

A Thing of the Present: Contemporary Challenges in Battling Slavery and Human Trafficking

An Interview with Dr Aidan McQuade; Director of Anti-Slavery International

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In an increasingly globalized society, many individuals travel outside of their home countries to find employment--what are the greatest challenges to ensuring that states respect the rights and particular vulnerabilities of migrant workers? How are these challenges particular to the vulnerabilities of female migrant workers?

There are a number of vulnerabilities for migrant workers. First there are limited options for safe migration and these options are even more limited for poor people from socially excluded communities. Second many countries maintain rather xenophobic migration regimes. These can be exploited by unscrupulous employers to exclude migrants from the basic protections of rule of law. Third many poor countries don't take the welfare of their migrating citizens seriously and don't, for example, assign labour attachés to the embassies of countries to which their citizens travel for work, to assist with standing up for their rights.

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As a result of high levels of discrimination against them and the intrinsically vulnerable nature of many of their employment, such as in domestic work, women are generally at higher levels of risk. These vulnerabilities are exacerbated when women are physically weaker than men, and therefore vulnerable to increased physical and sexual threat.

So, national protections need to be increased for migrant workers alongside appropriate international protections that recognise the transnational nature of this issue. In particular there needs to be new mechanisms of co-operation on aid, trade, and diplomacy as well as criminal justice to ensure anti-slavery and anti-trafficking protections are adequate.

Many victims of human trafficking enter into trafficking arrangements willingly, but are deceived about the nature and standards of their future situations. What can states do to protect their citizens from becoming victims of human trafficking? What are the greatest challenges to promoting cooperation between states which are "sources" of human trafficking and those which are "destinations"? Is trafficking better fought in the

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country of departure or of destination?

The Philippines is increasingly recognised as a country that makes valiant efforts on behalf of its migrant citizens by the posting of labour attaches across the world to act on their behalf.

There are currently discussions under way within the ILO on a new instrument to supplement the ILO forced labour convention (Convention 29). It would be useful if states, businesses and trades unions ensured that the instrument contains clear guidance on how states must act and cooperate to deal with the transnational aspects of trafficking as well as the national ones. For example focussed awareness raising of the realities of migration, and better control of recruitment agencies could help reduce trafficking risks.

However, constraints on achieving this include a lack of recognition of trafficking as a significant problem in many countries, a lack of political pressure to cause governments and other powerful interests to change, and an ideological opposition amongst many trade ministries to regulatory protections of vulnerable workers.

Europe is one of the main destinations of women trafficked into the sex market. It is estimated that 30-60% of “legal” sex-workers in the Netherlands are actually kept working against their will. Yet it is the continent with the strongest legal guarantees and judicial structures made to prevent such practices. Why is it so difficult for European countries to put an end to it? Do states turn a blind eye to trafficking, or condone it partially because it generates revenue from tourism?

In spite of the political coherence of Europe, and the relatively strong legal protections in place in many countries, the implementation of these protections is piecemeal with many criminal justice actors not fully understanding their responsibilities or a trafficked person’s rights¹. Further international co-operation on this issue is poor: the UK wants, for highly ideological reasons with little to do with the best interests of the victims of crime, to withdraw from European criminal justice measures. This would diminish cooperation on trafficking even further.

The so-called “B-9” law in the Netherlands provides potential victims of trafficking with temporary permits to remain in the country, based on their cooperation with legal proceedings against traffickers. How do you evaluate this legislation? How would you compare it to the standards of other developed nations? How might it be altered to provide better protection to victims of trafficking?

Protections for victims of trafficking should not be based on anything other than their rights as human beings to be protected from crime. When such measures are in place many trafficked people will choose to co-operate with legal proceedings. However this should not be a pre-requisite for assistance.

Sexual slavery and trafficking are two kinds of modern slavery that fall the harder on women. These practices are already largely illegal, so what should be done to address the root of these two problems?

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One important approach to tackle the root causes of the trafficking of women for sexual exploitation relates to the economic empowerment of women vulnerable to slavery to ensure that they have a real choice about migration. Another is to ensure safe migration routes so that those who are seeking a better life for themselves and their families do not have to run ridiculous risks to do so. For example, trafficking researchers in South East Asia argue that a primary causal factor in Vietnam-China sex trafficking is the lack of a framework for legal cross-border marriage².

Although women are the most vulnerable group when it comes to sexual slavery and human trafficking for sexual purposes, transgender persons are also greatly victimized by these practices, especially when they find themselves in states that outlaw their very existence. What are the particular challenges to this facet of the problem?

Given that transgender people might be subject to considerable discrimination and a lack of legal recognition and protection in some countries, they can find themselves in precarious situations either in their home countries or as migrants. The lack of specialised support services for trafficked transgender people has also been noted as a problem in some countries.

¹ For further information see “In the Dock”, (2013) by Anti-Trafficking Monitoring Group http://www.antislavery.org/includes/documents/cm_docs/2013/inthedock_final_small_file.pdf.

² See also http://www.unicef.org/vietnam/reallives_562.html.

In the past week, the government of Qatar approved a draft Health Insurance Law which would increase the availability of healthcare to foreign workers in that country. At the same time, the UAE and the Philippines have discussed new Memorandum of Understanding on labour standards, while a meeting in Manama in October has been set to explore the possibility of a common law to regulate the domestic sector workforce in GCC states. Can you comment on these developments, and the resources available to migrant workers in the Gulf states? Are you optimistic about the future of these initiatives?

It's good to see a government like the Philippines so deeply engaged on behalf of its citizens. Clearly, however, the problem of forced labour and labour exploitation amongst migrant workers is one that involves more than Filipinos. There would be a greater prospect of improved standards for migrant workers in the Gulf if more governments got involved in cooperation with each other on behalf of their migrant citizens. Minimally, governments with large migrant populations need to appoint labour attaches to their citizen's destination countries to advocate on behalf of their rights.

The ILO's Domestic Workers Convention entered into force in September 2013. What, in your opinion, are its main strengths and weaknesses? What alterations would your organization advocate to strengthen its effect?

The first thing to say about this convention is that it is important for providing an international legal standard for the protections that domestic workers should be able to expect. Unfortunately, for this to make a difference in the lives of domestic workers the Convention must be ratified and the provisions domesticated in national law and, critically, implemented. So the main thing that we must press for now is more widespread ratification of it and its codification into the national laws of the countries that ratify it.

The Rome Statute of the International Criminal Court, which entered into force in 2002, defines the trafficking of women in the context of armed conflict as a war crime and a crime against humanity. What do you see as the main challenges to the protection of women from trafficking in times of armed conflict? What is the interplay between trafficking during times of conflict and times of peace?

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Cicero's observation, "In times of war the laws fall silent" is apposite when considering this question. War is a time when the most basic fundamentals of society, such as not killing, are put aside. Given this chaos and lawlessness of war there is ample opportunity for criminality. War is also by its nature cruelty, as Sherman pointed out, and its practice leads to brutalisation of those who are combatants hence leading to further cruelties, such as rape and trafficking being inflicted upon the vulnerable.

In spite of all this, it is still right and proper to insist that certain minimum standards are not transgressed. The challenge however is to make these standards meaningful in a time of war which can make all such scruples seem wholly meaningless. Towards this end an increased emphasis in peacekeeping and peace processes of criminal, most specifically, war criminal investigation is desirable. There should be major emphasis on policing and military policing capacity in such situations to have some chance of getting at the truth and ending exploitation and rape even in such trying circumstances.

Often, when we think of modern-day slavery, trafficking by non-state actors and criminal organization comes to mind. In certain cases however, notably in North Korea, political prisoners are placed in gulags and experience a form of state-sanctioned slavery. How can non-governmental organizations and governments cooperate to prevent state-sanctioned slavery? How are the challenges of combating this form of slavery unique?

Certainly the crass use of forced labour by authoritarian or undemocratic regimes such as Uzbekistan, where child forced labour is used for the harvesting of cotton, much of which is sold into international markets and used sometimes in the clothes we wear, are among the most egregious abuses. Many other countries, such as some of the Gulf states as well as some European ones, establish migratory frameworks which facilitate the private exploitation and enslavement of people.

These situations must also be tackled through advancing national and international rule of law, and making slavery eradication, by both state and non-state actors, a priority in aid, trade and diplomacy.

Even though traditional slavery (the possession and trade in humans) largely doesn't exist anymore, other forms of quasi-ownership (such as debt slavery) and degrading working conditions are eerily similar to it. The slave trade was abolished by treaties and laws in the 19th century, but modern-day human rights and labour regulations don't seem to be able to tackle the problem completely. Is this an inadequacy of these laws or are there other structural issues that need to be addressed? Do we need more laws or just better implementation?

“Traditional” slavery, that is descent based slavery where people are born into slavery and regarded as chattel possessions by slaveholders, does indeed still exist affecting tens of thousands of people in West Africa. So this is still a major problem in the world.

To deal with the diverse manifestations of contemporary slavery, including “traditional” slavery, we need some more laws and much, much better implementation of existing law. In a wider sense though, the difficulties of dealing with contemporary slavery is a manifestation of the fact that many of us have bought into the comforting delusion that slavery is a thing of the past. Hence, the necessary collaboration between governments, businesses, trades unions and civil society to end these abuses has not reached critical mass.

Many countries have abolished forced labour as a criminal punishment, while others (notably China) greatly rely on it as part of their productive capabilities. Is this practice akin to slavery and/or inherently deleterious, or is it problematic because of working conditions alone?

The 1930 forced labour convention explicitly states that it is not forced labour if it relates to “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.” Setting aside the question of working conditions in prisons for a moment, which is a matter of penal policy rather than anti-slavery labour policy, if prisoners’ labour is used for private profit then that is a contravention of the provisions of the 1930 convention and should be categorised as forced labour.

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Brazil has since many years a public “black list” of companies that were caught red-handed using modern-day slave labour. This list has been criticized for failing to comply with due process guarantees, since it is compiled by the public prosecutor’s office without a judicial ruling. What do you think of such administrative measures? Is there a clash of values and rights in cases like this? Is public shaming of companies, product boycotts and the like effective ways to deter or combat these practices by private actors?

Public prosecutors have different powers in different legal systems. So I do not think there is a problem of principle about having such an administrative measure as Brazil’s “black list”. It is essential that the compilation of such a list should comply with wider principles of rule of law, such as having an appeal procedure and a transparent process that means that decisions are based on rules and evidence not on arbitrary opinion.

Public shaming of companies is a regrettable measure and it would be ideal if it was never necessary and all companies acted with dispatch to end abuses when they are discovered. However it is also the case that many companies will not act until compelled to do so by public pressure. So public shaming will probably always be essential, particularly as long as the rule of law as it applies to transnational business is so limited.

The recent collapse of a textile factory in Bangladesh, which killed over 1100 people, brought up again the question of the responsibility of companies for the welfare of workers. Would you consider those workers, and others in similar situations, living in a condition of modern slavery? Who must bear the greatest pressure (or who can best solve the problem), the governments who should control these operations, the companies themselves, or the consumers?

While it is plain that the workers in Rana Plaza were working in conditions of the gravest exploitation, I can’t give a conclusive judgement on whether the Rana Plaza workers were in slavery-like conditions, as I don’t have enough information about their terms of employment. However the Bellagio-Harvard guidelines on the legal parameters of slavery note that the legal definition of slavery is found at Article 1(1) of the 1926 Slavery Convention, which reads: ‘Slavery is the status or condition of a person over whom

any or all of the powers attaching to the right of ownership are exercised'.

These guidelines note further that "Where a person controls another such as he or she would control a thing owned, such possession makes possible the exercise of any or all of the powers attaching to the right of ownership." The appalling safety conditions that applied in Rana Plaza are strong evidence that the workers were treated as mere things and so there is a strong *prima facie* case that the workers there were indeed subject to conditions comparably to slavery.

The responsibilities for ending such situations fall principally on governments. In places like Bangladesh, the governments have clearly not been ensuring basic standards of health and safety and rule of law for their citizens. But there is also a degree of culpability that applies to the companies, who chose to source from such countries. Many may point out that their buyers are not structural engineers or fire safety specialists. But the focus on low costs in international business irrespective of the conditions in which workers produce goods is an invidious cause at the core of atrocities such as Rana Plaza.

Is modern day slavery a direct result of underdevelopment and poverty? Wouldn't it be more soundly combated by world-wide incentives to local development, giving destitute populations means to generate wealth without being predicated?

Contemporary slavery is not a direct result of poverty and underdevelopment. Both these play a role but additional factors are necessary, specifically discrimination and prejudice, and failure of rule of law. Not every poor person is equally vulnerable to slavery. Slavery tends to fall on those against whom the wider society also practices discrimination. So women and children are more vulnerable than men. And specific groups are more vulnerable than others. For example poor Dalits in rural India, or migrant workers in Western Europe, are considerably more vulnerable than other members of the population that they live amongst. Both these communities – Dalits in India and migrants in Europe - in common with people who are subject to slavery everywhere in the world and throughout history, are subject to considerable discrimination by the wider community to such

an extent that that wider community either does not become aware of their abuse or is prepared to tolerate it. Governments certainly must take a lead in advancing the rights of discriminated against groups to ensure, firstly, the ending of abuses such as slavery being imposed on them, and ensuring their full inclusion into society.

What is the biggest misconception about modern day slavery that you wish to dispel? What specifically would you reinforce or increase awareness of in the legal community?

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The biggest misconception about slavery is that it is a thing of the past. The next biggest thing is that it is simply a manifestation of poverty and underdevelopment and eliminating that will automatically eliminate slavery. The poor are certainly more vulnerable to slavery than the rich, but slavery is also a consequence of social exclusion and discrimination, and government inaction. There needs to be an energetic response to these matters to end slavery.

The legal community, particularly those working as judges, and those working as immigration and criminal lawyers, needs to be aware of the realities of slavery, and of the laws relating to it in their jurisdiction, so they recognise it when they encounter it and hence can properly represent their clients or deliver proper judgements. Too often people who are trafficked, particularly those trafficked for forced criminal activity, are prosecuted for the crimes they have been forced into, rather than treated as victims of more serious crime, with rights guaranteed in national and international law³. ■

³ For further information see "In the Dock", (2013) by Anti-Trafficking Monitoring Group http://www.antislavery.org/includes/documents/cm_docs/2013/i/intinthedock_final_small_file.pdf.