

POLICY *Review*

DECEMBER 2008 & JANUARY 2009, No. 152

Trafficking and Human Dignity

By MARK P. LAGON

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Trafficking and Human Dignity

By MARK P. LAGON

HUMAN TRAFFICKING IS the slavery of our time. Exactly 200 years ago, Britain and the United States formally outlawed the transatlantic slave trade. A few decades later the practice of slavery was expunged from North America (with a heavy dose of justice enforced by the British Navy and of bloodshed in the American Civil War). While much has changed since the days of the transatlantic slave trade, the lie which fueled that horrific chapter in history is at the root of sex trafficking and slave labor today — a belief that some people are less than human.

Consider Carlo, a 27-year-old man from a rural area of the Philippines, recruited along with ten other men and women for a highly valued job in an American Midwestern hotel. The men were promised higher wages, reasonable hours, and benefits. Filipino recruiters charged each worker \$1,200 as a “processing fee” for securing the jobs. Hotel managers added new non-negotiable charges for “rent.” This debt was used to coerce Carlo and the others to work endless hours.

Mark P. Lagon is ambassador-at-large and director of the Office to Monitor and Combat Trafficking in Persons at the U.S. Department of State. In February 2009, he will become executive director of Polaris Project, a Washington, DC-based anti-trafficking NGO. This essay incorporates some material delivered in the William V. O'Brien Lecture in International Law and Morality at Georgetown University on April 19, 2008, and a speech before the American Society for International Law on May 7, 2008 in Washington, DC.

Carlo's passport was confiscated by the traffickers to keep him from fleeing, which also rendered him undocumented and subject to potential arrest and deportation if caught by immigration officials off hotel premises. Toiling for 16 to 18 hours a day, Carlo and the other Filipinos endured total control by hotel managers over every aspect of their lives — what they ate, where they lived, and the hours they worked.

Debt bondage

CARLO'S STORY INCLUDES several threads which I increasingly see in my work at the State Department's Office to Monitor and Combat Trafficking in Persons. Carlo is a migrant. His nightmare began at the hands of a recruiter who used fraudulent offers of employment and extracted a large recruitment fee which Carlo could only pay by taking a loan. Carlo was uniquely vulnerable to exploitation once in the destination country, the U.S., due to the debt he carried as a direct result of recruitment. This home-country debt was exacerbated by fraudulent expenses, such as "rent," added by an exploitative U.S. employer.

Carlo's debt led to debt bondage. Lacking any form of power, not to mention identification, in a country not his own, Carlo was robbed of his dignity as a victim of forced labor.

Current trends fleshed out in the 2008 *Trafficking in Persons (TIP) Report* released by the Secretary of State in June, and produced by my office, paint a grim picture of the diffuse and diverse factors which contribute to the vulnerability of more than 175 million migrants in the world today — vulnerability not just to minor labor infractions but to gross exploitation.

Among these factors is the flagrant use of excessive debt as a tool of manipulation, the fraudulent practices of some middle-men brokering the movement of millions across international borders, weak laws — and weak enforcement of laws — governing labor exploitation, some aspects of sponsorship laws in Persian Gulf states, and a fundamental lack of understanding about human trafficking.

Debt bondage is a frequent form of forced labor. Too often, people are enticed into fraudulent offers of work abroad that require a steep payment up front for the services of a labor agency arranging the job or a payment that goes straight to the future employer. To pay such fees, workers in poorer countries either become indebted to the recruiter, or take out a formal or informal loan in their country of origin, with the expectation of payment based on future wages earned abroad. Often, worker expectations and repayment terms are based on exaggerated and false representations by recruiters regarding wages the workers can expect to earn in their new jobs. Once at an overseas worksite, such high levels of indebtedness can make workers vulnerable to exploitation by unscrupulous employers who subject workers to terms much less favorable than promised at the time of recruit-

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ment (such as much longer hours, less pay, and harsher conditions).

The very factors that push migrants to leave their home countries are often the factors which make them vulnerable to the exploitation of trafficking when they arrive in a new destination. For example, millions of Burmese, facing bleak economic conditions, brutal political repression, and the prospect of forced labor at home, have fled homes and villages, usually without legal documents. The International Labor Organization (ILO) considers Burma to harbor a significant share of the estimated 2.2 million victims of state-imposed forced labor globally.

Burma's repression bleeds out into the surrounding region. As Harvard University professor Stanley Hoffmann wrote in *Duties Beyond Borders* in 1981 — and it is every bit as true today — “There is no way of isolating oneself from the effects of gross violations abroad: they breed refugees, exiles and dissidents.”¹ The grim situation in Burma serves to drive desperate people from their homes, often in irregular, undocumented migration.

Shortly after I became U.S. ambassador to combat human trafficking, I met Aye Aye Win — a young Burmese woman in search of work beyond her own tortured country. A recruiter painted a promising picture of work in neighboring Thailand. Aye Aye Win assumed substantial debt to cover upfront costs required by the recruiter for this job placement. Together with some 800 Burmese migrants, many of them children, Aye Aye Win was “placed” in a shrimp farming and processing factory. But it wasn't a job. It was a prison camp. The isolated ten-acre factory was surrounded by steel walls, 15 feet tall with barbed wire fencing, located in the middle of a coconut plantation far from roads. Workers weren't allowed to leave and were forbidden phone contact with anyone outside. They lived in run-down wooden huts, with hardly enough to eat.

Aye Aye Win tried to escape with two other women. But factory guards caught them and dragged them back to the camp. They were punished as an example to others, tied to poles in the middle of the courtyard, and refused food or water. Aye Aye Win told me how her now beautiful hair was shaved off as another form of punishment to stigmatize her. And she described how she was beaten for trying to flee. In countries where desperation leads people to migrate, it is easy for human traffickers and recruiters to market a dream, or a lie, to vulnerable men, women, and children like Aye Aye Win.

Dignity and decency

IT IS IMPORTANT to clear up any misunderstanding about the difference between the issues of human trafficking and human smuggling or even illegal immigration — a charged topic in today's politics.

¹ Stanley Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse University Press, 1981), 111.

Policies that conflate human trafficking and human smuggling or illegal immigration have the potential of punishing the very victims of trafficking whom we seek to protect. Human smuggling is the illicit transfer of someone across sovereign borders, often with the consent of the person being smuggled. Human trafficking involves a defining element of gross exploitation and control over an individual.

As recognized in both U.S. law and relevant international instruments, human trafficking victims either do not consent to their situations, or, if they initially consent, later become victims of force, fraud, or coercion — like Carlo. The ongoing exploitation of trafficking victims generates illicit profits. Yet the sooner we understand that migrants who are victims of human trafficking are just that — victims — the sooner we will have a proper perspective, which looks beyond simply law enforcement mechanisms, for grappling with how to confront this challenge.

Part of that perspective must be informed by a basic understanding of the human dignity which should be accorded to all people under natural law. By “natural law” I mean the broad category of universal principles of dignity and decency which, while not law in and of themselves, have historically informed our understanding of basic human rights from the Declaration of Independence to the United Nations Universal Declaration on Human Rights. President George W. Bush and Secretary of State Condoleezza Rice have called these principles “the non-negotiable demands of human dignity.” Natural law has proved to be a powerful force — one which moves history. It triumphed over slavery before and it can triumph again.

For these principles to triumph, we must fashion instruments to overcome the rapacious and the sadistic. Presently there are national laws and policy, bilateral accords, and international instruments available which we can employ in the service of human dignity to eliminate the vulnerability of migrants to trafficking.

International trafficking

AMONG THE MOST compelling tools at our disposal is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime* (a mouthful, but a worthy one). This protocol requires parties to criminalize all trafficking in persons, including trafficking for purposes of forced labor or sex.

In some regions of the world, particularly Asia and the Middle East, a number of governments have entered into bilateral agreements or Memoranda of Understanding (MOUs) in order to encourage and formally manage the flow of migrant workers from one country to another. To date, however, very few contain provisions explicitly protecting workers from conditions of forced labor or other forms of trafficking in persons. Even a

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country such as Saudi Arabia, with an estimated 7 million migrant workers imported largely for “3D” work (dirty, dangerous, and difficult), does not have sufficient protection for migrant workers.

We are encouraging labor-source and labor-destination governments in these regions to collaborate in confronting the problem of forced labor trafficking, including, when appropriate, through incorporation in bilateral agreements and Memoranda of Understanding specific measures to prevent trafficking in persons. Ironically, and tragically, some of those MOUs currently contain specific measures that promote trafficking, such as requiring the withholding of migrant workers’ passports by employers in the destination country.

Labor-source governments should: 1) Prohibit and punish labor recruiters who participate in trafficking by securing workers through fraudulent offers or imposing fees meant to create situations of debt bondage; 2) Ensure that labor recruiters are properly vetted, licensed, and monitored; and 3) Increase efforts to raise awareness of the trafficking risk associated with labor recruitment and migration.

Labor-destination governments should consider steps to ensure that workers secured through third-party recruiters are not the victims of fraudulent work offers or conditions of debt bondage. The activities and practices of local labor brokers should be monitored, and such agencies, as well as employers, should be criminally accountable for acts of exploitation accomplished through force, fraud, or coercion against foreign workers.

All criminals responsible for human trafficking deserve potent penalties rather than suspended sentences or fines comparable to mere slaps on the wrist. Although there is still a massive lag in prosecution of forced labor trafficking versus sex trafficking cases, my office has noticed, in recent years, a rise in the number of reported cases of forced labor trafficking, some of which stem from otherwise legal transnational labor migration. But in many countries, there is official indifference in the face of labor trafficking, which is too often considered a civil, regulatory offense rather than a criminal act.

It is important that labor-destination governments encourage workers to report alleged cases of forced labor to law enforcement authorities and institute measures to ensure a worker can leave an abusive employer and seek legal redress without fear of automatic detention and deportation. Destination countries should take steps to make migrant workers aware of their rights. These efforts are invariably more effective where there are incentives for victims, such as provision of shelter, medical care, free legal aid with translation services, the ability to work while awaiting resolution of investigations, avenues for seeking restitution, and protection from possible retri-

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bution for having filed a complaint.

Finally, and perhaps most important, destination governments must ensure that exploitative employers and labor brokers are not allowed to abuse legal processes by having foreign workers who complain arrested, incarcerated, or deported. Workers who allege forced labor must have the opportunity to seek redress.

Migrants

HUMAN TRAFFICKING IS also a phenomenon occurring within national borders. In Brazil, for example, forced labor has typically involved young men drawn from the impoverished Northeast states — Maranhao, Piaui, Tocantins, Para, Goias, and Ceara — to work in the northern and central western regions of the country. Although the law prohibits forced or compulsory labor, including by children, forced labor and trafficking of workers has occurred in many states, most commonly in activities such as forest clearing, logging, charcoal production, raising livestock, and agriculture, particularly harvesting sugarcane, coffee, and cotton. The ILO estimated that there were approximately 25,000 forced labor workers in Brazil during the year 2007.

Labor intermediaries trafficked most forced laborers to remote estates, where victims were forced to work in harsh conditions until they repaid inflated debts related to the costs of travel, tools, clothing, or food. Armed guards sometimes were used to retain laborers, but the remoteness of the location, confiscation of documents, and threats of legal action or physical harm usually were sufficient to prevent laborers from fleeing.

In Brazil, while the central government has announced a national plan to combat trafficking in persons, violators of forced labor laws enjoyed virtual impunity from criminal prosecution, and no landowner has ever been convicted and imprisoned for using slave labor. In a positive step forward, the Ministry of Labor and Employment did punish those who used slave labor by imposing fines, requiring that indemnities be paid to the workers and placing the names of violators on a “dirty list,” which was published every six months on the Internet.

Given the nature of forced labor trafficking, it is necessary for our efforts to expand beyond government action. The ILO, for example, is reaching out to the private sector and has developed a list of ten promising practices to help employers prevent forced labor in their own enterprises and cooperate with broader efforts to combat forced labor and trafficking.² Goods enter the global marketplace while consumers have little or no knowledge of the supply chains and work conditions that resulted in their production. This is problematic for both the consumer and businesses which are increasingly

² International Labour Organization. Special Action Program to Combat Forced Labour (SAP-FL). http://www.ilo.org/sapfl/Events/ILOevents/lang-en/WCMS_092176/index.htm.

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faced with the challenge of ensuring that complex supply chains are untainted by forced labor.

Governments must protect victims of trafficking, including victims who are foreign migrants. For purposes of the annual U.S. *Trafficking in Persons Report*, one important component of victim protection considered is whether foreign victims of trafficking are provided with legal alternatives to deportation to countries where they face hardship or retribution. The *United Nations Protocol on Trafficking in Persons* also calls on state parties to consider offering victims of trafficking the ability to remain in their countries in appropriate cases.

North Koreans crossing the border with China are extremely vulnerable to trafficking given their illegal status in China and the harsh punishment they would face if they were to return home. Protection of victims should be the core principle of any effective anti-trafficking strategy. Greater government efforts need to be made to protect this highly vulnerable group.

At this time, China classifies North Korean refugees as “economic migrants” and forcibly returns some to the DPRK where, as noted, they may face severe punishment, including execution. The U.S. consistently urges China to treat North Korean asylum seekers in line with international agreements to which it is a signatory. The political sensitivity of this issue and a lack of transparency in China’s law enforcement system have hampered our efforts to advocate effectively for change.

In many Persian Gulf states, which rely heavily on foreign migrant labor, individuals working as domestic servants, often migrant women, are particularly vulnerable to acute sexual and labor exploitation. They labor in low-paying, poorly regulated sectors. In many such countries, to be a woman or a migrant often means less than equal treatment under the law and in practice. But to be a woman migrant leaves you in a particularly precarious position. So-called sponsorship laws — prevalent throughout the Gulf — have in practice been abused in too many cases by unscrupulous employers who require the migrant worker to do whatever they demand or else run the risk of deportation due to alleged breach of contract.

Less than human

NOWHERE IS THIS more evident than in Saudi Arabia, where every month, hundreds of female migrants, recruited as domestic workers, flee Saudi households in which they face severe abuse including rape, physical beatings, confinement, and denial of wages. The perpetrators of these trafficking crimes are Saudi husbands and wives who, as part of the Gulf’s “maid culture,” see foreign servants as less than human and acceptable for exploitation. Unfortunately, Saudi Arabia’s criminal justice system too often validates this culture of abuse by failing to hold traffickers accountable. Reflecting an abject lack of political will to address this

crime, Saudi Arabia has been on the *TIP Report's* lowest ranking for four years in a row.

Take Nour Miyati, an Indonesian woman who sought a brighter future for her nine-year-old daughter. Nour worked as a domestic servant for four years in the Saudi Kingdom. She was treated fairly and was able to send money back home so that her daughter could stay in school. Then her fate took a turn under a new employer, who confined her to his house, denied her pay, and tortured her. Injuries she suffered to her hands and feet resulted in gangrene that required the amputation of her fingers and toes.

Tragically, Nour was twice victimized. Despite having escaped these horrific circumstances, she was arrested for “running away” under the country’s sponsorship laws and was not accorded proper status as a victim of trafficking. Workers such as Nour may escape abuse in private homes or work sites only to be denied an exit permit to leave the country.

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Labor-destination countries should have procedures in place to ensure that foreign workers are screened for evidence of trafficking prior to being removed for lack of legal immigration status. Training law enforcement officials and immigration officers on victim identification, or the deployment of trained victim identification specialists, are among the measures destination countries should consider in order to improve their ability to identify trafficking victims.

The exploitation of domestic workers is not unique to the Gulf. The 2008 *TIP Report* highlights the case of two women — Mala and Kamala — who came to the U.S. to work as domestic servants for an American family on Long Island, New York. They accepted an offer of work in a far-away country in hopes of improving the livelihood of their families back in rural Indonesia. Instead, what they encountered in an affluent community of suburban New York City was a form of modern-day slavery. The two domestic workers were subjected to beatings, threats, and confinement until, after years, they sought help. Their exploiters were tried and convicted on multiple criminal charges, including forced labor and “document servitude” (withholding a person’s travel documents as a means to induce them into labor or service).

Trafficking of migrant women is particularly relevant in the realm of commercial sexual exploitation. As migration becomes increasingly feminized, more migrant women are at risk of being trafficked into prostitution. Lila, a 19-year-old Romanian girl, who had already endured physical and sexual abuse from her alcoholic father, was introduced by an “acquaintance” to a man who offered her a job as a housekeeper or salesperson in the UK. When she arrived in the UK, the man sold her to a pimp, and Lila was pushed into prostitution. She was threatened that she would be sent home in pieces if she

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didn't follow every order. After an attempted escape, her papers were confiscated and the beatings became more frequent and brutal. Months later, after being re-trafficked several times, Lila was freed in a police raid. She was eventually repatriated back to Romania, where after two months she fled from a shelter where she had been staying. Her whereabouts are unknown.

Migrants are abused nearby, not just in far-off lands. Molina, a 30-year-old Mexican, was held against her will and forced to work in a factory in Southern California making dresses from 5:30 in the morning until 11 at night, seven days a week. She was not allowed to take a shower or leave the factory; at night she shared a small bed with another woman. She received one meal of beans and rice a day. If she didn't sew fast enough, her boss would pull her hair, pinch and slap her. The factory doors were locked during the day and at night a watchman prevented her from leaving. "If we wouldn't do what she [her boss] said, she told us somebody who we love would pay the consequences," says Molina.

Relief

TO ELICIT COOPERATION from other nations in eradicating human trafficking, the U.S. needs to be seen as acknowledging that it confronts trafficking as well, as Molina's story illustrates, and that we are willing to share lessons learned as well as talk about areas where there is room for improvement. I work closely with domestic agencies to show other nations we are not just delivering diplomatic demands to others to change but are deeply committed to change ourselves. The U.S. government identifies our own areas for improvement in an annual self-assessment produced by the Department of Justice.³

Within the United States, the Trafficking Victims Protection Act of 2000 (TVPA), which created the office I direct, also created the "T" Visa which allows trafficking victims to remain in the United States to assist federal authorities in the investigation and prosecution of human trafficking cases, and to give them a place of refuge in the aftermath of severe exploitation. This status applies even to individuals who may have come here originally without proper documentation, if it is clear that they were victims of human trafficking.

From 2001 through January 2008, the U.S. Department of Homeland Security granted approximately 2,000 "T" visas to trafficking victims and their families, allowing them to remain in the United States. Human trafficking survivors from as many as 77 countries have been certified to receive certain U.S. federally-funded or administered benefits. Fortunately, Molina from the story above qualified for a "T" Visa under U.S. law and she now

³ *Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007* (May 2008). <http://www.usdoj.gov/ag/annualreports/tr2007/agreporhumantrafficking2007.pdf>.

works as a security guard in Los Angeles; she's completed English classes and is working toward her GED.

While this victim-centered approach is laudable and something that we encourage foreign governments to consider, there is still room to improve at home. Many trafficking victims do not know that this form of relief exists. Greater government efforts need to be made to educate a highly vulnerable group of victims regarding what protections are available. Otherwise, as in so many countries, victims hidden in the shadows of complex, insidious manipulation — what sociologist Kevin Bales calls “disposable people”⁴ — are afraid to come forward and seek help, afraid to be treated as criminals and illegal aliens.

The plight of exploited migrants, some of whom are susceptible to human trafficking, should not become enmeshed in our domestic immigration debate. We should be able to agree that those who arrive on our shores only to experience victimization in the form of human trafficking deserve proper care. As a global leader, we encourage the same response abroad.

What to do

IN ORDER TO improve our awareness of forced labor abroad, and to discourage labor exploitation, the U.S. Department of Labor is currently developing a list of goods that the department has reason to believe are produced through forced labor or child labor in violation of international standards. The list, due in 2009, will serve as an awareness-raising tool for U.S. enforcement agencies, for the public, for governments, for NGOs, and ultimately for the business community. It is also consistent with U.S. government efforts to deny specific items produced, in part or wholly, by forced labor access to the U.S. market.

Amid the tremendous benefits that international migration brings, we cannot be blind to the dark side of the global economy — for it is in these shadows that trade in human beings is permitted to flourish. Whether it is an Indonesian migrant worker trapped in a factory in the Middle East, or an Eastern European girl prostituted and held captive in a brothel in Western Europe, or a young North Korean bride forcibly married to a Chinese man — these are the faces of modern-day slavery. They have become ensnared in human trafficking and forced labor and they demand our attention as they yearn for dignity.

Governments, both at the domestic level and through international cooperation, must work to improve protection for those migrants who are victims of trafficking while respecting their human rights — ensuring they are not treated as nonpeople. Most of these arrangements need not take the

⁴ Kevin Bales, *Disposable People: New Slavery in the Global Economy* (University of California Press, 2000).

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form of new treaties and multilateral institutions. As Anne-Marie Slaughter pointed out in *The Real New World Order*, “In this context, a world order based on government networks, working alongside and even in place of more traditional international institutions, holds great potential.”⁵

To end the enslavement of some of the world’s migrants, we need to focus on legal tools as well as other arrangements that further the fundamental principle of human dignity. This principle inspired Myres McDougal and Harold Lasswell, of the so-called New Haven school of legal thought, who wrote in 1959, “Our overriding aim is to clarify and aid in the implementation of a universal order of human dignity.” To decrease migrants’ vulnerabilities to human trafficking, we indeed need to focus on tools in public law (and also in less formal arrangements) which take into account the underlying concern of the New Haven school in advancing human dignity.

International cooperation can be achieved as well through the most prominent international instrument in this area, the *UN Trafficking in Persons Protocol*, a state-of-the-art UN instrument adopted in 2000, the same year that the U.S. Trafficking Victims Protection Act passed. The UN Protocol should be a touchstone, alongside ILO conventions and migration agreements, for confronting the special calamitous horror of human trafficking. More important than ratifying the protocol is implementing it. As important as enacting laws consonant with the protocol is vigorously enforcing them. Promoting human dignity is the common denominator in these arrangements, formal and informal, among or within nations designed to fulfill the natural law principle that fellow humans not be treated as less than human — as slaves. All governments, ours included, must embrace this obligation.

⁵ Anne-Marie Slaughter, *The Real New World Order* (Princeton University Press, 2005).