

# **Transnational regimes for combating trafficking in persons: Reflections on the UN Protocol to Prevent, suppress and Punish Trafficking in Persons**

Dr. Emmanuel Obuah  
Assistant Professor  
Department of Behavioral Sciences  
Alabama A&M University  
P O Box 85  
Normal, AL 35762.  
Phone: (256) 372 4143

## ***Abstract***

*Trafficking in persons (TIP) is one of the fastest growing areas of global criminal activity and one that is of monumental concern to the international community. It is estimated that 800,000 to 900,000 persons, mostly women and children are bought, sold or forced across international borders every year. In fact, current estimate by the International Labor Organization (ILO) 2005) put the minimum of persons in forced labor at a given time as a result of trafficking at 2.45 million. It is a lucrative criminal activity and generates from \$10 to \$12 billion annually, making it the third largest illicit business following drugs and arms trade. The process of globalization and the existence of underground and informal economies are among the factors that facilitate this illegal trade. Trafficking in persons constitute serious problems which affects every country. Following from its previous efforts, the United Nations (UN) by the beginning of the 21<sup>st</sup> century adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to combat TIP. This paper therefore describes and examines the scope, causes and the profit of the global trafficking in persons (TIP) and the regimes adopted by the United Nations to combat it.*

## **Introduction**

In 2003, the United States declared that human trafficking: the commodification of human beings, as one of the greatest threats to human dignity and a humanitarian crisis spreading across the world's border (Ashcroft 2003a; Bush, 2003). This was a confirmation of what was already known. TIP is modern day slavery that involves victims who are forced, defrauded or coerced into labor or sexual exploitation (US

Department of State, 2004a). Slavery is as old as human civilization and existed in many ancient civilizations (Meltzer 1993; Thomas, 1999). From the mid 1500s to the mid 1800s millions of Africans were shipped as slaves to work in plantations in the Americas. By 1833 Britain had banned slave trade. America banned slavery in 1865, Spain banned slavery in 1873, and Brazil outlawed slavery in 1888. Internationally, the institution of slavery was banned by the League of Nations in 1926, and prohibited by the UN in 1948 and 1956 through the UN's Universal Declaration of Human Rights and Supplementary Convention on Abolition respectively. By this act, the UN expected slavery to be *jus cogen* i.e. completely accepted as banned hence no need for further treaties. Yet modern slavery and trafficking in persons has become another humanitarian crisis that is globally problematic. TIP is a transnational crime and sexual enslavement is a crime against humanity under the Article 7 of the Rome Statute (International Criminal Court (ICC) (1998).The magnitude of this commerce in human beings is huge and the profits generated runs into billions of dollars. Although it is difficult to measure accurately, it is estimated that 800,000 to 900,000 human beings are bought, sold or forced across the world's borders each year (Bush, 2003; USAID 2004; Masci, 2005). In fact, current estimate by ILO (2005) put the minimum of persons in forced labor at a given time as a result of trafficking at 2.45 million. This figure is in addition to a far yet indeterminate number of persons trafficked within countries. In fact, by 2003 an estimated 27 million people were held in some form of bondage worldwide, which indicates that trafficking in persons is, in terms of sheer numbers, greater today than in any other period of history (Free the Slaves, 2003a). Of this figure, about eight million are children forced into prostitution, pornography and bonded labor ([www.hrea.org/list/child-](http://www.hrea.org/list/child-)

[rights/markup/msg00072.html](#)). The 21<sup>st</sup> century's slave trade represents a global demand for cheap and vulnerable labor (US Department of State, 2004b). It is often characterized by commoditization of human lives in which monetary value is attached to the life of a child, woman or man that is to be set free.

TIP is a pernicious and brutal abuse of human rights. Policing and combating it is problematic because of its clandestine nature and underreporting by relevant government agencies, which results in many of the perpetrators remaining at large and going unpunished. Prosecuting these criminals is further hindered by the fact that many of them are associated with international criminal organizations and are, therefore, highly mobile and difficult to prosecute ([www.humantrafficking.org/prosecution/](#)). Although there have been efforts by the UN, states and non-governmental organizations (NGOs) to tackle the traffic in human beings, these efforts are not sufficient in combating this illicit commerce in humans.

Combating TIP and modern slavery requires a multifaceted approach at various levels.

According to Ashcroft (2003b)

Trafficking is a transnational criminal enterprise. It recognizes neither boundaries nor borders. Profits from trafficking feed into the coffers of recognized crime. Trafficking is fuelled by other criminal activities such as document fraud, money laundering and migrant smuggling. Because trafficking cases are expansive in reach, they are among the most important matters – as well as the most labor and time-intensive matters – undertaken by the Department of Justice ([www.usdoj.gov/trafficking.htm](#)).

By the beginning of the 21<sup>st</sup> century, the United UN took a strong step toward tackling this problem by adopting the Convention Against Transnational Crime and the Protocol

to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000. This was a culmination of years of efforts which began with establishment of an open-ended intergovernmental ad hoc committee for the purpose of setting up an international convention against organized crime.

This paper seeks to make a contribution toward the discourse on abolishment of modern day slavery and trafficking in persons by examining the role of the UN As Bales (1999) noted, slaves touch every life directly or indirectly. For instance, the shoes we wear or carpets in our homes may have been made by slave workers in Pakistan, or the sugar in our kitchen and toys in the hands of children may have been made by people working in slave-like conditions in the Caribbean. As Kyle and Koslowski (2001:4-5) pointed out “. . . Trade in humans and migrants is more than a subcategory of global migration. . . [It] is a subject that intersects contemporary anxieties concerning the global political economy, ethnic and gender stratification, multiculturalism, population growth, political corruption, transnational crime, the Internet, human rights abuse, and the (in)ability of states and global agencies to control effectively. . .” Yet in spite these anxieties, Kyle and Koslowski (2001) point out that international relations experts, migration specialists and labor scholars have ignored this global phenomenon.

The debate has been dominated by governments concerned with irregular immigration and/or transnational organized crimes, (especially after the September 2001 event) and international and domestic advocacy NGOs (such as the feminist abolitionists e.g. Barry 1995; Jerrys 1997; Raymond 2001; and the workers rights advocates like Oxfam 2002;

Kempado and Doezema 1998) who are concerned about the violations and abuses of human rights of the victims, be it women, children or men to deal with that humanitarian concern of bondage (Anderson and Davidson, 2002). Although there has been intense debate on trafficking phenomenon, Jordan (2002:29-31) notes that there has been inadequate responses by governments and indeed the UN, to combat trafficking. The reasons for this inadequate responses, Jordan (2002) argues are due to the denial of the problem of trafficking by states; the objectification of the victims and failure to consider the victims' human rights because states view trafficking as organized criminal activity; the conflation of trafficking in persons with undocumented migration by governments; and the improper definition of the crime of trafficking.

Drawing from studies by Rijken, 2003; Kyle and Koslowski, 2001; Joppke, 1998; Cornelius *et al*, 1994; and Hollified, 1992, this paper attempts to fill a gap in current literature by presenting an assessment of UN efforts at combating trafficking in persons. To this end, the paper intends to examine the characteristics of modern slavery, sources of modern slavery and human trafficking, the scope of the trafficking, profits from trafficking and the efforts by the UN to address the problems of TIP. The study is important because it seeks to enhance our understanding of the volume of the trade and its intricate networks, the profit involved, the graveness of the crime, and the efforts by both states and non-state actors aimed at combating this illicit commerce.

## **Definitions of concepts**

### **Trafficking in Persons**

Due to the interest in trafficking and debate it has generated, or the lack thereof, it has been difficult to reach a precise and acceptable definition of the term (Ucarer, 1999). According to the Global Alliance Against Traffic in Women (GAATW), trafficking involves “all acts in the recruitment and/or transportation of a person within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion” (Rijken, 2003: 59). The European Parliament defined trafficking in human beings as “the illegal action of someone who, directly or indirectly, encourages a citizen from a third country to enter or stay in another country in order to exploit that person by using deceit or any other form of coercion or by abusing that person’s vulnerable situation or administrative status” (Rijken, 2003:60). Considered as a process, trafficking involves recruitment, transportation, and control in the place of destination (Anderson and Davidson, 2002).

However a generally agreed and broader definition of trafficking in persons is that proffered in Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. It is defined as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the

removal of organs (UN, 2001:32; Coalition Against Trafficking in Women (CATW)2001; US Department of State, 2004c)<sup>i</sup>.

Based on this definition, the consent of a victim of TIP to the intended exploitation shall be irrelevant where any of the means aforementioned have been used and the recruitment, transportation of a child for the purpose of exploitation shall be considered “trafficking in persons” even if it does not involve any of the means aforementioned (UN, 2001:32).

According to the 1926 Slavery Convention, slavery is described as “the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised” (Free the Slaves 2004:19; [www.knowledgerush.com/kr/encyclopedia/Slavery](http://www.knowledgerush.com/kr/encyclopedia/Slavery)). According to the US Department of State (2004a:1) slavery is the status or condition of a person over whom any or all the powers attached to the right of ownership are exercised and its practices include, debt bondage, serfdom, forced or servile marriages and delivery of children for exploitation . Bale (1999:280) defined slave as a person held by violence or the threat of violence for economic exploitation. He defined slavery as the total control of one person by another for the purpose of economic exploitation (Bale, 1999:6). In sum therefore, slavery is a practice which permits some people within a society to own other persons and to claim the right to their labor. It is characterised by subjugation, submission and lack of freedom. The overwhelming majority of those trafficked are women and children. Traffickers often prey on individuals who are poor, unemployed or underemployed, and who may lack access to social safety nets. Sometimes the victims are lured with false promises of good job opportunities and better lives, but they are later exploited and forced to work under brutal and inhuman conditions ([www.usdoj.gov/trafficking.htm](http://www.usdoj.gov/trafficking.htm)).

### **Characteristics of human trafficking and modern slavery**

Compared to old slavery which was characterized by legal ownership, high purchase price, and long-term relationship, modern slavery is characterized by: low price; lack of or no acknowledgment of legal ownership; high profit potential; short-term relationship; disposability and long-term economic exploitation; ambiguity in operation (neither purely voluntary nor involuntary from the perspective of the trafficked person); entrapment and concealment through false/fraudulent contract; and subjugation and complete control by slaveholders without asserting ownership or accepting responsibility for their survival (Free the Slave 2003; Bales, 1999:15 and 25).

Like old slaves, modern slaves are forced to work on various sectors and industries and their exploitation feeds directly into the global economy. Modern slaves unlike old slaves know that they will be smuggled illegally across borders to work, and they sometimes know the nature of the work but they do not know the terms of the ‘contract’ (Kyle and Koslowski, 2001:9).

### **Causes of Slavery**

There has been a phenomenal growth in TIP in the last quarter of the 20<sup>th</sup> century and many scholars believe this increase is due to the simultaneous existence of a number of ‘push’ ‘pull’, and facilitating factors’ (Morrison, 2000; Jordan 2002; Rijken, 2003). The push factors include: the increase in civil wars since the collapse of the former Soviet

Union, the collapse of the Chinese socialist system, violence in the family, uneven economic development etc. The pull factors include the relative prosperity and peace in industrialized and newly industrializing countries. Other pull factors include the lowering of barriers, and xenophobic immigration laws that discriminate against unskilled workers (Morrison 2000; Jordan 2002:28-29; Rijken 2003). The facilitating factors include the growth in the industrialized economies and the process of globalization of the world economy which is accompanied by lower cost for transportation and communication.

As a global market, trafficking can be explained in terms of supply and demand: the victims being the supply/commodity, while the abusive traffickers, unscrupulous employer, sexual exploiters represent the demand side. There are the 'push' factor explanations on the supply side for the causes of slavery ranging from population growth since World War II, poverty, attraction to perceived high standard of living, weak social and economic structures, lack of employment, to political instability and cultural traditions (Bales, 1999; Jordan, 2002; Kelly, 2002; Rijken, 2003; US Department of State 2004b). On the demand side, the 'pull' factors which include the relative prosperity and peace in industrialized and newly industrializing countries as manifest in the expansion of the sex industry and the growing demand for exploitable labor. Furthermore, the growth in the industrialized economies, the globalization process which is accompanied by low cost transportation and communication along with the lowering of national barriers, and the xenophobic immigration laws that discriminate against unskilled workers (Morrison 2000; ARIAT 2000; Kelly, 2000; Foo 2002; Jordan 2002) are the facilitating factors to TIP. For instance, Kyle and Koslowski (2001) noted that immigration levels increased

during the period of significant restructuring of the US economy. As a result, immigration laws created to stem the flow of immigration and human trafficking into developed economies contained many loopholes, back doors, and side doors which facilitated even greater levels of immigration (Joppke, 1998; Cornelius *et al*, 1994; Hollifield, 1992). TIP is also facilitated by the growth of underground and informal economies where, as noted by Foo (2002) multiple violations of minimum wage and overtime laws, health and safety, workers compensation and other labor laws are common practices.

While TIP may be economically driven, it is, in some cases, promoted by governments through their policies. Kyle and Dale (2001:41 – 47) noted that the Burmese government promotes the sale of Burmese virgins to the lucrative sex industry in Thailand. They further noted that the Thai government supported illegal immigration into the country in the 1990s to provide for the shortfall in the labor requirements in its key industries and to protect a key source of revenue generated by sex workers. For instance, it was estimated that the annual illegal income generated by women sold into sexual bondage in Thailand was \$10 billion Cited in Kyle and Dale, 2001:42). Therefore, it was in the government's interest to maintain this important source of labor and revenue. In Thailand, Pakistan, India, and Brazil, Bales (1999) noted that the local police act as enforcers to the 'contracts' that conceal slavery. In Britain, Bales (1999:27) noted that the immigration law which gives concession to foreigners moving into the United Kingdom as well as returning British nationals to bring in their domestic servants perpetuates slavery.

In order to control their victims, traffickers utilize various means of coercion such as rape, beatings, confiscation of travel documents, threat of retribution (to subjugate their victims), and ritual offering (which is common among West African traffickers) (Kelly, 1987; Kelly and Regan 2000).

### **Sources of Trafficked Persons**

Trafficked persons are procured by many methods and the major sources of this human commodity include the following:

- (a) Wars: the increase and the frequency of conflicts especially in African and other developing regions have led to the enslavement of captives. Captives sold into slavery are prevalent in Sudan, Liberia, Sierra Leone etc.
- (b) Kidnapping/abduction: in war ravaged countries, such as Sudan, where militia routinely raze villages as part of a government-backed jihad against the southern black African tribes. Women and children captured from these raids are enslaved.
- (c) Voluntary: some trafficked persons volunteer to do so because of the erroneous believe that they are heading for a better life in Europe, US or the Gulf states.
- (d) Deception: sometimes parents sell their children to slave traders who pose as labor contractors and promise to provide better life for the children. Sometimes parents send their children overseas through the “so called” employment agencies to support their families without knowing that these agents are slavers. In the 1990s, for example thousands of Bangladesh families were shocked to learn that their female children who they had supposedly sent to the Gulf States through employment agencies were rather

sent to brothels in India and Pakistan. The boys on the other hand were sent to the Gulf States where they were used as camel jockeys (iAbolish, 2005:1a). In other cases, desperation brought on by poverty made parents gullible enough to accept money from slave traders for their children. This practice occurs in India, Benin Republic, Nepal, Thailand and other impoverished countries (iAbolish, 2005b).

(e) Bondage: This category provides two types of slaves, namely, slaves by ‘divine’ creation, and slaves through debt inheritance. In the former, in places like Mauritania, in West Africa, wealthy Arabo-Berber own slaves, and children produced by the union of slaves couples become property of the couples’ owner. These children are born into slavery in perpetuity as part of ‘divine’ creation. The latter category is those who become slaves because of the debt they inherited from their parents. Therefore, they pledge their labor and that of their families as collateral against loans which they have taken, usually in time of crisis. This creates a vicious circle as they are unable to defray the original loan and incur more debts for food, clothing and shelter. This practice occurs in India, Pakistan, and Nepal (iAbolish, 2005b). For example, the Bonded Labor Liberation Front (BLLF) estimates that between 200,000 and 300,000 children in India; 500,000 children in Pakistan, and 200,000 or more children in Nepal are involved in the homemade woolen carpet industry (iAbolish, 2005:2b).

(f) Involuntary/forcible organ removal for transplants/ or human sacrifice: A number of people including children are involuntarily sent into slavery to provide organs for transplantation or offered as scarifies to some gods or deities (Ren, 2004).

(g) Involuntary servitude: In this case, the trafficked persons (mostly female) are used as domestic servants. Sometimes the girls are impregnated by their masters or forced into

unwanted marriage. Sometimes women are also enslaved through servile (mail-order) marriages and are exploited or even prostituted by their spouses (Foo 2002:52-3). In fact, the US Department of Homeland Security estimates that between 4,000 to 6,000 females who enter the US are mail-order or pen-pal brides (Foo, 2002:53).

### **The scope and magnitude of TIP**

Although the actual number of persons trafficked annually worldwide may never be known, authorities generally agree that the scope of the trade is huge and multifaceted, making policing and eradication of TIP difficult. According to the TIP report published annually by the US Department of State, it is estimated that 600,000 to 800,000 persons are trafficked across international borders (US Department of State 2004b). This figure excludes the far larger and indeterminate number of intra-country trafficked persons. From Sudan to Mauritania, India to Pakistan, Brazil to Bangladesh, Haiti to Dominican Republic etc., men, women and children are trafficked and sold into slavery where they live and work as slaves or in slave-like conditions. According to the United Nations Economic and Social Council (UNESCO) (2004) over 1.2 million children are trafficked globally every year. The ILO puts the estimate at 2.45 million. According to the ILO figures, the regional distribution of the number of forced labor as a result of trafficking are as follows: Asia and Pacific 1,360,000; industrialized countries 270,000; Latin America and Caribbean 250,000; Middle East and North Africa 230,000; transition countries 200,000; and Sub-Saharan Africa 130,000 (ILO, 2005:14). In Southeast Asia, the practice of sex slavery and bridal trade are common (Ren 2004), especially among young girls who, due to poverty are deceived and forced into slavery. The current trend

among sex slavers in Southeast Asia is to kidnap and lure young girls who are supposedly AIDS free from Burma, China and Cambodia and send them to Thailand. In India, it is estimated that parents have sold 15 million children into bonded labor in return for meager loans from moneylenders, and in Bangladesh an estimated 25,000 women and children are trafficked annually (Masci, 2005:253). The hand-made woollen carpet industry in India, Pakistan and Nepal survives on 'carpet' slaves. Similarly, the perennial labor shortfall at harvest season in the sugar industry in the Dominican Republic is sourced by slave labor from Haiti (iAbolish, 2005a:4).

In Africa it is estimated that over 50,000 persons are trafficked out of the continent annually (Miko and Park, 2002). In Sub-Saharan Africa, it is estimated that at least 200,000 people are in bondage, especially in war-torn Sudan and Congo; and in Uganda, Mauritania, Benin, Cote D'Ivoire and Sierra Leone. Nigeria, Gabon, Ghana and South Africa are transit locations for trafficked persons to Western Europe and the Middle East (Miko and Park, 2002). Mauritania and Sudan still practice the classic chattel slavery in the form of debt bondage, forced labor, and child prostitution for breeding purposes. In Mauritania for example, black Muslims who are African in origin are enslaved by light-skinned Arab Berber Muslims. The black Muslims suffer varying forms of discrimination, such as not being able to marry Muslims, attend schools or go to the mosque (iAbolish, 2005a:11). There are reports that from 30,000 to 100,000 Brazilians (mostly migrant workers) are being held in debt bondage in Brazil (Masci, 2005:252).

Since the collapse of the former Soviet Union, Eastern Europe has become a fecund ground for traffickers and a vital source supplying young women and children to support the sex industry and the factories of Europe and the US. For example, it is estimated that about eighty percent of women trafficked as prostitutes in Western Europe might be from Moldova and about 400,000 Ukrainian women have been trafficked for sexual exploitation in the past decade (Masci, 2005). It has also been estimated that between 3,000 and 8,000 Nigerian women were trafficked as prostitute in Italy ([www.law.depaul.edu](http://www.law.depaul.edu); CATW, 2001:2).

The scale of the inflow of trafficked persons into developed economies is immense and the exact number may never be known because of the clandestine nature of the trade and the limited studies on the subject. There were up to 750,000 sex-trafficked victims transported into the United States in the past decade (Masci 2005:252), and about 300,000 trafficked women into the Western European sex trade in the same period ([www.law.depaul.edu](http://www.law.depaul.edu)). The Central Intelligence Agency (CIA) estimated in 2003 that between 18,000 and 20,000 people are trafficked into the US each year (Department of Justice (DOJ) 2003:3). These numbers were refined and revised in 2004 from 14,400 to 17,500: the largest number, 5,000 to 7,000, came from East Asia (DOJ, 2004:8). However the number of persons entering the US under false pretences and held in servitude, forced into prostitution, bonded sweatshop labor and/or domestic servitude is between 45,000 to 50,000 annually (Richard 2000; Foo 2002:47). Out of that figure, approximately 30,000 come from Asia (Thailand, China, Vietnam), 10,000 from Latin

America, and 5,000 from other regions such as Africa and countries of the former Soviet Union (Foo, 2002:47) and 1,000 from other regions<sup>ii</sup>.

### **Profit from TIP**

Traffickers of this illicit trade make huge profits which run into billions of dollars with little risk. In fact, Foo (2002) noted that trafficking in women is more lucrative than the international trade in drugs and arms. According to UNESC (2004) report, it is estimated that trafficking in children involved some \$1.2 million and the annual profit from TIP is estimated between \$10 to \$12 billion for the perpetrators making it the third largest illegal business following drugs and arms trade (Ashcroft, 2004a; Masci, 2005:252). This figure does not include the cost benefits gained by industries that use slave labor.

In Thailand, it was estimated that the annual illegal income from sex workers ranged between \$10 and \$10.5 billion (Kyle and Dale 2001:42; Bales, 1999:23). In US the profit from trafficking is staggering. It was estimated that traffickers in persons made profit anywhere from \$1 million to \$8 million in a period from one to six years (Richard 2000:19). For instance, it was reported that the Thai Traffickers who, incarcerated some Thai women and men in a sweatshop in El Monte, California made over \$8 millions in about six years. While Thai traffickers who enslaved women in a New York brothel, made over \$1.5 million in approximately one year (Richard 2000:19).

Similarly Chinese criminal syndicates made between \$5,000 and \$7,000 for each Malaysian woman delivered to the US, and a Mexican crime family that forced deaf

Mexicans to peddle trinkets made about \$8 million in over four and half years (Richard 2000:19). TIP is an illegal activity, yet governments find it difficult to prosecute and punish the traffickers. In some cases, when traffickers are prosecuted and punished, the punishment is not commensurate to the offense committed. Until the introduction of the Trafficking of Victims Protection Act (TVPA) 2000 in the US, conviction for trafficking in persons carried only a maximum prison sentence of 10 years per count. In contrast, the punishment for the distribution of a kilo of heroin in the US is a life sentence. To all intents and purposes, TIP in spite of its heinous nature is very lucrative to the dealers and its proceeds continue to support and encourage the global network of organized crimes.

### **The Effects of TIP**

The effects of TIP on the victims and the society can be horrible and devastating.

At the victims' level, they suffer incalculable and irreparable physical and as well as psychological damage including infliction of disease and stunted growth, especially in children victims. Psychologically, trafficked victims are often excluded from their families and communities and miss critical opportunities for social, moral and spiritual development (US Department of State, 2005). Trafficked victims are often overcome with drugs and suffer serious violence, and they later become addicted to drugs. Persons who are trafficked for sexual exploitation and gratification may suffer serious emotional and physical damage due to premature and forced sexual activity, forced substance abuse and exposure to sexually transmitted diseases including HIV/AIDS.

Furthermore, TIP is a serious violation of the universal human rights to life, liberty, and freedom from slavery. For children victims, trafficking threaten the basic needs for them to grow up in a protective and conducive environment, free from sexual abuse and exploitation.

At the societal level, trafficking promotes social breakdown through the loss of family and community networks. The loss of these networks renders the victims vulnerable to the traffickers' demands and threats. It also weakens parental authority, undermines extended family ties and prevents moral development of children. The fear of being trafficked drives the children into hiding hence missing at school and other development activities for their early development.

Trafficking fuels organized criminal activities for the purpose of directly or indirectly obtaining a financial or other material benefits. TIP is the third largest criminal activity worldwide generating an estimated \$9.5 billion in annual revenue. Trafficking is also linked to other criminal activities such as terrorism, money laundering, drug trafficking, document forgery and human smuggling (US Department of State, 2005).

Trafficking deprives communities of vital human capital. According to US Department of State (2005) trafficking has been noted to contribute to irretrievable loss of human capital on the labor market through depression in wages, fewer people left to care for the increasing elderly population and undereducated generation.

### **International Regimes at combating TIP**

International relations scholars differ on the definition of regime<sup>iii</sup>. However, the definition that is appropriate for this paper is that proffered by Keohane (1989:4), in which regime is defined as ‘institutions with explicit rules, agreed upon by governments, which pertains to particular sets of issues in international relations’. Regime must have issue-area, coherent and well-developed and according to Donnelly (1992:283) it can be promotional, assistance, implementational, enforcement or declaratory<sup>iv</sup>.

By the end of the 19<sup>th</sup> century many countries had abolished slavery, which had characterized the growth and expansion of capitalism in Europe and the Americas (Mosci, 2005; Free the Slaves, 2003)<sup>v</sup>. These efforts were country-based. However, since the 1900s, international treaties were passed and adopted that outlawed slavery on a worldwide basis. In 1910 the International Convention for the Suppression of White Slave Trade, was signed in Paris to obligate signatory states to punish anyone who recruits a woman, below the age of majority, into prostitution, even if she consents (Free the Slaves 2003). In 1926 for example the League of Nations outlawed slavery and in 1930 in conjunction with the International Labor Organization (ILO), the Forced Labor Convention was passed seeking to protect colonial laborers. This was in response to the imposition of mass forced labor on indigenous populations by the various colonial powers<sup>vi</sup>. In 1999, the ILO adopted the Convention for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. This Convention among other things identified trafficking and related exploitation such as child prostitution as

one of the forms of child labor (UNESCO, 2002). The ILO through its programs to End Child Labor (IPEC) supports governments and workers' and employers' organizations in the prevention, rescue, repatriation and restoration of the rights of the victims of trafficking. ILO has five regional projects in South Asia, West and Central Africa; Central America and the Dominican Republic; South America; South-East Asia; and the Greater Mekong sub-region for the reduction of labor exploitation and combating trafficking in children (UNESCO, 2002).

The first concrete step to outlaw slavery on a global basis was in 1948, when the UN established the Universal Declaration of Human Rights which under Article 4 provides that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". Similarly in 1949, the UN passed the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. In 1956, the UN passed a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery such as bondage, sale of wives, serfdom, child servitude and other forced-labor practices. Following the exponential growth in TIP in all countries, the UN in 1975 created the Working Group on Contemporary Forms of Slavery to collect information and make recommendations on slavery and slave-like practices around the world.

While the UN was making these efforts, pressure was brought to bear by the emergence and activities of non-governmental organizations that began to mount campaigns on the evils of human trafficking and slavery<sup>vii</sup>. Following the collapse of the former Soviet

Union and the end of the Cold War and other geopolitical changes in the world which intensified human trafficking, the UN in 2000 adopted the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children. The protocol entered into force on 25 December 2003 and by September 2005 has been ratified by 92 countries. ([www.unodc.org/unodc/crime\\_cicp\\_signatures\\_trafficking.html?print=yes](http://www.unodc.org/unodc/crime_cicp_signatures_trafficking.html?print=yes))<sup>viii</sup>. The protocol contains three basic concepts, namely, the movement of individuals, deception, and exploitation encapsulated in the definition of TIP.

The protocol supplements the UN Convention Against Transnational Organized Crime. According to Article 2, the purpose of the protocol are: “to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among State parties in order to meet those objectives” (UN, 2001; CATW, 2001). The protocol further enjoined State Parties to adopt such legislative and other measures that may be necessary to establish as criminal offenses set out in the definition of TIP. As a supplementary protocol the provisions of the Convention shall apply, *mutatis mutandis*. In this era of globalization, the protocol was intended to create a global language and legislation to define trafficking in persons, establish the parameters of judicial cooperation and exchange of information among countries, globalize legality of prohibiting trafficking in persons and slavery by creating penalties that fit the crime, and offer human rights protection and assistance to the victims (CATW, 2001:1-2). While the protocol was hailed as a bold step forward in combating trafficking and advancing human rights, like other conventions and protocols of the UN, it lacks any force as

implementation and interpretation of its contents depend on the willingness of State Parties to incorporate the stipulations into their domestic laws. In other words, it lacks policing powers or the mechanism to enforce its prohibition.

To support the efforts of the UN, many countries and/or regions and international organizations have risen to the challenge by dedicating resources and enacting new laws to combat this obnoxious trade in humans. In Europe and Africa for example, the European Union and the Organization for Security and Cooperation in Europe (OSCE); and the Economic Community for West African States (ECOWAS) have developed regional anti-trafficking strategies to combat trafficking in persons (Rijken, 2003; ECOWAS 2001). In Asia, the South Asian Association for Regional Cooperation (SAARC) in 2002 signed the Convention on the Prevention and Combating Trafficking in Women and Children for Prostitution ([www.saarc-sec.org/old/freepubs/conv-trafficking.pdf](http://www.saarc-sec.org/old/freepubs/conv-trafficking.pdf)). Similarly, the International Organization for Migration and other advocacy NGOs are involved in counter-trafficking in persons through research studies and policy papers, awareness raising campaigns, as well as advisory services, technical cooperation and training for government institutions and protection and assistance activities for the benefit of trafficked victims (such as voluntary return and reintegration assistance, counseling and medical services) (UNESCO, 2002).

### **Impediments to the implementation of UN Regime for combating TIP**

The UN Protocol is largely a “push”/supply factor-led regime which attempts to tackle the problem of TIP from the countries of origin. In TIP, there are buyer and sellers. The

regime does not address the strong pull” of unmet labor demands that exist particularly in the informal sectors in the industrialized countries. There are a number of impediments or obstacles that hinder the implementation and efficacy of the Protocol. These include, but not, limited to the following:

Immigration rules of some State Parties to crack down trafficking by crime groups may ignore the rights and needs of the trafficked persons and even exacerbate their vulnerability and re-victimization. For example in some member states undocumented aliens, some of whom victims of trafficking, are detained, deported for immigration violation without investigation into their circumstances of their migration and their experiences in the destination countries.

The implementation of the Protocol may be affected by the lack of repatriation regimes among member states. Or the bureaucratic process of repatriation, where they exist, between the destination state and country of origin of the trafficked persons may delay the return of the victims. For example, Dinan (2003) noted that Thai trafficked women who had escaped from their traffickers or released by police in Japan, who wanted to return to Thailand faced significant delays while their travel documents and funds to cover the travel expenses were being processed by the Japanese authorities. And for others, obtaining travel documentation proved to be very difficult because the victims did not have papers to establish their Thai nationality. There may also be difficulties in the extradition of traffickers, especially where there are no formal extradition arrangements between the countries involved and if either country involved is not a signatory to the protocol.

The effective implementation of the Protocol may be hindered by the non-provision of assistance as stated in Article 25 of the Convention by State Parties. Although the protocol specifies the type of assistance from State Parties to victims, the degree of the provision of these assistances varies from state to state, depending on the resources, and the commitment of the State Party to the overall realization of the protocol. For example, Dinan (2003) noted that the Japanese government does not provide any assistance specially targeted at trafficked persons and its policies toward undocumented aliens more generally are designed to impede their access to a range of key services.

Another problem to the effective implementation of the protocol is the wider and vexed issue of jurisdiction. TIP by its nature is clandestine and transnational and therefore raises the question of jurisdiction in the prosecution of the perpetrators. Transnational criminals can only be successfully prosecuted if all the parts of the international investigation jig saw are laid next to each other and interlinked. This therefore requires international policing and judicial cooperation and coordination among State Parties. The regime lacks clarity on the issue of jurisdiction. The existence of different legal systems and regimes, bureaucratic inertia, the pervasiveness of corruption in some law enforcement services and judiciaries, the lack of resources and human capital in legal and linguistic areas are important setbacks to the effective implementation of the protocol.

Finally, effective implementation of the protocol may be affected by poverty of some state parties, especially from the origin states in the developing countries. Poverty is a

legitimate concern among developing countries and it has been expressed in various international and UN forums. Poverty inhibits the State Parties from building the capacity and capability needed to effectively police and prosecute perpetrators of TIP.

## **Conclusion**

It has been the task of this paper to describe and examine the scope, causes and the profit of the global trafficking in persons. The scope of the illicit trade is huge and multifaceted and the explanations as to why people are trafficked are diverse and vary from country to country. Generally, TIP is caused by a number of economic, social, cultural and security factors. The paper noted that modern day slavery is facilitated by the process of globalization and the existence underground and informal economies.

The paper also examined the various international regimes by the UN especially the protocol to Suppress and Punish Trafficking in Persons, to combat the obnoxious trade in persons. The 21<sup>st</sup> century has witnessed an exponential increase in human trafficking exacerbated by the process of globalization, hence efforts by both international organizations and states to combat it. To this end the paper views the UN efforts under the 2000 protocol as “push”/supply factor-led regime. The UN effort must also be targeted at the strong “pull”/demand factor which exist in many industrialized economies of the world of the

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<sup>i</sup> For a catalogue of other definitions of trafficking in persons (human beings), see Rijiken (2003:53-79).

<sup>ii</sup> The US government annual estimate of the number of persons trafficked into the United States have varied and overtime it has been revised downward. For example in 2004, the figure was revised down to between 14,500 and 17,500 ([www.whitehouse.gov/news/releases/2004/07/print/20040716-11.html](http://www.whitehouse.gov/news/releases/2004/07/print/20040716-11.html)) based on severe forms of trafficking in persons.

<sup>iii</sup> The debate on regime and regime theory was led by the Anglo-America academics and the German International Relations Community. See for example the definition by Ruggie (1975:570) in which regime is refer to as a 'set of mutual expectation, rules and regulations, plans, organizational energies and financial commitments, which has been accepted by a group of states'. Or Krasner's (1982:186) definition of regime as sets of implicit and explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given international relations'.

<sup>iv</sup> Promotional is a type of regime which encourages national implementation of international norms by sch mechanism as public information activities and the adoption of hortatory resolutions; Assistance is regime that provides support for national implementation of international norms through financial or technical assistance; Implementation is the type of regime that plays direct international role by putting regime norms into practice through, for example, systems of international information exchange, policy consultation; Enforcement is the type of regime that binds and enforces international implementation of regime norms in which the principal role of states is to give national force to supranational decisions; and Declaratory regime involves international norms but have no international decision making powers (Donnelly, 1992:283).

<sup>v</sup> For examples, Britain abolished slavery throughout its empire in 1833, France abolished slavery in French colonies in 1848, the US Congress abolished slavery through the 13<sup>th</sup> Amendment in 1865, Brazil abolished slavery in 1888 etc.

<sup>vi</sup> Forced labor was defined as 'all work or service which exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily' (United Nations 1930:55).

<sup>vii</sup> Groups such as, Anti-Slavery International (1839, the International Organization for Migration (IOM)(1951), Human Rights Watch (HRW)(1978), American Anti-Slavery Group (1994), Free the Slaves (2000)etc. became important advocates for the banning of slavery.

<sup>viii</sup> The US is yet to ratify this protocol.