

July, 2011

The Strong Arm of the Law is Weak: How the TVPA is Failing Victims of The Sex Trafficking Trade

Cheryl George, Professor



Cheryl George

Associate Professor, Lincoln Memorial University, USA.

The Strong Arm of the Law is Weak: How the TVPA and other International Law are not Protecting Victims of the International Sex Trade

Slavery is alive, well and flourishing. Not the slavery that ended with the U.S. Civil War, which is what most people think about when the word "slavery" is mentioned. Today, we call this form of slavery: *HUMAN TRAFFICKING*. As innocent as this term may sound, it is a tragic situation where many innocent women and children are trapped, suffering and dying.

When one counts all of the victims forced or coerced into servitude—from farms in India to charcoal mines in Brazil—the numbers reach into the millions.³ Even America is a major importer of sex slaves, with conservative estimates fluctuating between 18,000 and 20,000.⁴ Of those, nearly 80% are women, and half are minors.⁵ Cases of human trafficking have been reported in all fifty states in the United States.⁶

"Over the last 10 years, the numbers of women and children [who] have been trafficked have multiplied so that they are now on par with estimates of the numbers of Africans who were enslaved in the 16th and 17th centuries."⁷

One expert defines human trafficking as "'an opportunistic response' to the tension between the economic necessity to migrate . . . and the politically motivated restrictions on migration . . ."⁸

Globalization, indeed, led to an increased exchange of both capital and goods, but it also led to an increase in labor migration.⁹

³ Kathleen Parker, *Slavery by Any Other Name*, AUSTIN-AMERICAN STATESMAN (Oct. 1, 2007). (referencing two movies/documentaries that chronicle actual cases of sex trafficking, which movies/documentaries are sold and traded).

⁴ *Opposing and Preventing Global Sexual Trafficking*, http://www1.salvationarmy.org/ihq/www_sa.nsf/vw-dynamic-arrays/B5DD72A243A1150B80256E49006C621E?openDocument (last visited Feb. 28, 2009).

⁵ Kathleen Parker, *Slavery by Any Other Name*, AUSTIN-AMERICAN STATESMAN (Oct. 1, 2007).

⁶ Human Trafficking Cheat Sheet-Polaris Project

⁷ *Opposing and Preventing Global Sexual Trafficking*, http://www1.salvationarmy.org/ihq/www_sa.nsf/vw-dynamic-arrays/B5DD72A243A1150B80256E49006C621E?openDocument (last visited Feb. 28, 2009) (quoting Dr. Laura Lederer). Dr. Lederer, a senior state department adviser on trafficking, has studied sexual trafficking for twenty years at Harvard University. *Id.*

⁸ Janie Chuang, *Beyond a Snapshot: Preventing Human Trafficking in the Global Economy*, 13 *IND. J. GLOBAL LEGAL STUD.* 137, 140 (2006).

⁹ *Id.*

Subsequently, the globalization restructuring is what harshly affects women in developing countries by either "fostering exploitative conditions for women working in the formal sector, or pushing women directly into work in the informal sector."¹⁰ Further, "[t]he conflation of prostitution and trafficking has also led to the faulty idea that ending 'demand' for commercial sex will lead to a reduction in or eradication of trafficking."¹¹ Sexual exploitation has taken the media forefront in recent years.¹² Human trafficking is one of the most rapidly growing transnational criminal activities.¹³ Much legislation has been passed to try to curb this illegal marketing of women and children. Up until 2005, the legislation has been suggested but has had no "backing" or support to pass legislation to fight this criminal enterprise.¹⁴

Four components comprise the demand for human sex trafficking: (1) the men who purchase commercial sex acts; (2) the exploiters who make up the sex industry; (3) the states that serve as destination countries; and (4) the cultures and environments that tolerate and promote sexual exploitation.¹⁵

This paper will focus on the law of certain countries (as well as the international community) and the culture that allows these traffickers and Johns to largely go unprosecuted and undeterred. I will address this issue and propose policy considerations to tackle this problem head on.

¹⁰ *Id.* at 143.

¹¹ Grace Change & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J. CIV. RTS. & CIV. LIBERTIES 317, 331 (2007).

¹² See U.S. Dep't of State, *Trafficking in Persons Report 1 (2003)* [hereinafter *TIP Report*], available at <http://www.state.gov/documents/organization/21555.pdf> (last visited May 18, 2010).

¹³ LeRoy G. Potts, *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 *Geo. Wash. Int'l L. Rev.* 227, 227 (2003)

¹⁴ Margaret A. Healy, Note, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 *Fordham Int'l L.J.* 1884-88 (1995).

¹⁵ Donna M. Hughes, *The Demand for Victims of Sex Trafficking*, Women's Studies Program, Univ. of R.I., June 2005.