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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

Child Prostitution and Trafficking: A Global Challenge for the Whole World

1. Introduction

Commercial sexual exploitation and trafficking of children is considered by ILO as one of the worst forms of child labour which requires immediate and definitive action from governments. Human trafficking, whether of children or of adults, is a gross violation of human rights. In the case of people who have not yet attained the age of majority, it additionally violates their rights as children, in particular their right to be protected from exploitation. On these points, there is universal agreement. As we explore the detail of child trafficking, however it becomes clear that there is some variation in the way common concepts are interpreted or understood and that there are a number of different approaches to combat child trafficking. It is a violation of the fundamental human rights of the most vulnerable in our society, our children, and an outrage that must be condemned in the strongest manner, it must also galvanize us into action. ILO research in the Pacific has shown that these issues are present in our communities and a collective effort is required in the fight against this.

Trafficking in human beings and, more especially, trafficking in children has been high on the international agenda for more than a decade. The trafficking of children is a serious human rights violation. Only recently, however, has the international community recognized that child trafficking is also undeniably a labour issue. While most people are now aware that children and women (and sometimes boys and men) are trafficked into the world's commercial sex trade, children's right to be free of exploitation is violated in many other ways. Children are frequently trafficked into labour exploitation in agriculture, both long-term and on a seasonal basis. They may toil in a variety of manufacturing industries, from large-scale sweatshops to small craft workshops. In some parts of the world, children are exploited in mining or in fisheries. Girls in particular are trafficked into child domestic labour. Children are also trafficked into the militia and into armed gangs in conflict zones and, while this may not strictly be 'labour', it is nevertheless true that the children are effectively put to working these situations, not only as soldiers but in a variety of jobs such as cooking, acting as couriers and, for girls especially, providing sexual services to adult combatants.

Numerous States have enacted legislation based on the UN Trafficking Protocol. Since its adoption in November 2000, donors have given relatively large amounts of money to anti-trafficking programmes. The adoption of the UN Trafficking Protocol and the resulting focus on efforts to stop human trafficking prompted new research and numerous publications on the subject. Many statistics are now available on how many cases of human trafficking have been recorded, how many prosecutions have been started and how many people convicted of trafficking.¹ The disadvantage for anyone working specifically to stop the sexual exploitation of children is that these statistics do not distinguish between the various purposes for which the trafficking took place or indicate whether those being trafficked were adults or children (and, if

¹ See, for example, UNODC. Trafficking in Persons. Global Patterns. Vienna. 2006.

children, younger children or older adolescents). They do not tell us much that is useful when planning future actions. The evidence available today is not sufficient to assess whether the number of children being trafficked for sexual purposes around the world has increased or decreased since 2001. Although, in particular countries or regions, evidence is available. Further, despite the adoption of international instruments standardising definitions of abuse such as human trafficking and child trafficking, individual countries, and even agencies within the same country, continue to use different definitions and ways of assessing the number of cases.

For several years after the new international instruments were adopted in 2000, the focus of most anti-trafficking initiatives was on transnational human trafficking, i.e., cases in which a child or adult was trafficked from one country to another. This was probably because the UN Trafficking Protocol supplemented a convention concerned with transnational organised crime. In the last few years, there seems to have been a realisation in various regions that the majority of trafficking cases, or at least a significant proportion of them, concern children or adults trafficked within the borders of their own country, i.e., internal or domestic trafficking. This paper reviews progress in the actions to stop child trafficking, looking at the areas characterised as ‘prosecution’, ‘prevention’ and ‘protection’.² It focuses on action to stop children from being trafficking for sexual purposes, but notes that such efforts have been engulfed in a tide of related initiatives to stop sexual violence, forced labour, child labour and, in particular, trafficking in persons (i.e., adults and children). Many anti-child trafficking initiatives address trafficking that occurs for a variety of purposes, not only for sexual exploitation. While the paper tries to keep the focus on child trafficking for sexual purposes, much relevant information is about efforts to stop child trafficking in general

2. The impact of new international instruments, especially the UN Trafficking Protocol

In 1999 and 2000 three international instruments were adopted in quick succession, two of which have come into force since 2001. All have a bearing on cases of children trafficked for sexual purposes. These are:

- The International Labour Organization’s (ILO) Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. It was adopted in June 1999 and came into force in November 2000.³

³ Convention No. 182 was accessed on 24 July 2008 from: <http://www.ilo.org/ilolex/english/convdisp2.htm>. By this date it had been ratified by 168 States

- The Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography. It was adopted in May 2000 and came into force in January 2002.
- The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the UN Trafficking Protocol), supplementing the UN Convention against Transnational Organized Crime (which came into force in September 2003). The protocol was adopted in November 2000 and came into force in December 2003.⁴ Although it was the last of these instruments to be adopted, the UN Trafficking Protocol has had the greatest impact on the wording of national laws that make it an offence to traffic children for sexual purposes.

The UN Trafficking Protocol

Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)

Article 3 of the UN Trafficking Protocol contains a definition of human trafficking which applies to cases of both transnational and internal trafficking (although the Protocol supplements a convention about transnational crimes). The definition is different for adults and children (whom the Protocol specifies as anyone under 18 years of age, whatever the age of adulthood specified by national law). It addresses a range of forms of exploitation (for which people are said to be trafficked), including “the exploitation of the prostitution of others” and “other forms of sexual exploitation”.

a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

⁴ By 24 July 2008 there were 119 States Parties to the UN Trafficking Protocol. UNODC. Signatories to the United Nations Convention against Transnational Crime and its Protocols

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age

Interpretations of the term ‘trafficking’

The definition in the UN Trafficking Protocol means that the term ‘trafficked’ may be applied to every child who is recruited for sexual exploitation, whether or not the recruitment involves any form of transportation or movement. However, since 2000 most initiatives aiming explicitly to prevent children being trafficked have focused on children who are moved in some way, either within their own country or across a border; i.e., from an environment with which they are familiar (and where they are either protected by a parent or caregiver or have some idea where to turn for help), to one in which they are deprived of their usual social support systems and are exceptionally vulnerable to abuse.

The UN Optional Protocol on the sale of children, child prostitution and child pornography

The other international instrument adopted in 2000 was the Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography.⁵ Although the title does not mention trafficking, the Optional Protocol’s preamble expresses concern at “the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography”.

The Optional Protocol requires States Parties to prohibit forms of abuse associated with trafficking, whether they are “committed domestically or transnationally or on an individual or organized basis” (Article 3). Article 3.1 specifies the acts that States Parties are required to prohibit by their criminal or penal law and Article 3.2 requires States Parties to make it an offence to attempt to commit any of these acts and to punish complicity or participation. In effect, the Optional Protocol requires States to criminalise many of the same acts as the UN Trafficking Protocol. While the UN Trafficking Protocol refers to “the exploitation of the prostitution of others” (i.e., a pimp or other third person receiving remuneration from someone who pays for sex

⁵ The text of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was accessed on 1 October 2008 from: <http://www2.ohchr.org/english/law/crc-sale.htm>. Article 2 defines “sale of children”, “child prostitution” and “child pornography”

with a child, either directly from the person who pays or via the child) and to “other forms of sexual exploitation”, the Optional Protocol bans any practice in which a person remunerates a child in exchange for sexual activities, whether a third person profits or not.

While the provisions of the UN Trafficking Protocol on protecting and assisting victims require States only to “consider implementing measures to provide for the physical, psychological and social recovery of victims”,⁶ Article 9.3 of the Optional Protocol requires States Parties to “take all feasible measures” to ensure all appropriate assistance to children who are victims of offences mentioned in the Protocol, “including their full social reintegration and their full physical and psychological recovery”. States do not seem to have taken action on the basis of this and other comparatively strong provisions relating to protection and recovery when adopting regulations on assistance for child victims

The ILO’s Convention No. 182 on the Worst Forms of Child Labour

As the legislation against child trafficking adopted in some countries is based on ILO Convention No. 182, it is also relevant to this paper. In 1999, the International Labour Conference adopted Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. This mentions “the sale and trafficking of children” as one of the “unconditional” worst forms of child labour,⁷ categorising them as “forms of slavery or practices similar to slavery”.⁸ Other unconditional worst forms of child labour include, “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” and “the use, procuring or offering of a child for illicit activities...”.⁹ States are required to prohibit the involvement of any child (below 18 years of age) in any of the worst forms of child labour.¹⁰

3. Law enforcement

⁶ UN Trafficking Protocol, Art. 6.3. Entered into force December 2003. Accessed on 24 July 2008 from: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

⁷ International Labour Office (ILO). A Future without Child Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, p. x. Geneva. 2002.

⁸ Along with debt bondage, serfdom and forced/compulsory labour. ILO Convention No. 182, Art. 3.a. Entered into force November 2000. Accessed on 24 July 2008 from: <http://www.ilo.org/ilolex/english/convdisp2.htm>.

⁹ Arts. 3.b & 3.c. Article 3.d refers to forms of hazardous work, which are to be identified at the national level and which are consequently not defined ‘unconditionally’.

¹⁰ 74|Child Trafficking for Sexual Purposes 1 The Convention on the Rights of the Child has 193 States Parties, i.e., excluding two States. Somalia and the US have both signed, but not ratified, the Convention. The Convention was accessed on 24 July 2008 from: <http://www.unhcr.ch/html/menu3/b/k2erc.htm>.

Many States have adopted new laws since 2001 on the issue of human trafficking. These define the offence of trafficking in persons or more specific offences, such as child trafficking or recruiting a child into prostitution. At the regional and international levels, there have been efforts to establish minimum standards concerning the way criminal justice systems respond to human trafficking cases, although not yet with a specific focus on children.¹¹ The past seven years have also seen numerous training programmes for law enforcement officials on everything from techniques for gathering evidence (of crimes involving the sexual abuse of children or human trafficking) to measures to make legal proceedings more child-friendly. Have the changes in legislation and the trainings had the expected results, such as an increase in convictions of child traffickers or a reduction in the numbers of children being trafficked? Or have changes been made primarily in response to international pressure, when existing legislation would have sufficed if it was implemented more methodically? It is difficult to reach firm conclusions. Even when available statistics indicate that the number of successful prosecutions for child trafficking has increased, it seems sometimes to be because prosecutions are being ‘re-labelled’ as involving child trafficking.

Efforts to make the criminal justice system more child-friendly

In theory, it is clear what needs to be done to improve the effectiveness of criminal justice systems and protect child victims of trafficking at the same time. The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005) set out “good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.”¹² Experts convened at the UNICEF Innocent Centre in April 2008 summarised the steps to be taken by saying that,

“...child-friendly judicial processes should be established to avoid the double victimization of children during the judicial process – such as avoiding all unnecessary contact with the perpetrators, ensuring privacy and support to the child’s psychological well-being through in camera proceedings, providing adequate protection and compensation to victims, and expediting prolonged legal processes through fast-track child-friendly courts and the use of recorded video testimony”.¹³

¹¹ ASEAN Responses to Trafficking. Ending Impunity for Traffickers and Securing Justice for Victims, p. 85. Jakarta. April 2006. This contains a checklist identifying eight “Key elements of an effective criminal justice response to trafficking” for ASEAN States, which are, in principle, equally applicable to other parts of the world.

¹² Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para. 1. Annex to UN General Assembly Resolution 2005/20. Accessed on 6 October 2008

¹³ UNICEF Innocent Research Centre. Report of the Expert Consultation Meeting in Preparation for World Congress III Against Sexual Exploitation of Children and Adolescents, p. 22. May 2008

This is easier said than done. Efforts to prosecute traffickers (of children and adults) have been hampered in many countries by the unwillingness of victims and witnesses to testify. This is sometimes due to a fear of reprisals against themselves or their loved ones. However, it sometimes appears to have as much to do with criminal justice procedures as it does with threats of violence from traffickers. Making criminal procedure more child-friendly is widely believed to facilitate the work of law enforcement officials and to secure more convictions of child traffickers. From a different point of view, if criminal procedure is not child-friendly, counsel or advocates supporting a child who has been trafficked may reasonably conclude that it is not in the child's best interests to provide evidence and participate in the prosecution of the child's suspected trafficker

Compensation or damages for children trafficked for sexual purposes

While there has been progress in developing techniques to protect children during the criminal justice process, rather less is apparent when it comes to actually delivering justice for trafficked children. This means punishing those responsible for abusing a child as well as providing an appropriate remedy for the child who has been a victim of crime. Remedies include payments for damages or compensation, few of which are reported to have been made to children trafficked for sexual purposes¹⁴. Certain countries have taken steps to improve compensation payments. In the Philippines, for example, fines collected under the anti-trafficking law are reported to go into a fund to pay for services to children and adults who have been trafficked.¹⁵

Are there reasons why there has been little progress in awarding compensation or damages to trafficked children? Is it because courts feel it is unnecessary or inappropriate to order compensation to children who have earned money for traffickers from commercial sex, even though they have, by definition, suffered as a result and should be entitled to moral or material damages? If so, they may need reminding that it is difficult for children to re-launch their lives in the absence of compensation.

4. Protection and assistance for children who have been trafficked

The issues of protecting and assisting children who have been trafficked, or might have been trafficked, are inter-dependent and are considered together. The section starts by examining

¹⁴ Office for Democratic Institutions and Human Rights (ODIHR)/OSCE. Compensation for Trafficked and Exploited Persons in the OSCE Region, p. 11. Warsaw.2008. Accessed on 12 August 2008

¹⁵ ASEAN. ASEAN Responses to Trafficking. Ending Impunity for Traffickers and Securing Justice for Victims, p. 81. Jakarta. April 2006.

protection issues, including international guidelines prepared by UNICEF on protecting trafficked children, and moves on to questions about assistance for children trafficked for sexual purposes. The most relevant set of guidelines for protecting children who have been trafficked was issued by UNICEF in 2003 and updated in 2006.¹⁶ These guidelines concern any child who has been trafficked, for whatever purposes and whether internally or transnationally. While it is important to take stock of the provisions of these guidelines, it is also necessary to note that States have not, so far, been active in implementing them. It is not clear whether this is because officials are unaware of the guidelines or because they are reluctant to implement them for policy reasons

Special services to children trafficked for sexual purposes

Following discussions in various regions about what forms of psycho-social care are appropriate in different cultures, there seems to be general recognition that all children who have been subjected to sexual exploitation require treatment for some degree of post-traumatic stress disorder. Unfortunately, the expertise required for such treatment is not yet reported to be available in all regions. Projects in several regions have learned lessons about the contribution that children who have themselves been trafficked or experienced sexual exploitation can make to the recovery of other children. These projects do not focus on children who have been trafficked, but rather on children who have experienced sexual exploitation. For example, the Youth Partnership Project for Child Survivors of Commercial Sexual Exploitation in South Asia (YPP) is reported to have had a positive psycho-social impact on affected children in Bangladesh, India and Nepal.¹⁷ The project, which has been running for four years, reportedly creates opportunities for adolescents who have experienced sexual exploitation to interact with others in the same position. The interaction is meant to let them know that they are not alone, help them develop new and positive relationships and transform negative self-images by focusing on their positive roles as peer supporters, youth advocates and community leaders

Children's participation in efforts to stop child trafficking for sexual purposes

One regional convention explicitly states that States are to encourage the participation of children in both the development and implementation of government policies, programmes and other

¹⁶ The UNICEF guidelines were accessed on 29 July 2008 from:

http://www.unicef.org/ceecis/GUIDELINES_Protection_of_Victims_of_Trafficking.pdf. A reference guide about these guidelines, issued by UNICEF in July 2006, contains a chapter on prevention. The Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe can be found at http://www.unicef.org/ceecis/protection_4440.html

¹⁷ Mitchels, Barbara. Let's Talk. Developing effective communication with child victims of abuse and human trafficking. Practical handbook for social workers, police and other professionals, p. 7. UNICEF & UNMIK/Government of Kosovo Ministry of Labour and Social Welfare. September 2004. Accessed on 29 July 2008

initiatives against the sexual exploitation of children.¹⁸ However, actual participation of children in the development of standards or guidelines at the international or national level has been rare. A notable exception is the development of the ASEAN Guidelines for the Protection of the Rights of Trafficked Children in Southeast Asia. In one ASEAN State, the Philippines, this involved a consultation with children who had been trafficked to obtain their views on which measures would be appropriate to include in the guidelines.¹⁹

It seems obvious that children who have been trafficked should be a primary source of information on which to base preventive actions, as well as assessments of the effectiveness of existing measures to protect children or stop trafficking. Unfortunately, a weakness of many anti-trafficking programmes is that they have been launched without consulting children who have already been trafficked nor including them as actors or messengers in the programmes

The experience gained was not specifically about children trafficked from one place to another, but the project included such children. An external evaluation concluded that there was a consensus among all those involved, “from the international through to the grassroots level that the premier achievement of the project is the substantive difference it has made to the lives of the young people involved”.

5. Conclusions and recommendations

This paper has raised many questions, starting with a basic one about the very meaning of the term ‘child trafficking’. It is important to note that the terms ‘trafficking’ and ‘trafficked child’ are used to mean different things by different people, so it is routinely necessary to check what meaning is intended. The paper has focused on issues in which States and others have choices over the strategies they pursue and the resources they choose to make available. It suggests that some should be reviewed and modified to bring about a child rights approach to cases of child trafficking. On a number of issues the paper suggests that more care is needed to ensure that national responses to child trafficking are based on the realities experienced by children in the country concerned, both in terms of the wording used in legislation and the measures taken to stop child trafficking. Following a period in which transnational trafficking has preoccupied States, it seems important to refocus attention on the places where exploitation occurs and on the patterns of recruitment of children to such places, whether that is from within the same country or from outside the country. With respect to both protection and prevention, the paper has raised

¹⁸ Article 9.1 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse states: “Each Party shall encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children

¹⁹ LO/IPEC. Child Trafficking. The ILO’s response through IPEC. Geneva. 2007.

questions about how to balance the need to protect children from abuse with the obligation to enable them to exercise their rights. Even if the principles that should guide policy decisions are clear, in practice there is a need for practitioners to exchange experience and views and to get a better understanding of the alternatives to their own current practices. Donors should pay attention to such discussions and ensure that they do not unwittingly support practices which fail to protect children or which impose unjustifiably harsh restrictions on children's rights. There is also a need to establish a better balance between the coordination structures and plans designed specifically to address the sexual exploitation of children, and those designed to address other issues. Different types of child abuse, which are currently addressed by separate structures or plans, would potentially benefit from a more unified approach to child protection in general. On issues which affect both adults and children, particularly women and girls, such as sexual violence and human trafficking, good coordination is needed between the measures affecting adults and the measures affecting children. At the same time, special efforts are needed to ensure that the rights and needs of children receive explicit and specific attention. In the numerous places where children are trafficked from one place to another for sexual purposes, either within the same country or between countries, there is a need to improve the contacts between child protection authorities in the two places.

