

# Legal Aspects of Human Trafficking: Law, Politics, and Society.

Scholten, Andrew.

Cita:

Scholten, Andrew (2016). *Legal Aspects of Human Trafficking: Law, Politics, and Society*. Conference on Human Rights in Bologna, Bologna.

Dirección estable: <https://www.aacademica.org/andrew.scholten/4>

ARK: <https://n2t.net/ark:/13683/pq1o/pBn>



Esta obra está bajo una licencia de Creative Commons.  
Para ver una copia de esta licencia, visite  
<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.es>.

*Acta Académica es un proyecto académico sin fines de lucro enmarcado en la iniciativa de acceso abierto. Acta Académica fue creado para facilitar a investigadores de todo el mundo el compartir su producción académica. Para crear un perfil gratuitamente o acceder a otros trabajos visite: <https://www.aacademica.org>.*

## **Legal Aspects of Human Trafficking: Law, Politics, and Society**

**Summary:** Presented article is focused on legal and socio-political aspects of the issue of human trafficking worldwide. The growing scale of human trafficking is an issue widely discussed in scientific literature and on international agenda. Human trafficking can occur within a country or trans-nationally. Human trafficking is a crime against the person because of the violation of the victim's rights of movement through coercion and because of their commercial exploitation. Human trafficking is the trade in people, and does not necessarily involve the movement of the person from one place to another. A significant part of this article is focused on international humanitarian aspects of human trafficking and human smuggling. Public service announcements have also proved useful for organizations combating human trafficking. In addition to many other endeavors, UNODC works to broadcast these announcements on local television and radio stations across the world. By providing regular access to information regarding human-trafficking, individuals are educated how to protect themselves and their families from being exploited.

**Resume:** Article présenté est axé sur les aspects juridiques et socio-politiques de la question de la traite des êtres humains dans le monde entier. L'ampleur croissante de la traite des êtres humains est une question largement débattue dans la littérature scientifique et sur l'agenda trafic international humain peut se produire dans un pays ou trans-national. La traite des personnes est un crime contre la personne en raison de la violation des droits de circulation de la victime par la coercition et à cause de leur exploitation commerciale. La traite des personnes est la traite des personnes, et ne comporte pas nécessairement le mouvement de la personne d'un endroit à l'autre. Une partie importante de cet article se concentre sur les aspects humanitaires internationaux de traite des êtres humains et la contrebande humaine. Messages d'intérêt public se sont également avérées utiles pour les organismes de lutte contre la traite des êtres humains. En plus de nombreuses autres entreprises, l'ONUDC travaille à diffuser ces annonces sur les chaînes de télévision et de radio locales à travers le monde. En fournissant un accès régulier à des informations concernant traite des êtres humains, les individus sont instruits comment se protéger et protéger leurs familles d'être exploités.

### **Introduction: Current Dynamics of Human Trafficking in Selected Regions of The World**

Presented part of the article will be focused on theoretical aspects of human trafficking. Human trafficking differs from people smuggling, which involves a person voluntarily requesting or hiring another individual to covertly transport them across an international border, usually because the smuggled person would be denied entry into a country by legal channels. Though illegal, there may be no deception or coercion involved. After entry into the country and arrival at their ultimate destination, the smuggled person is usually free to find their own way. According to the International Centre for Migration Policy Development (ICMPD), people smuggling is a violation of national immigration laws of the destination country, and does not require violations of the rights of the smuggled person. Human trafficking, on the other hand, is a crime against a person because of the violation of the victim's rights through coercion and exploitation. Unlike most cases of people smuggling, victims of human trafficking are not permitted to leave upon arrival at their destination.

While smuggling requires travel, trafficking does not. Trafficked people are held against their will through acts of coercion, and forced to work for or provide services to the trafficker or others. The work or services may include anything from bonded or forced labor to commercial sexual exploitation. The arrangement may be structured as a work contract, but with no or low payment, or on terms which are highly exploitative. Sometimes the arrangement is structured as a

debt bondage. Bonded labor, or debt bondage, is probably the least known form of labor trafficking today, and yet it is the most widely used method of enslaving people. Victims become "bonded" when their labor, the labor they themselves hired and the tangible goods they bought are demanded as a means of repayment for a loan or service in which its terms and conditions have not been defined or in which the value of the victims' services is not applied toward the liquidation of the debt. Generally, the value of their work is greater than the original sum of money "borrowed." Forced labour is a situation in which victims are forced to work against their own will under the threat of violence or some other form of punishment; their freedom is restricted and a degree of ownership is exerted. Men are at risk of being trafficked for unskilled work, which globally generates 31 billion USD according to the ILO. Forms of forced labor can include domestic servitude, agricultural labor, sweatshop factory labour janitorial, food service and other service industry labor, and begging. Some of the products that can be produced by forced labor are: clothing, cocoa, bricks, coffee, cotton, and gold. The IOM, the single largest global provider of services to victims of trafficking, reports receiving an increasing number of cases in which victims were subjected to forced labour. A 2012 study observes that "... 2010 was particularly notable as the first year in which IOM assisted more victims of labour trafficking than those who had been trafficked for purposes of sexual exploitation." Child labour is a form of work that may be hazardous to the physical, mental, spiritual, moral, or social development of children and can interfere with their education. According to the International Labor Organization, the global number of children involved in child labour has fallen during the past decade— it has declined by one third, from 246 million in 2000 to 168 million children in 2012. Sub-Saharan Africa is the region with the highest incidence of child labour, while the largest numbers of child-workers are found in Asia and the Pacific.

### **Legal Aspects of Human Trafficking**

The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is an agreement that aims to make connections between human rights and migrant workers as well as their families. The agreement stresses the importance of migrant labor and the recognition that should be rewarded to the migrant worker, also arguing that the migrant worker is subject to equality and protection. This agreement has yet to be signed by many nations in Southeast Asia but there are a few that have signed and ratified the agreement like Indonesia and the Philippines and Cambodia which is yet to ratify. Anti-Trafficking in Persons Act are laws passed by many countries in Southeast Asia to prevent traffickers from using abduction, fraud, deception, abuse of power and giving or receiving money to obtain consent from the individual for control over them as a means for the recruitment, transportation, harboring of individuals by means of force or threats, sale, lending and hiring of an individual with or without their consent. Countries such as Thailand, Myanmar, Malaysia, Philippines, Cambodia and Indonesia all have their own Anti-Trafficking in Person Acts that are used to prevent human trafficking and prosecute those who violate this act.

The collapse of the Soviet Union has been identified as one of the main contributing factors in explaining the recent increase in human trafficking in Europe. It provided both human capital and new regional opportunities to fuel the expansion. After this period, trafficking victims, primarily women, expanded to include more diverse forms, aided by the rise of organized crime, corruption, and the decline of borders. Porous borders and close proximity of wealthy countries have made it easier and cheaper to transport victims within the region and abroad. Another factor contributing to the rise in trafficking has been militarization and war in the Balkans. The presence of a large number of foreign men in the Balkans after the war in Yugoslavia led to the trafficking of thousands of women for commercial sex exploitation. The connection between military bases and sex work is a well-known phenomenon and soldiers have helped drive the demand for brothels in this region. Outside Balkan nations, the legalization of soliciting prostitution has also been linked to increased

trafficking, with the Netherlands being identified as having a large percentage of trafficking victims transported there. While there are a multitude of factors that limit the ability of NGOs to respond to trafficking, such as lack of funding, extensive mandates, and lack of government support, NGOs play a critical supporting role for victims. Most NGOs, which emerged during the 1990s, initially struggled to hold their ground against increasingly predatory traffickers. While their success varies from country to country, NGOs are often credited with stepping in and taking initiative where governments have failed. Victims are often more likely to trust NGOs because "many trafficked persons fear and distrust state-based organizations as they frequently enter destination countries illegally, or have had their documentation removed on arrival.". Fear of deportation, being forced to testify, or retaliation by their traffickers also contribute to their reluctance to approach statutory agencies for support. NGOs have risen to fill this gap and provide services to victims. Services they offer include.

Human trafficking is an equally important issue in South-East Asia. Most of the victims that are currently working under forced labor conditions are doing so because they were either misled about job opportunities or were enslaved or forced to against their will. According to a policy brief on human trafficking in Southeast Asia, although victims include girls, women, boys, and men the majority are women. Women tend to be more highly targeted by traffickers due to the fact that they are seeking opportunity in an area of the world where limited economic opportunities are available for them. Unskilled and poorly educated women are commonly led into human trafficking. According to the UNODC report, the numbers for women and men in forced labor may be skewed due to the fact that only a few countries released the numbers for adult men. The forced labor market in this region also is dominated by male adults and females while the trade of children is evident it is considered small in comparison to the total. Most of these workers are undocumented and from different countries of origin than the country they work in. Countries like Thailand and Laos attract migrants of similar cultural backgrounds and language. Ethnic majority migrants from Laos are attracted to the similarities between the two countries and migrate to Thailand where they can assimilate easily. The combination of undocumented workers and similar cultures can cause problems for authorities to properly document and estimate the number of trafficked persons without confusing them for illegal immigrants and locals.

The issue of human trafficking is an important humanitarian challenge in Africa. According to the UNICEF the government's National Children's Council (INAC) continued to operate 18 Child Protection Networks (CPNs), which serve as crisis "SOS Centers" for victims of trafficking and other crimes who are between the ages of 9 and 16. There were no apparent victim services available for child victims under the age of nine. The CPNs offered rescue services, health, legal and social assistance, and family reunification. Government personnel referred an unspecified number of suspected victims over the age of 16 to shelters and services provided by the Organization of Angolan Women (OMA), an NGO that receives government support. Law enforcement, immigration, and social services personnel do not have a formal system of proactively identifying victims of trafficking among high-risk persons with whom they come in contact. The government does not offer victims long-term assistance, nor does it offer temporary or permanent stay.

Development-induced displacement is another push-factor which might result in the growing number of trafficked people. According to Michael M. Cernea the main causes of development-induced displacement include: water supply (construction of dams, artificial reservoirs, irrigation projects), urban infrastructure, transportation (roads, highways, canals); energy (mining, power plants, oil exploration and extraction, pipelines), expansion of agriculture, parks and forest reserves and population redistribution schemes. According to Bogumil Terminski the principal causes of DIDR include: 1. the construction of dams, hydroplants, and large irrigation projects, 2. the building of highways, roads and railroad networks, 3. urbanization and social services (expansion of cities, urban transport, water supply), 4. expansion of agriculture (especially monoculture plantations), 5. mining (oil exploitation, gold, copper, coal mining), 6. conservation of nature, 7. population redistribution schemes, 8. other causes.

## Bibliography:

- Buckland B., Human Trafficking and Smuggling: Crossover and Overlap. In C. Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Vienna and Geneva: National Defence Academy and Austrian Ministry of Defence and Sports, Vienna 2009, pp. 137-165.
- Jandl M., „Irregular Migration, Human Smuggling, and the Eastern Enlargement of the European Union”, *International Migration Review*, Vol. 41, Issue 2, June 2007, pp. 291–315.
- Kyle D., Koslowski R., *Global Human Smuggling: Comparative Perspectives*, John Hopkins University Press, New York, 2001.
- Mounz A., „Embodying the nation-state: Canada’s response to human smuggling”, *Antipode: A Radical Journal of Geography*, Vol. 35, Issue 3, July 2003, pp. 622–644.
- Nadig A., „Human Smuggling, National Security, and Refugee Protection”, *Journal of Refugee Studies*, Vol. 15, Issue 1, 2002, pp. 1-25.
- Pastore F., Monzini P., Sciorino G., „Schengen's Soft Underbelly? Irregular Migration and Human Smuggling across Land and Sea Borders to Italy”, *International Migration*, Vol. 44, Issue 4, October 2006, pp. 95-119.
- Salt J., „Trafficking and Human Smuggling: A European Perspective”, *International Migration*, Vol. 38, Issue 3, 2000, pp. 31-56.
- Terminski B., „Mining-Induced Displacement and Resettlement; Social Problem and Human Rights Issue”, *Social Science Research Network*, Research Paper, Geneva, September 2012. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2028490](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2028490)
- United Nations Office on Drugs and Crime (2010). Issue Paper: A Short Introduction to Migrant Smuggling (Last Checked on 12th October 2015).
- United Nations Office on Drugs and Crime (2012). Issue Paper: Abuse of a Position of Vulnerability and Other Means within the Definition of Trafficking in Persons (Last checked on 12th October 2015).
- Vayrynen R., „Illegal Immigration, Human Trafficking, and Organized Crime”, *Proceedings of the UNU/WIDER Development Conference on Poverty*, International Migration and Asylum, Helsinki, 27-28 September 2002.