Compare results to produce a national diagnosis of the phenomenon from the 14 countries;
- Compare results to produce a national diagnosis of the American phenomenon; and
- Make recommendations to combat the phenomenon.

### Expected Outcomes

Empirical data will make it impossible for governments and international organizations to continue their ignorance and denial of the phenomenon and the terrible toll it takes on the lives of the world's most vulnerable people. The investigation will lay the groundwork for effective, national, regional and international means to combat the phenomenon and to put an end to this cruel form of human slavery.

Moreover, the methodology developed in the Americas will serve as a model for other regional investigations of the trafficking of women and children for sexual exploitation.

The anticipated outcomes of IHRLI's work in the Americas are:

- Provide civil society with the necessary data to combat this criminal exploitative phenomenon.
- Educate families, children, schools, the media and public officials as a means of prevention.
- Provide governments and legislative bodies with the factual bases needed to enact legislation (this is not an effort to influence legislation or bring about legislation).
- Provide the OAS and member-states with the factual bases to develop regional treaties.
- Increase awareness of the trafficking phenomenon in international civil society through worldwide dissemination of the investigations' findings.
- Improve capabilities to undertake the same type of fieldwork in other regions of the world.

## International Human Rights Law Institute

DePaul University's International Human Rights Law Institute is uniquely qualified to conduct this study. Established in 1990 to develop and promote international human rights law and international criminal justice through fieldwork, documentation, publication and advocacy, the Institute has carried out a wide range of human rights activities, and has a particular expertise in investigative research.

Between 1992-94, it served as the data-gathering and analysis center for the United Nations Commission of Experts to Investigate Violations of Humanitarian Law in the Former Yugoslavia, chaired by IHRLI President, Professor M. Cherif Bassiouni. In addition to this work in the former Yugoslavia, the Institute's other investigative projects have included: interviewing witnesses to an alleged massacre of peasants in Guatemala in 1995; observing the first open elections in Guatemala; participating through its Executive Director in the United Nations Truth Commission for El Salvador which investigated a number of massacres and crimes during that civil conflict; and reviewing the state of Rwanda's judiciary and preparing recommendations on how best to prosecute those responsible for the 1994 genocide in that country. The Institute has ongoing programs in support of establishing the International Criminal Court, as well.

This year, two Institute student Fellows handled the first asylum case in the United States involving a Thai woman illegally trafficked in the U.S. for commercial sexual exploitation. The case is still pending.

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# INVESTIGATING INTERNATIONAL TRAFFICKING IN WOMEN AND CHILDREN FOR COMMERCIAL SEXUAL EXPLOITATION

## PHASE I: THE AMERICAS

In Cooperation With the INTER-AMERICAN COMMISSION OF WOMEN AND THE INTER-AMERICAN CHILDREN'S INSTITUTE OF THE ORGANIZATION OF AMERICAN STATES

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THE INTERNATIONAL HUMAN RIGHTS LAW INSTITUTE DEPAUL UNIVERSITY COLLEGE OF LAW

### The Problem

To most people, slavery is a terrible relic of the past. Yet, an estimated 2,000,000 women and children are held in sexual servitude throughout the world. Eighty percent of them are under the age of 24, and an estimated 50% were internationally trafficked from one country to another. The precise numbers are unknown and difficult to determine for lack of empirical research in the different countries where this criminal phenomenon exists. Nevertheless, it is estimated that yearly, between 100,000 and 200,000 young women and children, some as young as 6 years old, are trafficked for sexual exploitation from one country to another.

Anecdotal accounts suggest that those held in sexual servitude have a short life-span. Most of them die within a few years due to abuse, torture, neglect, and disease. A reasonable statistical projection is that 15% of the sexually exploited population, or 30,000 women and children, die every year. Over a ten year span, it is more than those killed by the atomic bombs of Hiroshima and Nagasaki. This is why it is the most compelling human rights problem of our time. Yet, this tragic situation is causing few concerns among most governments of the world.

The phenomenon is fueled by poverty and indifference to the rights of women and children, as well as conflict and political upheaval in various parts of the world. The advent of globalization has exacerbated the problem by creating what some call market opportunities for traffickers in human beings and for their exploiters. Liberalized borders and ease of movement of people across them have made international trafficking in persons a profitable criminal activity. But when the illegal trafficking of human beings across borders is connected to their sale into sexual servitude, the activity becomes significantly more profitable. It is the third most lucrative international criminal activity after drug and arms trafficking.

The worldwide situation is worsened by the fact that the persons trafficked are not deemed victims in most countries into which they are imported. Instead, they are considered undocumented aliens whose illegal presence makes them subject to imprisonment and to deportation to the countries from which they have fled. They are also doubly victimized since by working in the sex industry, they are also working in an illegal area. They rarely receive legal or other support from the countries in which they are imported and placed in sexual bondage. Moreover, they have no incentives for cooperating with governments in identifying those who illegally trafficked and exploited them.

Because of the high profitability of this activity, it has become part of small and large criminal organizations in many countries. Smaller organizations limit themselves to cross-border illegal smuggling of persons, or combine that activity with the sale of women and children to other organizations. Larger organizations that directly exploit trafficked persons may also involve themselves in the cross-border activity. Once in-country, the trafficked persons are resold like commodities to other exploiters.

The regional manifestations of this worldwide criminal phenomenon differ. The patterns of trafficking from Africa to Europe differ from those within Southeast Asia or the Indian Sub-Continent. Invariably, however, the end result is that women and children become hopelessly trapped in sexual slavery without much chance to extricate themselves from it alive.

*"I must not consider the poor peasant or a poor woman according to their outer appearance, nor in what I see of the capacity of their mind; especially as very often they are so vulgar and earthly that they hardly seem to have the countenance or the mind of rational beings."*

- St. Vincent de Paul

*"St. Vincent's description is the way trafficked women and children for commercial sexual exploitation appear."*

*They are poor, weak, and oppressed because they lack the power to protect themselves. But also because those who have the power to protect them fail to do so. Maybe they do not see in them the same human being like themselves, created by the same Almighty."*

- Professor M. Cherif Bassiouni

### Regional and National Statistical Estimates

- 80,000 women and children from Myanmar, Cambodia, Laos and China have been sold into Thailand's sex industry since 1990.
- 5,000 - 7,000 Nepali girls, some as young as nine, are trafficked into the red light districts of India each year. 200,000 Nepali girls, mostly under 14, have been trafficked into India in the last decade.
- Afghani women are sold into prostitution in Pakistan for 600 rupees per kilogram.
- Albanian women are regularly trafficked into Italy, more than 10,000 in the last 5 years.
- 45,000-50,000 women and children from Asia, Latin America and Eastern Europe are trafficked for sexual exploitation into the United States. The going rate for a woman or child sold to the U.S. sex trade is between \$12,000 and \$18,000.
- 10,000 children between 6 and 14 are enslaved in brothels in Sri Lanka.
- 5,000 children from 10 to 16 are sold into sexual slavery in Cambodia every year.
- 300,000 women have been trafficked into the Western European sex trade in the last 10 years.
- 20,000 women are in brothels in the Czech Republic, most are from the former USSR.
- 10,000 Albanian women have been trafficked into Italy in the last 5 years and forced into prostitution.
- 250 women from Romania, Moldova and the Ukraine were discovered in Bosnia in the last 2 years having been trafficked and forced into prostitution.
- 5 women from Moldova were discovered in a Phnom Penh, Cambodia brothel in 2000.
- Lithuania, Latvia and Estonia have become sex centers for Western Europeans. The women trafficked there are from the former USSR Republics.
- 1,000 women trafficked from the former USSR into Israel became prostitutes in exchange for legal documentation.
- 3,000 Nigerian women have been forced into prostitution in Italy.

—These numbers are estimates drawn or projected from a few actual cases, based on NGO and media reports, as well as scant law enforcement reports.

## International Neglect

Some governments fear embarrassment by acknowledging the existence of sexual servitude in their countries and, more so, illegal trafficking from or to their countries. Others avoid the subject so as not to embarrass countries where the phenomenon is significant, yet tolerated. In countries where prostitution is legal or tolerated, sexual servitude is assimilated with that presumed consensual sex for money. As a result, sexual servitude is given the appearance of legitimacy. Why such neglect?

First, the victims are mostly from developing and least developed countries and are trafficked and held in sexual bondage in developed countries or in more affluent ones than their own.

Second, the women and children are from the lowest economic and social strata of their societies, and their families have neither the economic nor the political capability of bringing about pressure on public authorities to try to save their loved ones from this terrible fate. In some societies, it is in fact poverty that drives families to sell their children into what they frequently believe are legitimate jobs.

Third, law enforcement and prosecutorial authorities in most countries place prostitution, even when it is illegal, at the lowest end of their enforcement priorities.

There are also several disincentives which national laws, policies, and practices have engendered. Among them are the fact that most national criminal laws are inadequate to deal with this contemporary phenomenon. Even when such laws are sufficient, policy considerations make it difficult to reach the traffickers, exploiters, and pimps. Because national laws deem the victims criminals, their arrest and prosecution add to overburdened criminal justice systems. Thus law enforcement is discouraged from prosecuting or pursuing such cases.

Trafficked victims are also subject to deportation proceedings, thus adding to the state's administrative burdens and financial costs. Furthermore, many of these victims may be in need of medical and social services which states are reluctant to provide to illegal aliens.

Enforcement of these disincentives favors the traffickers, exploiters, and pimps who are seen by the victims as their only hope of getting out of the criminalization process and avoiding deportation. Traffickers also have power over the victims because they are usually from the same country of origin and have the capability of harming members of the victim's family.

Economic, race, and gender prejudices are the unarticulated premise for the neglectful or sluggish way in which national laws and policies respond to this widespread criminal phenomenon. This is particularly true in Developing and Least Developed Countries, where women and children are generally the weakest elements of the society.

## Definitional Problems

Sexual exploitation takes various forms. "Commercial sexual exploitation" is a term used for situations in which there is an exchange of sex for money. The term "trafficking" describes acts related to the movement of women and children from one country to another, but also within a country. It includes the recruitment, transportation, harboring or facilitation of border crossing, if it is international. It becomes "forced" when threats, or use of force, or other types of coercion, such as abduction, fraud, deception or the abuse of power or of a position of vulnerability is involved and used to achieve a benefit.

"Sexual servitude" and "sexual bondage" are alternative terms that refer to maintaining a victim against her will by means of force. It is in this context that the issue of "consent" arises. Obviously, no minor can "consent" to being trafficked or to be a sex worker, and therefore the majority of children who are trafficked and held in sexual servitude are in clear violation of existing international law, as well as the national laws of every country in the world. There is a debate as to whether adults are capable of exercising their right to consent to being trafficked, if that "consent" is free.

Some NGOs take the position that there should be an irrefutable presumption that women in prostitution could not have given their consent to such a practice. Their reason is that the activity is so abhorrent and so unnatural that no one would freely choose it. Others believe that women can be sex workers by choice, and thus be trafficked by choice, and that they have rights that should be protected. The debate between those in favor and those against recognizing any type of consent in prostitution should be informed by public policy, and that depends on factual knowledge which at present is scant. The dimensions of the problem, however, compel us to adopt a strong policy of presumption against consent, leaving only a small opportunity for clear and unambiguous cases of an adult's choice to engage in sex for money.

One of the problems related to the issue of consent, but which affects public reaction to the criminal phenomenon, is the image of the "happy hooker" who can freely ply her trade of choice, retain its proceeds, and decide whenever she wants to stop and return to a normal life. This false image, which has been propagated over the years by movies and novels, contributes to unjustified benevolent public attitudes toward this criminal phenomenon.

## Despair and False Hopes

Whether as a result of desperate economic conditions or in the hope of acquiring better ones, women and children are deceived into believing that their departure for foreign countries is for a legitimate job. Traffickers prey on families so poor that they may be willing to sell a child for labor in order to save the family. This is the case in some parts of Southeast Asia, such as Cambodia and Laos, where the annual per capita income is about \$300 and where a 12- to 16-year-old girl can be bought for that amount. In a perverse way, that little girl is her family's savior, as she brings in a year's income to a family that may be on the verge of starvation. No wonder the father is so ready to accept the false representations of the recruiter. In other countries, where the standard of living is so low, such as in Bangladesh, Pakistan, Nigeria, Moldova, or some Caribbean or Central American country, the lure of a relatively well paying job in a foreign country which does not require language or other skills, such as domestic help, is enough to lead many unsuspecting women and children into the hands of the recruiters and traffickers.

No matter how these women and children are recruited or lured, they find themselves illegally herded across borders into countries that they do not know and where they have no support or contacts and, in most cases, whose language they do not speak. They are then forced into sexual servitude in brothels, bars, massage parlors and the like, from which most of them cannot leave. Their exploiters beat them, mistreat them, decide what type of sexual services they are to perform, and the manner they are to perform them. They provide for their dress, food, sleeping hours, and everything else that touches their lives. They determine if, when, and what type of medical treatment they will receive in case of illness or venereal disease, even though payment of these expenses is added to their debt. They are also free to sell them to other sexual exploiters. In most cases, they can never break out of their bondage. A common practice of the exploiters is to addict these victims to drugs as a way of subduing them, and they then use their drug dependency to make them perform. Those who were once free human beings become like one of Pavlov's dogs, responding despondently to the proffered stimuli. In short, the hope and promise of a legitimate job turns into an abhorrent form of modern slavery. Sometimes, these women and children rebel, either before entering into the cycle of bondage or during its course. Those who do are subjected by their captors to severe beatings and such terrorizing acts as rapes, involving additional physical torture. If resistance continues, the victim is killed and there is no one to question it. They are disposable human beings.

Exploiters benefit from almost total impunity. The victims have no one to turn to for help. Law enforcers are frequently in collusion with the traffickers and exploiters and victims who seek to escape are returned to their captors by those from whom they sought protection. Their despondency and despair is beyond description.

## A Problem Ignored - A Problem Denied

The absence of empirical data has allowed governments to deny this criminal phenomenon. Governments that do address it are quick to add a disclaimer that it does not occur in their country. But they are reluctant to point to other powerful countries. For example, it is well known that a large number of women and children are trafficked every year in Japan under the guise of entertainers, performers, artists, or domestic workers. These children, who range from 12 to 18, are highly prized in that society. Furthermore, in a society that places a great deal of work performance pressure on its male adult population, release of tensions often occurs through sex for pay. The demand for it is high, particularly for younger girls. The concern for these women, mostly children and from other races, is low.

The interest of law enforcement in these victims is minimal as they are usually in the hands of the Yakusa. These Japanese criminal organizations, who run the red light districts in that country, maintain a certain order on their turfs in exchange for assurances that law enforcement will not intervene. Thus, trafficked women and children who are part of the Japanese sex trade are outside the reach of the law and anyone else who can save them from a fate that is dependent exclusively upon the whims of organized criminal elements.

It is unknown how many women and children annually go into this "black hole", and no one knows how many come out of it. Ignorance of the facts makes it possible to deny the existence of the problem, and thus to avoid doing anything about it.

## Weak International Concerns

In December 2000, the United Nations adopted an international convention against organized crime that includes a Protocol on International Trafficking in Persons by Organized Crime Elements. The Convention is an important expression of international concern, though it falls short of covering the entire range of the criminal phenomenon. More particularly because it is linked to organized crime, it does not apply to other manifestations of the phenomenon, particularly the protection of trafficking victims if they are to escape and seek justice. Other conventions dealing with slavery, slave-related practices, traffic of persons, and international exploitation of prostitution have proven inadequate. A telling sign is that only twenty five percent of the world's countries have ratified the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Adding to this shameful lack of interest by governments is the fact that there are no regional treaties concerning this phenomenon, even though there are many regional organizations that deal with a variety of problems concerning their respective regions. Some organizations, such as the United Nations and the European Union, have expressed concern as have a number of governments. This has engendered an increased interest in the western world in combating this phenomenon. To inform public policy, however, it is necessary to obtain reliable data.

Because of the international character of the phenomena, it is one that also needs to be addressed by governments on a regional and international basis.