

# Combating Trafficking in Women and Children: A Review of International and National Legislation, Coordination Failures, and Perverse Economic Incentives\*

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## Abstract

*In this review, we argue that the pattern of trafficking needs to be understood through the impact of legislative forces and human rights policies in place in the host countries of trafficking. Analyzing trafficking patterns solely through the lens of economic, labor market and demographic variables leaves a key question unanswered: how much of the incidence of trafficking into host countries is due to perverse incentives created for traffickers by the provision and enforcement of policies that grant human rights (such as amnesty) to trafficked victims? The reason why we focus on this particular policy is twofold. First, the role of amnesty in creating possible perverse incentives for traffickers is controversial and has not been explored in the literature. While economic and enforcement factors affecting the “market” for trafficked victims for commercial sexual exploitation through incentives for traffickers have received a fair amount of attention, the impact of legislation surrounding anti-trafficking activities in host countries on the incentives for traffickers remain an equally important but unexplored issue. Second, from a normative point of view, the role of amnesty for trafficked victims needs careful evaluation. We argue that while the policy of amnesty does protect the rights of trafficked victims in host countries, it cannot be viewed as a policy that deters traffickers, but as one that may in fact increase the incentive to select countries that offer amnesty as destination countries for victims.*

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## Introduction

The term “trafficking” refers to a set of interrelated activities that encompass migration, prostitution, and acts that violate human rights. The term is synonymous with illicit trade in human beings across international borders or within the same country. A subset of such activities is the trafficking of women and children for purposes of forced commercial sexual exploitation – an activity synonymous with slavery and designated by the International Labour Organization (ILO) as one of the “Worst Forms of Child Labor.” Trafficking of children is often discussed together with the trafficking of women, the main reasons being that: (i) available data on trafficking of women are not disaggregated by age; and, (ii) there is considerable debate regarding the age at which a child should be considered an adult. For example, the majority of women coerced into prostitution are between 16 and 24 years of age.<sup>1</sup> However, 16 and 17-year old girls are children according to the 1989 U.N. Convention on the Rights of the Child (CRC) and the ILO Worst Forms of Child Labor Convention (182). The issue of age is further complicated by considerable variations in national laws regarding the age until which an individual is considered a “child.” Ireland protects those under 17 as children, while Australia, Belgium, the Netherlands, New Zealand, Switzerland, and the United Kingdom accord protection to those under 16. The age for protection is 15 in France, Sweden, and Denmark, while it is 14 in Austria and Germany.<sup>2</sup> The age of consent for sexual matters is 15 in Denmark: thus, the word “child” in the Danish provision on child pornography is only applicable to individuals below the age of 15.

The above variation regarding the legal definition of a child notwithstanding, there is broad consensus regarding activities that fall under the definition of trafficking in women and children. Specifically in the context of child trafficking, according to the ILO, trafficking is said to occur if: (i) a child is misled with false reports or promises, coerced, or otherwise forcibly recruited/handed over to transporters; (ii) a child is lied to about the destination; and (iii) a child is lied to about either the nature of work (i.e., recruited as a dancer but forced into prostitution) or the wages and methods of payment. Trafficking may also take the form of physical or mental abuse, confinement, inadequate or nonexistent health care, poor accommodation, and hazardous work.<sup>3</sup> A comprehensive definition of trafficking, the most recent and frequently cited by researchers, is the U.N.

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1 JUNE KANE & PANUDDA BOONPALA, INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, UNBEARABLE TO THE HUMAN HEART: CHILD TRAFFICKING AND ACTION TO ELIMINATE IT (International Labour Organization, Geneva, 2002) [hereinafter ILO 2002].

2 Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 *American Journal of International Law* 789, at 794 (2000) [hereinafter Dennis 2000] [citing VITIT MUNTARBHORN, EXTRATERRITORIAL CRIMINAL LAWS AGAINST CHILD SEXUAL EXPLOITATION AT 23 (UNICEF 1998)].

3 ILO 2002, *supra* note 1.

Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000. The Palermo Protocol encompasses three primary features associated with trafficking: (i) activities that constitute human trafficking (recruitment, transportation, harboring, receipt of persons), (ii) means being used (force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability), and (iii) purpose, which is exploitation (prostitution of others, sexual exploitation, forced labor or services, slavery or practices similar to slavery).

The Palermo Protocol is one of the more recent attempts to define the term “trafficking” and outline the activities that surround it, although the act of trafficking has been couched within earlier definitions of “forced labor” dating back to Convention No. 29 of the ILO in 1930. ILO Convention No. 29 defines forced or compulsory labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>4</sup> Subsequently, ILO Convention No. 105, adopted in 1957, specifies that forced labor cannot be used for the purpose of economic development or as a means of political education, discrimination, labor discipline or punishment for having participated in strikes.<sup>5</sup> One of the forms of forced labor under the ILO definition is ‘forced commercial and sexual exploitation,’ which includes women, men and children who have been forced by private agents into prostitution or into other forms of commercial sexual activities.<sup>6</sup>

Estimates for the period of 1995-2004 put the number of cases of forced labor and the number of trafficked victims worldwide at 12.3 million.<sup>7</sup> Of these, 2.5 million are forced to work by the State (forced labor camps, child soldiers), 1.4 million in commercial sexual exploitation, and 7.8 million in other forms of economic exploitation.<sup>8</sup> In addition, more than 500,000 victims could not be assigned to either of the forced labor categories above. Specifically, in the context of forced commercial sexual exploitation, Belser provides a regional breakdown

4 International Labour Organization (ILO), 14th Sess., Convention (No. 29) Concerning Forced Labour, *opened for signature June 28, 1930 (entered into force May 1, 1932) at Article 2(1). Convention No. 29 allows exemptions for military service and prisoners convicted in a court of law and working under the control of a public authority, at Article 2(1) (a) and (c).*

5 ILO, 40th Sess., Convention (No. 105) Concerning the Abolition of Forced Labour, *opened for signature June 25, 1957 (entered into force Jan. 17, 1959) at Article 1. See also, Patrick Belser, Forced Labour and Human Trafficking: Estimating the Profits*, at 2 (ILO, DECLARATION/WP/42/2005, March 2005), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor> [hereinafter Belser 2005].

6 See, INTERNATIONAL LABOUR ORGANIZATION, A GLOBAL ALLIANCE AGAINST FORCED LABOUR, (ILO Report, 2005). The other two forms of forced labor as defined by the ILO are: (i) forced labor imposed by the State or by armed forces/rebels which includes compulsory participation in public works and forced prison labor and (ii) forced labor for economic exploitation, other than in the sex industry, by private agents and enterprises.

7 Belser 2005, *supra* note 5 at 4. The ILO estimates are calculated from reports by International Organizations, non-governmental organizations (NGOs), governments, police and other sources.

8 *Id.*

of the number of victims: 200,000 in industrialized economies, 98,000 in transition economies, 902,000 in the Asia and the Pacific, 115,000 in Latin America and the Caribbean, 50,000 in Sub-Saharan Africa and 25,000 in the Middle-East and North Africa.<sup>9</sup>

Moreover, a large share of the victims in forced commercial sexual exploitation particularly in the industrialized economies, and in Asia and the Pacific, are also victims of international and internal trafficking. For instance, 63% of victims in forced commercial sexual exploitation in the industrialized economies are trafficking related while the corresponding percentage for Asia and the Pacific stands at 54%, transition economies at 45%, Latin America and the Caribbean at 12%, Sub-Saharan Africa at 6% and the Middle East and North Africa at 10%. Perhaps more striking are the profits from forced commercial sexual exploitation as a result of trafficking. Belser finds that global profits made from trafficking into forced commercial sexual exploitation over the period 1995-2004 amount to \$27.8 billion; \$13.3 billion of which is in the industrialized economies, \$9.5 billion in Asia, \$3.2 billion in the transition economies, \$1.0 billion in Middle East and North Africa, \$0.6 billion in Latin America and \$0.1 billion in Sub-Saharan Africa.<sup>10</sup>

The profitability from commercial sexual exploitation engendered through trafficking begs two important questions. First, what are the push (supply side) and pull (demand side) factors that allow for the persistence of the trade of human beings across national borders? Apart from the customary socio-economic and political variables that impact the market for transnational trafficked victims such as poverty, lack of educational opportunities, lure of higher wages in developed countries, a key question remains unanswered: what explains the persistence of only some of the poorer countries as primary source countries from where trafficked victims hail, and what explains the persistence of only some of the richer countries as destinations for these victims? Second, it is worth emphasizing that a distinguishing feature of international trafficking is that a middleman is involved. Such a middleman may be an individual “recruiter” with an aim to serve the receiving end at the lowest cost, a smuggler of illegal migrants specializing in evading border controls, or a criminal network operating on both the supply and the final demand sides.<sup>11</sup> Thus, in addition to the aforementioned push and pull factors, it is important to understand how these different types of traffickers operate, and more importantly, how legislation granting human rights to trafficked individuals in the host and source countries of trafficking affects the incentives of

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9 Belser 2005, *supra* note 5 at 5.

10 All amounts are cited in United States Dollars (USD).

11 *See generally*; U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 2003, (OFFICE OF THE UNDERSECRETARY FOR GLOBAL AFFAIRS, UNITED STATES DEPARTMENT OF STATE PUBLICATION NO. 11057) [hereinafter TIP REPORT 2003].

traffickers that leads to a persistence of trafficking in women and children across international borders.

Accordingly, Part I of this article will review evidence collected by Basu and Chau in countries distinguished as host, source and transit countries of trafficking victims, and which underscores the economic and demographic variables that explain the location of countries in these three categories.<sup>12</sup> Part II will take a closer look at the legislative variables surrounding trafficking activities in these three types of countries. Particular attention is paid to the role of amnesty<sup>13</sup> in host countries in creating possible perverse incentives for traffickers. This is a controversial issue and while economic and enforcement factors affecting the “market” for trafficked victims for commercial sexual exploitation through incentives for traffickers have received a fair amount of attention, the role of legislation in host countries is an equally important but relatively unexplored one. From a normative point of view, the role of amnesty for trafficked victims needs careful evaluation—something that is explored in Part III. While the policy of amnesty does protect the rights of trafficked victims in host countries, it cannot be viewed as a policy that deters traffickers, and may in fact increase their incentive to select countries that offer amnesty as destination countries for victims.

## I. Data and Patterns of Trafficking

Actual data on the incidence of international trafficking is sparse. The primary reason for this is that victims and survivors of trafficking for sexual exploitation, as well as traffickers and illegal migrants are part of a “hidden population” in any country.<sup>14</sup> In addition, lax enforcement, corruption and denial or under-reporting of the extent of the problem by officials and governments world-wide, makes it impossible to establish a representative sample for analytical purposes. As a consequence, qualitative research on the topic is based primarily on piece-meal information such as “70% and 80% of trafficked women into the Netherlands and Germany are from Central and Eastern European countries”<sup>15</sup> or the “majority of trafficked women into Thailand [are] from Myanmar and Cambodia.”<sup>16</sup> Only two countries/official bureaus – the German Federal Office of Criminal Investigation

12 Arnab K. Basu & Nancy H. Chau, *An Exploration of the Worst Forms of Child Labor: Is Redemption a Viable Option?* in *BUYING FREEDOM: THE ETHICS AND ECONOMICS OF SLAVE REDEMPTION*, (K. Anthony Appiah & Martin Brunzli ed. Princeton University Press, 2007) at 37-76 [hereinafter Basu & Chau 2007].

13 Generally speaking, amnesty is the concept whereby offense are pardoned.

14 See generally, Guri Tyldum & Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, 43 *International Migration Journal*, 17 (2005).

15 See, John Salt, *Trafficking and Human Smuggling: A European Perspective*, 43 *International Migration Journal*, 32 (2005) [hereinafter Salt 2005] and Donna Hughes, *The 'Natasha' Trade: The Transnational Shadow Market of Trafficking in Women* 53 (2) *Journal of International Affairs* 625 (2005).

16 ILO 2002, *supra* note 1.

(Bundeskriminalamt, BKA) and the Dutch National Rapporteur on Trafficking in Human Beings in the Netherlands have national databases on trafficked women forced into prostitution in these countries.

Among international organizations and academic institutions, it is the International Organization for Migration (IOM) that has collected data since 1999 from persons assisted under IOM's counter-trafficking programs. The data in the Counter-Trafficking Module Database (CTM) of the IOM comes primarily from the Balkans, a region that also has the Regional Clearing Point (RCP) database maintained by the Stability Pact Task Force on Trafficking in Human Beings since 2002.<sup>17</sup> Recently, a unique dataset was collected by the ILO's Special Action Programme to Combat Forced Labour (SAP-FL). Based on questionnaires from 160 returned migrants in four origin countries (Albania, Romania, Moldova and Ukraine), interviews with informants, focus group discussions and research in seven destination countries (France, Germany, Hungary, Japan, Russia, Turkey and United Kingdom), the SAP-FL database contains 298 entries of forced labor of which 186 are trafficked victims. Two findings from the SAP-FL database warrant mention: (i) 43% of trafficked victims found jobs through an intermediary while 11.9% found a job via agencies and (ii) 32.4% of the trafficked victims were engaged in sex work while 12.8% were engaged in entertainment/dancing/bartending.<sup>18</sup> In addition, a recent study by Mahmoud and Trebesch analyzes IOM data from 5,513 households in Belarus, Bulgaria, Moldova, Romania and Ukraine and shows that members of migrant families in migration areas and with larger migrant networks are much more likely to become victims of trafficking.<sup>19</sup> Further, illegal migration increases the risk of being trafficked, while information campaigns have a negative impact on the likelihood of being trafficked.

Nevertheless, by relying primarily on samples generated either through household surveys in source countries or through interviews with survivors identified by law enforcement agencies and NGOs, two potential problems arise: (i) it is impossible to ascertain the total number of trafficked victims from survivor samples, and hence the total number of trafficked victims in a year or even over a time period is unknown; and (ii) studies based on survivor interviews lead to an unbalanced emphasis on the supply-side of the problem of trafficking and limit analysis of the demand-side factors (economic and legislative) that create a market for trafficked individuals in the destination countries. As a result, the operational

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17 Frank Laczko, *Data and Research on Human Trafficking*, 43 *International Migration Journal* 5 (2005).

18 Beate Andrees & Mariska N. J. van der Linden, *Designing Trafficking Research*, 43 *International Migration Journal* 55 (2005).

19 *See generally*, Toman Omar Mahmoud & Cristophe Trebesch, *The Economic Drivers of Human Trafficking: Micro-Evidence from Five Eastern European Countries*, (Kiel Institute for the World Economy, Working Paper No. 1480, Feb. 2009) available at <http://www.ifw-members.ifw-kiel.de/publications/the-economic-drivers-of-human-trafficking-micro-evidence-from-five-eastern-european-countries/kap1480.pdf>.

network of traffickers, the specific features of the sectors in which trafficked victims are forced to work, the economic and demographic characteristics of host and source countries of trafficking and finally, international and national legislation in host and source countries that affect the incentives of traffickers have yet to be thoroughly analyzed.<sup>20</sup>

In terms of a global picture of the incidence of trafficking, there are three noteworthy sources. A global database for trafficking trends is available from the United Nations Office on Drugs and Crime (UNODC), which contains data on victims, traffickers and trafficking routes collected mostly from the industrialized countries. Second, the U.S. Department of State Trafficking in Persons (TIP) country reports provide a qualitative sample of host and source countries of trafficking based on reports published in the host countries, and only for those host countries where at least 100 cases of trafficking were discovered in the past year.<sup>21</sup> Third, The Protection Project at The Johns Hopkins University School of Advanced International Studies details trafficking routes as well as laws and legislation surrounding trafficking and prostitution in every country.<sup>22</sup>

In order to unravel the pattern of trafficking in women and children between countries, we first present data from Basu and Chau<sup>23</sup> which looked at the country-by-country reports in the U.S. Department of State TIP Report 2003<sup>24</sup> and The Protection Project Report 2002.<sup>25</sup> Of primary interest is the classification of countries into four mutually exclusive groups: host countries, source countries, trafficking hubs (both a host and a source country), and countries with no reported incidence of trafficking. Of the 187 countries in our dataset, 32 countries are

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20 An exception to this statement, where econometric analysis of legislations in source and host countries of trafficking show that the likelihood of a host-source country match increases with the provision of amnesty in a host country and a ban on prostitution in a source country, can be found in Randall Akee, Arnab Basu, Arjun Bedi & Nancy Chau, *Determinants of Trafficking in Women and Children: Theory, Empirics and Policy Implications*, Third IZA/World Bank Conference on Employment and Development, Participant Paper, 2008, [http://www.iza.org/conference\\_files/worldb2008/basu\\_a3581.pdf](http://www.iza.org/conference_files/worldb2008/basu_a3581.pdf).

21 Copies of the annual U.S. Department of State, Trafficking in Persons Reports can be found at <http://www.state.gov/g/tip/rls/tiprpt/>.

22 See THE PROTECTION PROJECT HUMAN RIGHTS REPORT ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN: A COUNTRY-BY-COUNTRY REPORT ON A CONTEMPORARY FORM OF SLAVERY (THE PROTECTION PROJECT AT THE JOHNS HOPKINS UNIVERSITY SCHOOL OF ADVANCED INTERNATIONAL STUDIES, WASHINGTON DC, 2<sup>ND</sup> ED. 2002) [HEREINAFTER TPP TRAFFICKING REPORT 2002]. THE PROTECTION PROJECT UPDATED ITS TRAFFICKING REPORT IN 2005 AND IS DUE TO PUBLISH AGAIN IN 2009.

23 Basu & Chau 2007, *supra* note 12.

24 TIP Report 2003, *supra* note 11.

25 TPP Trafficking Report 2002, *supra* note 22. As stated in the Introduction, the problems associated with segregating data on women from that on children due to the various national interpretations of legal age entails analysis of the joint incidence of trafficking in women and children only.

identified as source,<sup>26</sup> 45 as hosts,<sup>27</sup> 66 as hubs (or transit countries that act as both source and host),<sup>28</sup> 44 countries with no reported incidence.<sup>29</sup>

The pattern of trafficking and the types of work that trafficked individuals are engaged in vary across countries and continents. For instance, in Africa, the most common source countries of trafficking are Sierra Leone, Malawi, Mozambique, Nigeria, and Somalia, from which children and women are trafficked to South Africa, Gabon, Gambia, and Western European countries primarily to work in the sex industry. There is also a steady supply of trafficked children from Mali to Côte d'Ivoire who end up working in cocoa plantations.<sup>30</sup> In Asia, the most common source countries of trafficking seem to be Bangladesh, Nepal, Vietnam, Bhutan, Laos, and Cambodia, while the host countries are India, Thailand, Sri Lanka, Saudi Arabia, United Arab Emirates (UAE), and Australia. Trafficked children and women are engaged in a variety of work. The primary activity remains prostitution, but an increasing number also work as domestic helpers in host countries, while young boys are smuggled from Bangladesh and India to work as camel jockeys in Saudi Arabia and the UAE.<sup>31</sup>

26 Source countries are determined to include: Algeria, Angola, Armenia, Azerbaijan, Belarus, Bhutan, Bolivia, Cape Verde, Colombia, Cuba, Ecuador, Estonia, Ethiopia, Georgia, Guyana, Honduras, Iraq, Kenya, Latvia, Madagascar, Malawi, Mauritania, Moldova, Morocco, Mozambique, Nepal, Nicaragua, Sierra Leone, Slovenia, Somalia, Tajikistan and Zambia (Basu & Chau 2007, *supra note 12*).

27 Host countries are determined to include: Antigua, Australia, Austria, Belgium, Belize, Bosnia & Herzegovina, Botswana, Canada, Central African Republic, Chile, Cote d'Ivoire, Denmark, Finland, France, Gabon, Gambia, Germany, Greece, Hong Kong (SAR), Israel, Italy, Japan, Kuwait, Lebanon, Libya, Macau (SAR), Mauritius, Netherlands, Norway, Portugal, Qatar, Rwanda, Saudi Arabia, Singapore, Spain, Suriname, Swaziland, Sweden, Switzerland, Syria, United Arab Emirates, United Kingdom, United States, Yemen and Yugoslavia (Basu & Chau 2007, *supra note 12*).

28 Hub countries are determined to include: Afghanistan, Albania, Argentina, Bahrain, Bangladesh, Benin, Brazil, Brunei, Bulgaria, Burkina Faso, Cambodia, Cameroon, Chad, China, Congo Dem. Rep., Costa Rica, Cyprus, Czech Republic, Dominican Republic, El Salvador, Equatorial Guinea, Ghana, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Kazakhstan, Kosovo, Kyrgyzstan, Laos, Liberia, Lithuania, Malaysia, Mali, Mexico, Mongolia, Myanmar, Niger, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Russian Federation, Senegal, Slovakia, South Africa, South Korea, Sri Lanka, Sudan, Taiwan, Tanzania, TFYR Macedonia, Thailand, Togo, Turkey, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam and Zimbabwe (Basu & Chau 2007, *supra note 12*).

29 Countries with no reported incidence of trafficking are: Andorra, Bahamas, Barbados, Burundi, Comoros, Croatia, Djibouti, Egypt, Eritrea, Fiji, Iceland, Jamaica, Lesotho, Liechtenstein, Luxembourg, Maldives, Malta, Marshall Islands, Micronesia, Monaco, Namibia, Nauru, New Zealand, Niue, Oman, Palau, Palestine, Papua New Guinea, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Seychelles, Solomon Islands, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Uruguay and Vanatu (Basu & Chau 2007, *supra note 12*).

30 See UNICEF, *TRAFFICKING IN HUMAN BEINGS ESPECIALLY WOMEN AND CHILDREN IN AFRICA*, (INNOCENTI RESEARCH CENTER, UNICEF, FLORENCE, 2005) AVAILABLE AT [HTTP://WWW.UNICEF-IRC.ORG/PUBLICATIONS/PDF/TRAFFICKING-GB2ED-2005.PDF](http://www.unicef-irc.org/publications/pdf/trafficking-gb2ed-2005.pdf). SEE ALSO, ADERANTI ADEPOJU, *REVIEW OF RESEARCH ON HUMAN TRAFFICKING IN SUB-SAHARAN AFRICA* 43 INTERNATIONAL MIGRATION JOURNAL 75 (2005).

31 ILO 2002, *supra note 1*.

In Latin America and the Caribbean, the root of trafficking lies in poverty, political instability and gender attitudes leading to social and income inequalities. Furthermore, there is a lack of anti-trafficking legislation and enforcement of existing laws against pimps and facilitators is non-existent.<sup>32</sup> The source countries of trafficking are Bolivia, Colombia, Dominican Republic, Ecuador, Guatemala, Honduras and Nicaragua, while destination countries are Argentina, Mexico, Belize, Costa Rica and Panama. El Salvador is a hub – a source, transit and destination country for trafficked victims. Typically, source countries in this region are characterized by low GDP per-capita, relatively higher youth illiteracy and lower female primary school enrollment.<sup>33</sup> Similarly, trafficked women and children from the former republics of the Soviet Union (Estonia, Georgia, Ukraine, Uzbekistan, Kazakhstan, and Kyrgyzstan) are usually forced into prostitution in Western European countries (especially Germany, Italy, and Greece).

The determinants of trafficking can be broken up into push (supply-side) and pull (demand-side) factors. Some of the supply-side factors that give rise to trafficking and prostitution are the same that lead to the emergence and persistence of child labor, that is, poverty and lack of educational opportunities. In addition, armed conflict in some African countries such as Sierra Leone and Sudan gives rise to social fragmentation that makes it easier for children to be forcibly removed and trafficked by various factions. On the demand side, the largest demand for child trafficking and prostitution may be linked to the growth in income in both developed and developing countries. For developed countries, two factors are frequently alleged to be in play: (i) the rise of tourism from developed to developing countries and the subsequent rise in the demand for “sex tourism” as developed countries increasingly strengthen laws to protect minors and increase enforcement related to prostitution; and (ii) economic growth in developed countries, low fertility, and the subsequent increase in demand for cheap migrant labor. The latter effect is also evident in some developing countries that have witnessed relative prosperity over the last decade, and where the native population has gradually moved away from low-skilled, low-wage employment sectors. Consequently, legal and illegal migrants are now filling employment in these low-wage sectors. As an example, an increased number of children have migrated and/or have been trafficked into Thailand from Myanmar, Laos, and Cambodia to work in exploitative jobs previously done by Thai children.<sup>34</sup>

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32 See Laura Langberg, *A Review of Recent OAS Research on Human Trafficking in the Latin American and Caribbean Region* 43 *International Migration Journal* 129 (2005) [hereinafter Langberg 2005].

33 *Id.*

34 ILO 2002, *supra* note 1.

Indeed, evidence suggests that there are links between sending and receiving countries of trafficked victims. These links are influenced by a number of factors: (i) traffickers' use of local knowledge about key locations or weaknesses in border and migration control; (ii) presence and tolerance of an extensive sex industry in receiving countries; (iii) historical/colonial links between countries and the existence of a large immigrant population in the receiving country.<sup>35</sup> Recent empirical work by Basu and Chau<sup>36</sup> underscores the differences in labor force composition and demographic characteristics of source, hub (transit), and host countries of trafficking victims. For instance, a typical worker in a source country for international trafficking or a trafficking hub is more likely to be employed in agriculture as compared to a worker in a host country. Source countries also exhibit a higher dependency ratio (ratio of children ages 0-14 to total population of a country). There is likewise a correspondingly higher incidence of child labor in source countries and trafficking hubs, with shares of economically active children (ages 10-14) at 13.7% in source countries and 12.9% in trafficking hubs, as compared to around 3.8% in host countries. Employment of adults, in contrast, exhibits the opposite pattern, with adult unemployment rates for both female and male nearly twice as high in source countries and trafficking hubs, as compared to host countries of trafficking. Meanwhile, dependence on income through workers' remittance from employment or other income sources abroad as a percentage of gross national product is higher in source countries and trafficking hubs (2.6%) as compared to host countries of trafficking (1.6%).

The empirical patterns described above are similar to the factors highlighted by Bales, who used multiple regression analysis to examine patterns of trafficking.<sup>37</sup> Bales found that for source countries the rank order of the factors (in terms of the importance of their effect) that affect the supply side of trafficking was higher government corruption, higher infant mortality rate (indication of population pressure), higher proportion of the population below age 14, lower food production index (an indication of poverty), higher population density and higher prevalence of conflict/social unrest. For host countries the rank order was less conclusive – more permeable borders (proxied by corruption), higher population over the age of 60, higher food production, higher energy consumption and lower infant mortality (the last three are indicators of the economic well-being of a host country). In addition, Ruggiero identifies sectors within host countries that most profit from trafficking to be the service sectors (restaurants, factories and farms), legitimate

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35 See generally, Liz Kelly & Linda Regan, *Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in the UK*, (UK Home Office, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, London 2000) available at <http://www.homeoffice.gov.uk/rds/prgpdfs/fprs125.pdf>.

36 Basu & Chau 2007, *supra* note 12.

37 Kevin Bales "What Predicts Global Trafficking?" paper presented at the International Conference on New Frontiers of Crime: Trafficking in Human Beings and New Forms of Slavery, Verona, 22-23 October 1999.

domestic service industries (households that employ maids), building, construction and textile industries, and the illegal sex industry.<sup>38</sup>

An interesting result pertains to how global links for source countries impact the push and pull factors of the trafficking market. Basu and Chau find that the average host country's dependence on trade (measured by the trade share of GDP) is in fact quite similar to that of the average source country's dependence on trade.<sup>39</sup> Of particular interest is the notion that trafficking of women and children is correlated with tourism. However, Basu and Chau observe no statistically significant difference between international tourism expenditure, either as a fraction of total exports or gross national product, between source and host countries of trafficking.<sup>40</sup> More precisely, the notion that countries such as Thailand which rely heavily on tourist revenues (and which might include revenues from alleged sex tourism) are also host countries of trafficked women and children for prostitution related activities is rejected by empirical tests. Indeed, international tourism receipts (whether as a fraction of export revenues or of gross national product) are on average smaller in countries that host trafficked victims in our sample.

## II. Conventions, Legislation and Enforcement

The pattern of trafficking explored in the last section puts international trafficking squarely in the context of the economic push and pull factors enumerated above. However, focusing on economic factors alone does not allow one to distinguish the legislative forces at play in the host and source countries that govern the incentives of traffickers. We start with an overview of some of the related existing international and national legislation to combat trafficking and forced labor and then look at the distribution of host and source countries in terms of their ratification of international laws, specific legislation surrounding prostitution and related activities in these countries and finally, law enforcement variables in host and source countries of trafficking.

In addition to ILO Conventions No. 29 and No. 105 and the U.N. Palermo Protocol, a number of countries have ratified and adopted a range of international laws, particularly ILO Convention 138 concerning the Minimum Age for Admission to Employment (1973),<sup>41</sup> and the ILO Convention 182 on the Elimination of the

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38 V. Ruggiero, *Criminals and Service Providers: Cross-National Dirty Economies*, 28 Crime, Law and Social Change 27 (1997).

39 Basu & Chau 2007, *supra* note 12.

40 *Id.*

41 ILO, 58th Sess., Convention (No. 138) Concerning Minimum Age for Admission to Employment, *opened for signature June 26, 1973 (entered into force June 19, 1976)*.

Worst Forms of Child Labour (1999).<sup>42</sup> In addition to these ILO conventions, the United Nations specifically targets trafficking through its International Agreement for the Suppression of White Slave Traffic (1904)<sup>43</sup> and the United Nations Supplementary Convention on the Abolition of Slavery (1956) and upholds children's rights through the U.N. Convention on the Rights of the Child (1989).<sup>44</sup> While laws regarding minimum age and the rights of the child do not directly fall under the purview of anti-trafficking laws, anti-child labor legislation (or the lack thereof) can be expected to have a significant impact on child trafficking since two key demographic variables—a high dependency ratio and a high incidence of child labor—are synonymous with the source countries of trafficking. However, unlike minimum age legislation, the ILO Convention on the Worst Forms of Child Labour (No. 182) calls for the immediate suppression of extreme forms of child labor including: (a) all forms of slavery or practices similar to slavery, sale, trafficking of children, forced or compulsory labor including debt bondage and serfdom; (b) the use, engagement or offering of a child for the purposes of prostitution, production of pornography or pornographic performances, production of or trafficking in drugs or other illegal activities; and (c) the use or engagement of children in any type of work, which by its nature or the circumstances in which it is carried out, is likely to jeopardize their health, safety, or morals.<sup>45</sup>

While legislation surrounding child labor might play an important role for source countries of trafficking, national legislation, particularly laws that grant amnesty to trafficked victims in host countries of trafficking, may play an important role in tilting the incentive of traffickers to target these countries as potential destinations. In order to understand the role amnesty plays in the selection of a country as a destination, we take a look first at the prevailing anti-trafficking laws in the United States and the European Union. The most significant national legislation on anti-trafficking in the U.S., the Trafficking Victims Protection Act of 2000 (TVPA),<sup>46</sup> defines severe forms of trafficking in persons as:

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42 ILO, 87th Sess., Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, *opened for signature June 17, 1999 (entered into force Nov. 19, 2000) [hereinafter ILO Convention No. 182]*.

43 International Agreement for the Suppression of the "White Slave Traffic," Paris, May 18, 1904, League of Nations. *See also, Dennis 2000 supra note 2 for a comprehensive treatment of U.N. and other international legislation regarding child labor.*

44 United Nations Convention on the Rights of the Child, U.N. Doc. A/Res/44/25, *opened for signature Nov. 20, 1989 (entered into force Sept. 2, 1990)*.

45 ILO Convention No. 182 *supra* note 42, at article 3. *See also, Janelle Diller & David M. Levy, Child Labor, Trade and Investment: Toward a Harmonization of International Law*, 91 *American Journal of International Law* 663 for an excellent survey of international conventions and laws governing child labor.

46 Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat. 1464 (2000) [hereinafter TVPA 2000].

(a) sex trafficking in which a commercial sex act is induced by force, fraud, and coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(b) the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>47</sup>

Further, in the U.S., while persons smuggled into the country are usually deported, trafficked victims are accorded protection.<sup>48</sup> During the period 2000-2003 over 400 adult victims received certification for benefits eligibility<sup>49</sup> including medical care, food stamps, housing and cash assistance, and immigration relief.<sup>50</sup>

A number of initiatives have also been undertaken by European Union countries to combat trafficking in humans. The Council of Europe's Convention on Action against Trafficking in Human Beings of 2005<sup>51</sup> is the most recent initiative at the regional level. Article 14 of the Convention allows for a residence permit for trafficked victims and states that,

Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both: (a) the competent authority considers that their stay is necessary owing to their personal situation; (b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

The first countries to ratify the Convention were Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and Slovakia. It has since been ratified by a further 14 countries as of May 2009.<sup>52</sup> The Convention has also

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47 *Id.* §103 (8). The TVPA has been reauthorized three times, in 2003, 2005 and 2008.

48 Langberg 2005, *supra* note 32.

49 *See*, Elzbieta M. Gozdziaik & Elizabeth A. Collett, Research on Human Trafficking in North America: A Review of the Literature, 43 (1-2) International Migration Journal 99 (2005) [hereinafter Gozdziaik & Collett 2005]. Child victims do not require certification to receive benefits, TVPA 2000 §107.

50 *Id.* Furthermore, the United States Department of State in 2004 reviewed efforts made by 140 governments to combat trafficking with increased funding for anti-trafficking programs. In addition, 2003 data suggests that the United States supported 190 anti-trafficking programs in 92 countries with US \$72 million, an increase from 118 programs in 55 countries in 2001.

51 Council of Europe Convention on Action against Trafficking in Human Beings, CoE Treaty Series - No. 197, (2005).

52 Countries that ratified in 2008 and 2009 include: Armenia, Belgium, Bosnia and Herzegovina, France, Latvia, Luxembourg, Malta, Montenegro, Norway, Poland, Portugal, Serbia, Spain and the United Kingdom [As of May 15, 2009].

been signed, but not yet ratified by 17 other member States<sup>53</sup> and six member States have not yet signed the Convention.<sup>54</sup>

The Convention on Action against Trafficking in Human Beings of 2005 aside, individual countries within the EU have their own anti-trafficking and smuggling laws. One particular law entails the granting of amnesty to trafficking victims such as in Germany, Italy and the Netherlands. Variations in the coding of the law aside, the salient features of amnesty involve: (i) trafficked persons are given access to necessary medical assistance; (ii) a minimum recovery and reflection period of at least three months is offered to all trafficked persons, and the person's presence in the country is regularized and recognized during this time; (iii) minimum six months-renewable and permanent residence permits are issued to trafficked persons on the basis of the needs and risks of their personal situation and/or to ensure their presence during proceedings (against the traffickers and/or for compensation), and family reunification is available; and (iv) trafficked persons are not detained, charged, or prosecuted for illegal entry or residence and activities which are a direct consequence of their situation as trafficked persons.<sup>55</sup>

Turning to the adoption of legislation related to trafficking, Basu and Chau<sup>56</sup> looked at the distribution of anti-trafficking conventions and legislation across source, host and hub countries of trafficking. Amongst international conventions, Table 1 reports the pattern of ratification of the ILO conventions on the Abolition of Forced Labour 105 and the Worst Forms of Child Labour 182, along with three other United Nations Protocols: (i) the Optional Protocol to the Convention on the Rights of the Child (OPSC) which calls for an end to the sale of children for the purposes of prostitution and pornography, (ii) the Protocol to Prevent, Suppress and Punish Trafficking in Persons (PPSPT), and (iii) the Migrant Workers' Convention (MWC) that calls for the protection of the rights of migrant workers and members of their families. The patterns of the ratification of these conventions differ widely (Table 1).<sup>57</sup> These patterns range from almost universal commitment to abolish forced labor, to the relative popularity amongst host countries of trafficking to the

53 Countries that have signed but not ratified include: Andorra, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Netherlands, San Marino, Slovenia, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey and the Ukraine [*As of May 15, 2009*].

54 Member states that have not yet signed include: Azerbaijan, Czech Republic, Estonia, Liechtenstein, Monaco, and the Russian Federation [*As of May 15, 2009*].

55 As a concrete example, Italy's Law 228/2003 – "Measures against Trafficking in Persons" drafted by the Ministry of Equal Opportunities grants residency status for the victims of trafficking by granting a special visa to victims of exploitation for reasons of prostitution and other crimes related to prostitution. See Marina Elefante, *Slave Women: The Italian Legal Response to the International Trafficking in Women*, 1 *The Protection Project Journal of Human Rights and Civil Society* 1 (2007) at 1.

56 Basu & Chau 2007, *supra* note 12.

57 These legislative and law enforcement variables are taken from TPP Trafficking Report 2002, *supra* note 22; the latest available years of the United Nations Interregional Crime and Justice Research Institute, *International Crime Victim Survey, (2004)* available at <http://www.unicri.it/icvs/>; and the United Nations *The Seventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems* (Crime Prevention and Criminal Justice Division, United Nations Office 2004).

commitment to eliminate the worst forms of child labor (which includes the sale of children and international trafficking). By contrast, ratification of the Migrant Workers' Convention is more prevalent among source countries of international trafficking.

In terms of national statutes with specific reference to trafficking and prostitution, a high percentage of host countries have enacted laws to protect the rights of trafficking victims. Around 22% of host countries grant legal status to trafficking victims, whereas no source countries do so. With respect to legal restrictions on prostitution and other related activities, laws banning prostitution are most common amongst trafficking hubs, followed by host and source countries. Meanwhile, laws banning activities surrounding and promoting prostitution, such as pimping, pandering, and brothels, are more common in host countries. With the exception of the Migrant Workers' Convention, which covers voluntary migrants as well, these observations would seem to indicate that a larger average share of host countries enact legislation answering to the international call to end trafficking and to protect trafficking victims.<sup>58</sup>

*Table 1: International and National Legislation*

| <b>Ratification of International Conventions</b> | <b>Host</b> | <b>Hub</b> | <b>Source</b> | <b>All</b> |
|--|-------------|------------|---------------|------------|
| ILO Convention 105                               | 88.1%       | 82.5%      | 89.7%         | 84.3%      |
| ILO Convention 182                               | 61.9%       | 54.0%      | 37.9%         | 53.0%      |
| PPSPT  | 47.6%       | 50.8%      | 37.9%         | 47.0%      |
| OPSC   | 50.0%       | 33.3%      | 34.5%         | 39.8%      |
| MWC  | 4.8%        | 14.3%      | 20.7%         | 13.3%      |
| <b>National Legislations</b>                     | <b>Host</b> | <b>Hub</b> | <b>Source</b> | <b>All</b> |
| Grant Legal Status to Trafficked Victims         | 22.2%       | 6.2%       | 0.0%          | 7.6%       |
| Prohibit Prostitution                            | 35.6%       | 41.5%      | 34.4%         | 38.3%      |
| Prohibit Pimping                                 | 86.7%       | 75.4%      | 75.0%         | 79.2%      |
| Prohibit Brothels                                | 55.6%       | 41.5%      | 50.0%         | 47.0%      |

Source: Basu & Chau (2007)<sup>59</sup>

58 It is important to note that why and when countries adopt international conventions is an area of inquiry that is still in its infancy. Chau & Kanbur, show, with specific reference to the four core labor standards of the ILO, that the ratification pattern is highly convention-specific. What is important in our context is that whereas countries with higher income per capita (the host countries) appear to be more likely to participate in international conventions and domestic legislation protective of victims' rights, the same is not true for many other core labor standard conventions. In fact, the stage of development of an economy is not always a good predictor of ratification. See, Nancy H. Chau & Ravi Kanbur, *The Adoption of International Labor Standards: Who, When and Why*, Brookings Trade Forum 2001, (Brookings Institution, Washington, DC, 2002) available at [http://muse.jhu.edu/journals/brookings\\_trade\\_forum/v2001/2001.1chau.pdf](http://muse.jhu.edu/journals/brookings_trade_forum/v2001/2001.1chau.pdf).

59 *Supra* note 12.

In addition to the enactment of national laws and the ratification of international conventions, one might argue that of even more importance is the extent to which these laws are enforced. To this end, Table 2 summarizes data taken from the U.N. Survey of Crime Trends (Seventh Survey) for the year 2000.<sup>60</sup> The capacity of police enforcement is expressed in two ways. The variable *police* denote the number of police personnel per 100 thousand persons. The variable *convicted persons per crime* provide the number of convicted persons per reported crime in a country. The police variable captures the physical capacity of the police force, while the convicted persons per crime variable is concerned with the efficiency of the police force. These two variables give two very different pictures of the capability of policy enforcement. In particular, host countries have, on average, a higher police force per capita than do source countries and trafficking hubs. Nevertheless, the number of convicted persons per recorded crime is also the lowest in host countries.

These conflicting observations may have to do with the under-reporting of crimes by victims in source countries. There are at least three reasons why under-reporting in source countries is of interest in the context of trafficking. First, for traffickers operating in potential source countries, under-reporting is of course advantageous, since the likelihood of getting caught is accordingly lower. Second, under-reporting may also be a signal of the public's distrust of the police force, due for instance to corruption among public officials. Third, the lower conviction rate in host countries could be due to the fact that in host (developed) countries, the burden of proof required to convict someone may be much higher than in source (poorer) countries. All of these factors concern the degree of access to effective law enforcement, and separate the (economic) push and pull factors of international migration, as distinct from the criminal activities associated with international trafficking. As a partial remedy to this issue of access, the "rule of law" governance indicator from Kaufmann, Kraay, and Zoido-Lobaton is also used.<sup>61</sup> The "rule of law" indicator is a composite index of (i) voice (e.g., freedom of press and the freedom to associate) and accountability; (ii) political stability/lack of violence; (iii) government effectiveness; (iv) regulatory framework; (v) rule of law; and (vi) control of corruption. The index ranges from -3 (worst) to +3 (best). As Table 2 shows, source and hub countries of trafficking on average have a lower rule of law indicator as compared to host countries.

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60 *Supra* note 57.

61 See, Daniel Kaufmann, Aart Kraay & Pablo Zoido-Lobaton, *Aggregating Governance Indicators* (World Bank Policy Research Department Working Paper no. 2195, 1999); and, Daniel Kaufmann, Aart Kraay & Pablo Zoido-Lobaton *Governance Matters* (World Bank Policy Research Department Working Paper no. 2196, 1999).

*Table 2: Crime and Law Enforcement*

|                                      | <b>Host</b> | <b>Hub</b> | <b>Source</b> | <b>All</b> |
|--------------------------------------|-------------|------------|---------------|------------|
| Police Personnel (per 100K)          | 289.65      | 288.78     | 272.04        | 286.38     |
| Total Recorded Crimes (per 100K)     | 4918.92     | 1825.94    | 1387.27       | 2991.97    |
| Total Convicted Persons (per 100K)   | 809.62      | 735.15     | 337.01        | 692.38     |
| Convicted Persons per Recorded Crime | 0.17        | 0.30       | 0.41          | 0.27       |
| Rule of Law                          | 0.73        | -0.30      | -0.52         | 0.01       |

Source: Basu & Chau (2007)<sup>62</sup>

### **III. Intervention in Illegal Markets and Perverse Incentives**

Trafficking is a complex operation that involves a number of players in source, transit and host countries. Sometimes, an organized network with each unit within the network specializing in a particular activity includes investors, recruiters, transporters, corrupt public officials or protectors, informers, guides and crew members, enforcers, debt-collectors, money launderers, supporting personnel and specialists.<sup>63</sup> An indirect measure of how potential victims in search of higher paying jobs are lured into foreign countries lies in the fact that traffickers and victims are often from the same country of origin. For instance, Salt reports that statistics from the Netherlands between 1994-1996 show that 23.1% of those apprehended for trafficking came from Eastern European countries with one-third from Poland and one-half from the former Soviet Union.<sup>64</sup>

These percentages also coincide with the percentages of trafficked migrants from these countries. Overall, 30-40% of traffickers originated from the Netherlands itself. In Germany, the equivalent proportion was 40% while in Poland, in 1995, 72% of traffickers were Polish by birth, a number that increased to 79% in 1997. In Hungary, before 1995 only 12% of traffickers were Hungarian but by 1997-98 this number had increased to over 66%.<sup>65</sup> Amongst other factors, such a high correlation suggests that recruitment of victims and identification of potential host countries are best carried out by recruiters that have knowledge about the victims and the legislation in the host countries that

<sup>62</sup> Supra note 12.

<sup>63</sup> See generally, A. Schloenhardt, *Organized Crime and the Business of Migrant Trafficking: An Economic Analysis*, 32 *Crime, Law and Social Change* 203 (1999).

<sup>64</sup> Salt 2005, supra note 15.

<sup>65</sup> See, Gerben J. N. Briunsmas, & Guus Meershoek, *Organized Crime and Trafficking in Women from Eastern Europe in the Netherlands*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 105, (Phil Williams ed. 1999); and Nathalie Siron & Piet van Baeveghem, *Trafficking in Migrants through Poland: Multidisciplinary Research into the Phenomenon of Transit Migration in the Candidate Member States of the EU, with a View to the Combat of Traffic in Persons*, (University of Ghent & European Commission STOP, 1999). An interesting observation gleaned from the various studies relates to the average age for traffickers. The average age of apprehended traffickers in the Netherlands was 34 while in Poland the sex trade was mostly undertaken by men in the 20-25 age group.

enables these traffickers to persuade victims to illegally migrate in search of either jobs or permanent residency in foreign countries.

Against this backdrop, the lack of effective legislation to punish traffickers and lack of cooperation internally and internationally (coordination and harmonization of national policies and laws, bilateral and multilateral agreements on protection of victims and punishment for traffickers) are two important reasons why trafficking for the purpose of commercial sexual exploitation continues to persist.<sup>66</sup> Indeed, can amnesty to trafficked victims – viewed also as a protection of human rights for victims in the host countries of trafficking potentially exacerbate rather than ameliorate the problem? Case studies and casual evidence suggest increased trafficking into countries that grant amnesty. For instance, in the mid- to late 1990s, an estimated 175,000 women were trafficked out of Russia and the Eastern European countries – 70% of them into Western Europe, especially Germany, Italy, France, Switzerland, the Netherlands, Greece, Austria and England, while 3% or 5,000 women were trafficked into the United States and Canada.<sup>67</sup> Similarly, estimates by the U.S. Department of State after the introduction of the TVPA in 2000, which grants asylum to trafficking victims, show the number of trafficking victims entering the United States in 2004 at 14,000–17,500.<sup>68</sup>

In a study of asylum policies, trafficking and vulnerability, Koser's case study of Iranian asylum seekers in the Netherlands over the period 1994-1996 identifies three issues that point to the nexus between countries with legislation that grant asylum and the subsequent rise of illegal immigration.<sup>69</sup> First, empirical evidence supported the view that increasing proportions of asylum seekers were being forced to turn to traffickers in order to negotiate restrictive asylum policies. Second, trafficking tends to expose asylum seekers to new forms of vulnerability such as harassment by law enforcement officials. Koser notes that although a variety of generally restrictive policies in the early 1990s led to a decline in asylum seekers in the Netherlands, the numbers had rebounded by 1999. While 30% of asylum seekers had hired smugglers in 1996, the number had risen to 60-70% by 2000.<sup>70</sup>

Third, trafficking has taken the form of a transnational business, which actively recruits clients and transports them illegally via transit countries, with false documentation, and with asylum seekers frequently exploited by traffickers

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66 Alexis B. Aronowitz, *Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive it and the Organizations that Promote it*, 9 *European Journal on Criminal Policy and Research*, 163 (2001) [hereinafter Aronowitz 2001].

67 FRANCIS T. MIKO & GRACE PARK (JEA-HYUN), *TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE*, (Report for Congress, Congressional Research Service, The Library of Congress 2002)

68 Gozdzik & Collett 2005, *supra* note 49.

69 Khalid Koser, *Asylum Policies, Trafficking and Vulnerability*, *International Migration Journal*, Special Issue 1, 91 (2000).

70 Aronowitz 2001, *supra* note 66.

to find themselves in conditions of debt bondage or working involuntarily in the sex industry.

Other than the case studies alluded to above, the exact impact of legislation granting amnesty on the incidence of trafficking (empirically or theoretically) is still an open question. However, a closer look at the related literature on illicit migration offers some clues as to how legislation to control different types of migration may have had unintended consequences. First, consider the case of smuggling in humans across international borders. According to Aronowitz, there are four elements that differentiate smuggling from trafficking: (i) smuggled persons always travel voluntarily while trafficked persons can either begin their trip voluntarily or may have been coerced or kidnapped; (ii) trafficked persons are used and exploited over a long period of time; (iii) an interdependency occurs between the trafficked person and the organized crime groups; and, (iv) trafficked persons are subsequently recruited for criminal purposes.<sup>71</sup> A further point noted by Kendall, specifically for trafficking victims in the sex industry, is that trafficking victims have more interaction with clients.<sup>72</sup> This high level of interaction increases the likelihood of seeking help, escape or attracting the attention of authorities. To prevent this, women are often rotated between criminal groups, cities, states and countries. There are, however, some common elements that affect smuggled and trafficked persons alike. For instance, both these groups might pay a percentage of the cost of transportation to the traffickers upfront and incur a debt for the remainder of the trip. Such financial arrangements often determine the extent to which these groups become vulnerable to exploitation.

Financial constraints lead migrants to turn to the traffickers to finance the migration costs, and force migrants to enter into temporary servitude contracts to repay the debt. Given that these debt contracts are easier to enforce in the illegal than in the legal sector of the host country, stricter deportation laws that make it costly for migrants to move from the illegal to the legal sector actually lower the risks for traffickers, who in turn, are more willing to finance illegal migration. Thus, countries with stricter deportation policies may thus paradoxically see an increase in illegal/smuggled individuals rather than a decrease.<sup>73</sup>

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71 *Id.*

72 R. Kendall, "Recent Trends in International Investigations of Trafficking in Human Beings," paper presented at the International Conference on New Frontiers of Crime: Trafficking in Human Beings and New Forms of Slavery, Verona, 22-23 October 1999.

73 See generally, for an analysis of the impact of deportation policies on the incidence of human smuggling, Guido Friebel & Sergei Guriev, *Smuggling Humans: A Theory of Debt-financed Migration*, 4 *Journal of the European Economic Association*, 1085 (2006).

Second, policies to control illegal immigration may also entail paradoxical policy outcomes especially with regards to the provision of amnesty.<sup>74</sup> A key counter-intuitive question is why do countries that impose employer sanctions to deter the illegal entry of foreign workers nevertheless grant amnesty to illegal immigrants? Chau shows that amnesty provision is best understood in the context of two widely used immigration policies—border enforcement and employer sanction measures.<sup>75</sup> Border enforcement is more aptly characterized as an income transfer from employers to native labor interests while employer sanctions generate deadweight losses that are borne entirely by the employers of illegal immigrants. Chau shows that while amnesty may appear to run contrary to the original intent of the immigration reform, as the policy induces higher waves of illegal immigration as potential illegal migrants incorporate the possibility of amnesty in their decision to migrate, it may nevertheless facilitate rent capture by the politician by “wiping the slate clean” and reducing the deadweight loss of employer sanction measures.<sup>76</sup>

Third, consider policies to eliminate one of the “Worst Forms of Child Labor” – child labor in debt bondage. A phenomenon widely observed in South Asian countries<sup>77</sup> in the agricultural sector, debt bondage is an outcome of seasonality in agriculture (a lean season where workers have minimal sources of income and need to borrow in order to finance their subsistence consumption) and the lack of a formal credit market in rural areas. Therefore, the only source of borrowing is from rural moneylenders who are also large landlords. In this setting, poor agricultural workers borrow in the lean season against the promise to repay with their labor services in the peak or harvest season when labor demand is high. Such credit-for-labor contracts are frequently skewed against poor workers who realize that they need to send their children to work in order to repay the full amount of debt. Two policies that have received attention and been implemented to eliminate child labor in debt bondage deserve mention. The first is legislation banning debt bondage. As Basu and Chau show, such a policy simply leads to more child labor *per se* (at the expense of bonded child labor) as poor families still have no alternative sources of income to finance subsistence consumption.<sup>78</sup> The second, implemented in Nepal, is the outright payment of outstanding loans by NGOs and governments

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74 For example, Chau analyzes the time-inconsistency of immigration reform policies. See Nancy H. Chau, Strategic Amnesty and Credible Immigration Reform, 19 *Journal of Labor Economics* 604 (2001); and Nancy H. Chau, Concessional Amnesty and the Politics of Immigration Reforms, 15 *Economics and Politics* 193 (2003).

75 *Id.*

76 *Id.*

77 Namely Pakistan, India and Nepal.

78 See both studies, Arnab K. Basu & Nancy H. Chau, Targeting Child Labor in Debt Bondage: Evidence Theory and Policy Prescriptions, 17 *The World Bank Economic Review* 255 (2003); and, Arnab K. Basu & Nancy H. Chau, Exploitation of Child Labor and the Dynamics of Debt Bondage, 9 *Journal of Economic Growth* 209 (2004).

to the moneylenders, thereby granting freedom to those enslaved in debt bondage. Absent any other complementary income generating policy, debt forgiveness leads the poor families to fall back into the debt bondage trap the next lean season.

Each of these examples highlights how policies aimed at providing relief to illegal immigrants or exploitative labor can lead to unintended consequences. Thus, arguments for strengthening protection and assistance to victims – like Italy’s residency permit, need to be complemented by policies that impose harsher punishments on traffickers in the host countries and deportation policies between source, transit and host countries of trafficking. Second, policies affecting activities surrounding forced commercial exploitation of women and children, such as a ban/legalization of prostitution, ban on pimping/pandering, need to be coordinated between host and source countries. In effect, anti-trafficking legislation in host and source countries needs to account for: (i) time-consistency of the policy: much like a policy of amnesty to illegal migrants needs to be accompanied by stricter border enforcement, amnesty for trafficking victims must go hand-in-hand with increased enforcement to prevent traffickers from selecting these countries as potential destinations; (ii) identification of the target group: similar to the intervention to ameliorate bonded child labor in the absence of policies to combat child labor per se, a policy of amnesty to trafficked victims for purposes of commercial sexual exploitation needs to be evaluated in terms of its impact on other forms of trafficking and human smuggling; (iii) the root causes behind the persistence of trafficking (poverty, lack of educational opportunities and information campaigns) in the source countries of trafficking need to be addressed alongside legislation that ban prostitution and child labor; and, (iv) careful consideration needs to be paid to the interplay between immigration and trafficking policies since little is known of the extent to which migration and trafficking routes/networks overlap and as a consequence, policies that inhibit legal or illegal immigration may well lead to an increase in trafficking as an alternative.

## **Conclusion**

This article has endeavored to show that while the policy of amnesty does protect the rights of trafficked victims in host countries, it cannot be viewed as a policy that deters traffickers. To this end, countries that introduce amnesty as part of a comprehensive and victim-protective law might reconsider such a policy as one in need of some fine tuning.