

Sale of Children: The Exploitation of Child Labour

Chaturont Wannuan*

GENERALLY SPEAKING, the phenomenon of the sale of children is universal in nature. The tragic circumstances leading to the abuse and exploitation of children cut across the barriers between the developing and developed world. The issue confronts most societies, although the typology and degree vary from country to country. Children are not only sold or exploited at the national level, but they are also trafficked across frontiers far and wide.

I. Sale of children

1.1 Sale

Concerning the notion of "Sale", different interpretations appear in the two major legal systems, *viz.* common law and civil law systems. The concept of the sale of children has many forms:

- (a) a sale involves a child *sold* by one person (the seller) to another (the buyer);
- (b) a child transferred to another in exchange for a sum of money or other considerations which do not constitute the price of the child but which nevertheless represent unjustified profits, for instance, bribes;
- (c) a child is *rented* to another person, for example, for the purpose of sexual exploitation or exploitation of her/his

labour when the sum paid is completely unrelated to the work the child has to do;

- (d) a child is *held* until the parent or guardian is in a position to meet a financial obligation.

In order to secure a consensus interpretation, one may use the definition derived from the 1956 Supplementary convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery as follows:

"The transfer of a child from a party (including biological parents, guardians and institutions) to another, for whatever purposes, in exchange for financial or other reward or compensation."

1.2 Children

It is not a simple matter to define who is a child. This is because age criteria may vary across different systems or different cultures. In addition, there is an admixture of other terms, for example "minor", "adolescent" and "youth". Nevertheless, as we are all aware it was not until 1990 that the Convention on the Rights of the Child gave in Article 1 the standard concerning the definition of the "child":

"... a child means every human being below the age of 18 unless, under the law applicable to the child, majority is attained earlier."

*Child Rights Asianet, Bangkok, Thailand.

1.3 Sale of Children

Again, like the notion of “sale” and “children” different approaches can be seen in regard to the “sale of children”. For instance, one U.N. document limits the notion to sale for adoption, sale for forced labour and sale for prostitution. With regard to one non-government organisation’s report, on the other hand sale of children includes their sale

- for adoption and marriage
- for prostitution and sexual exploitation
- for pornography
- for cheap bonded labour
- for begging, stealing and other criminal actions
- for organ transplants

In addition, as child labour entails the sale of a child, there may be some areas that the above concept of sale should consider, namely armed conflict, adult criminal activities, forced labour or abducted children, debt bondage, labour in the unorganised sector, labour in the organised sector, child prostitution, pornography and sexual exploitation, forced marriage, disabled children in the labour force, domestic labour, apprenticeship and family-supervised labour.

II. Exploitation of child labour

As mentioned above, it is recognised that the exploitation of child labour is a form of sale of the children. Generally speaking, when one considers the notion “child labour” work *per se*, it is not necessarily detrimental to children. However, when it gives rise to exploitation, usually by another party who has power over the child, it may result in negative consequences for children, both for their rights and for their development. It also constitutes sale because the child becomes the object of a transaction in cash or in kind.

It appears that, in many parts of the world, children are sold into several types of employment, either by their parents, guardians or other intermediaries. Recently, the International Labour Organisation (ILO) estimated that there were some 88 million working children between 10-14 years of age.

Instances of exploitation are to be found in all regions of the world but Asia and South America figure high in the number of children in difficult circumstances. It is noted that the worst forms of child labour exploitation often take place in the informal sector and small-scale industries.

2.1 Causes

Generally, the exploitation of child labour may arise from a variety of root causes, including poverty, migration, gender discrimination and criminality.

Poverty

Much of the exploitation appears to be a consequence of the pervasive poverty in developing countries. Likewise, economic needs push children to undertake exploitative work in developed countries. As children are cheaper and easier to employ, adults are kept out of the labour market.

Migration

According to the notion of “globalisation”, at present, it appears that people have become more mobile, and travel more easily to other countries. This also includes their search for jobs. As a result, it leads to the emergence of migrant labourers and immigrants which sheds new light on the old problem of child labour.

Gender Discrimination

In many societies, the preference for boys, coupled with a chauvinistic attitude towards the development of women, often

places girls at a disadvantage. As seen by many countries as having lower priority, the girl child, therefore, is usually denied access to educational and occupational opportunities which could protect her from labour exploitation.

Socio-economic Disparities

With respect to the sale of children for exploitative child labour, socio-cultural disparities may also contribute to the sale of children. Many societies display historical injustices and traditional taboos. The phenomenon is based upon race and social origin, interwoven with issues of class and caste and the remnants of slavery. It is obvious that children used for labour exploitation are lured from particular racial or social groups, rather than from the well-endowed groups in power. For instance, in South Asia, it is the children of the "untouchables" who are most often victimised in child labour situations.

Criminality

As one commentator has noted, the sale of children is the product of crime. Although child labour has been with us from time immemorial, criminal syndicates and individuals are now manipulating children in new ways as instruments of crime. The use of children to sell drugs, to steal and to commit other offences is probably a good example of this situation. Much of it is linked to corruption within national systems and elements of law enforcement authorities colluding with criminal elements. This is compounded by the fact that although various countries have laws to protect children, there is a huge gap between the norms and existing practices: many countries suffer from poor law enforcement. Therefore the exploitation of child labour is often the product of such deficiencies and related vested interests.

2.2 International Scenario

At the international level, various in-

struments provide an umbrella of protection for child labourers. Under the auspices of the ILO, a series of conventions and recommendations on the exploitation of child labour has been developed. One key Convention is Convention No. 138 which establishes 15 as the basic minimum age of employment, although reduction to 14 may be possible in developing countries. The ILO conventions and recommendations have been strengthened by the advent of the Convention on the Rights of the Child (CRC). The CRC re-emphasises the issue of sale linked with child labour. Article 32 states that children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." The convention calls for the stipulation of pluridisciplinary measures, for example, legislative, administrative, social and educational measures to:

- “(a) Provide a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulations of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”

In the case of migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 also protects those in irregular situations, for instance, those employed without proper documents in another country; they retain their rights *vis-a-vis* their employees, even in such a context.

Although various legal frameworks have been established, there remain the issues of implementation and programme planning to realise specific targets.

Implementation

The 1990 World Declaration on the Survival, Development and Protection of Children, highlighted the need to target implementation with specific programmes of action at the national level.

In addition, the UN Commission of Human Rights adopted the Programme of Action for the Elimination of the Exploitation of Child Labour in 1993. This Programme of Action advocates a number of measures which should be implemented, particularly at the national and local levels. These include the following:

- Information campaigns to raise awareness of the problem;
- Educational and vocational training to prevent child labour exploitation;
- Social action to help families and their children;
- Development aid;
- Stipulation and application of labour standards;
- The adoption by States of appropriate policies and programmes, for example, provision of primary education for all; and
- Support from international agencies.

Moreover in terms of programming in Islamabad in November 1992, the International Labour Office, within its Interdepartmental Project on the Elimination of Child Labour, helped to organise the Asian Regional Seminar on Children in Bondage, which developed and adopted A Programme of Action Against Child Bondage: The Programme of Action against Child Bondage advocates the following measures:

Legislation

Review the adequacy of existing legislation. In particular, the following aspects should be covered:

- Definition (the various forms of bondage)
- Objective (its total abolition)
- Specification of sanctions
- Compensation of victims
- Liquidation of debts and other obligations
- Enforcement machinery, e.g. measures for speedy trial
- Enabling provisions for the establishment of special courts
- Adverse publicity for violators
- Establishment of rehabilitation schemes

Enforcement

Establish mechanisms to promote and monitor enforcement, e.g., vigilance committees, task forces

- Strengthen the judiciary
- Provide appropriate penalties to deter violations
- Publicise violations
- Complement legal machinery with public awareness campaigns and the dissemination of information
- Provide information and training for targeted groups, e.g. officials of implementing authorities, the judiciary, trade unions, religious groups
- Conduct research and studies.

"Education, training and rehabilitation"

- Make primary education universal,

compulsory, and free

- Facilitate access to schooling through allocation of additional resources
- Provide incentives to parents to send their children to school
- Allocate greater resources to education
- Promote public awareness of the value of education
- Implement child labour and compulsory education laws
- Establish rehabilitation programmes including counselling services
- Provide non-formal education, vocational training, credit facilities and social services
- Establish transit and rehabilitation centres
- Develop a code of good practice for employers
- Promote and implement prevention, prohibition and rehabilitation programmes.

“Advocacy and community mobilisation

- Adopt a policy to eliminate bonded labour
- Develop advocacy and social mobilisation campaigns using the media, training programmes, investigative studies, etc.
- Mobilise specific groups, including employers and workers and their organisations, parents, government, judiciary, community groups, social and political institutions, through targeted information campaigns
- Establish networks among concerned groups.”

2.3 National Scenario

Concerning laws prohibiting or regulating child labour, it appears that these vary in aspects such as the age of employment and the types of work allowed. The enforcement of such legislation is often weak, and it tends to cover only the formal sector. In 1993, instances of rampant child labour exploitation were found in both developing and developed countries, though the extent varied according to the region.

In South Asia, the issue of child marriage was raised several times in 1993, particularly concerning customers buying young brides. The plight of child domestic workers and transnational trafficking of children emerged throughout the year. There is also a demand factor regarding the children of South Asia, both local and transnational, particularly with customers from the Middle East countries. In addition, numerous concerns were expressed in relation to children trafficked for camel racing in the Gulf countries. In this respect, however, there has been a positive initiative namely, the United Arab Emirates recently banned the use of child jockeys and ordered that they be returned home.

In East Asia, the sale and trafficking of children for labour exploitation are still rampant both locally and across borders. The issue is closely linked with the sex market.

In Africa, on another front, the exploitation of child labour in the informal sector was reported in various countries in 1993. In particular, the girl child is a victim of exploitative domestic service. At times, there is a link with remnants of slavery, such as the sale of children for forced labour, particularly among those of certain ethnic groups.

In Central or South America, the number of children at work is vast, especially as there is a large population of street children. There were disturbing incidents of killings of street children during the past years. In this

region too, the problem of child domestic workers and the use of children in the informal sector are also rampant. At the other extreme, children are at times employed to sell drugs.

In Europe, the problem of child labour exploitation poses a challenge to many countries. This includes a specific linkage with children used as instruments of crime and as domestic workers.

III. Conclusions and recommendations

Conclusions

In this paper an attempt was made to examine various areas of the sale of children due to child labour exploitation.

The general observation gained is that while there are national and international laws, including various plans and programmes of Action, which cover most of the situations, law enforcement leaves much to be desired. In addition, the existing laws tend to be remedial rather than preventive.

Recommendations

In relation to the sale of children for child labour exploitation, a number of recommendations are offered as follows:

General

States, national and international organisations are invited to bear in mind strategies of prevention, protection and rehabilitation in curbing the exploitation or child labour. All strategies involve short- and long-term planning, implementation and evaluation.

Realisable goals depend upon close coordination, adequate budgetary allocations and willingness between the national and local levels, including federal and state links.

1. Prevention

A key priority for action in the

short-term, with long-term implications, is in the area of prevention. States and national and international organisations should promote effectively, anti-poverty strategies, the improved flow of information, universal primary education, community consciousness raising, mobilisation, the satisfaction of basic needs, occupational opportunities and alternative forms of employment for families.

2. Protection

Protection of children from child labour exploitation depends upon adequate and effective laws and policies together with their implementation at the national and local levels. All countries already have laws which can be used to protect children, for instance, the criminal law. These should be implemented in a more committed manner. The quality of the law enforcement authorities, namely police force, immigration authorities, judges, inspectors and others, needs also to be improved.

In relation to transnational child labour exploitation, improved links between INTERPOL and national police are required to identify transnational networks. Moreover extradition arrangements should be expanded so as to facilitate the transfer of alleged criminals to face charges in the country where the abuse has taken place.

3. Rehabilitation

States and national and international organisations should take remedial actions to help children who are exploited. This may include juridical remedies, such as prosecution of abusers, and the provision of legal aid and assistance, and/or socio-medical

remedies such as the provision of hospices, counselling and other support facilities. On another front, appropriate spiritual remedies, e.g. religion, should also be considered as a tool to counter problems.

Facilities should be provided to help those with health problems, including HIV/AIDs. These may include medical and community facilities to help children and their families, as well as measures to protect them against discrimination and other harm. Emphasis should be placed upon family-based and community-based rehabilitation rather than State institutionalisation.

Particular attention should be paid to child trafficking. This entails proper safeguards, including independent monitoring and follow-up, for children to be returned to the country of origin. Pending their return to the country of origin, they should not be treated as illegal immigrants by the receiving countries but should be dealt with humanely as special cases of humanitarian concern. Upon the children's return, the countries of origin should treat them with respect in accordance with international human rights principles.

Other measures

In relation to child labour, the whole

range of measures advocated by the UN Commission on Human Rights' Programme of Action for the Elimination of the Exploitation of Child Labour 1993 should be implemented.

There should be stricter law enforcement in the case of child labour, with more incentives for exemplary law enforcement personnel. All vestiges of bondage should be eradicated, and the plight of the girl child should be attended to. The Programme of Action against Child Bondage 1992 should also be placed as a priority for all parties concerned.

More emphasis should be focused on the plight of domestic labour, particularly, in regard to children; laws may be required to prevent abuse in this field. Again, their basic human rights should be protected.

There should be greater protection of illegal, or undocumented child labourers. They should be deported to their country of origin only if their safety and human rights are guaranteed. This should be seen in the context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.



