

Human Rights versus Human Trafficking in the Face of Globalization

For the past two months, I have been traveling as Eisenhower Fellow across the United States of America studying the human rights situation in the country - including issues such as protection against sexual exploitation of children, juvenile justice, child labour, indigenous peoples, refugees, and human trafficking. It has been an eye-opening and humbling experience, particularly to recognize that there is much of the developing world in the developed world and of the developed world in the developing world in relation to exploitation and impoverishment - all part of the challenge of globalization. It has provided me with more insights, and I can perhaps encapsulate them by three key words which are pertinent to the call for human rights versus human trafficking : demythification, identification (of good practices) and consolidation.

Demythification:

There are several myths which deserve to be debunked. First, the myth that human trafficking is a rather new phenomenon. It is not – it is in fact a very old phenomenon, although today there are more complexities. We need only look back to the slavery which pervaded many countries in the colonization period until quite recently to recognize that slavery was very much linked with human trafficking – Africans and others were taken forcibly locally and across the waters to be used and abused as objects of trade – as chattels in chains. Colonization and enslavement were both part of the first wave of globalization. And the consequences of that period are still felt today in the rampant discrimination which exists against their descendants and their economic, social and political deprivations.

Today, of course, sadly we have slavery and trafficking in easier, broader and innovative forms – humans, particularly women and children, are traded as chattels in more modernistic shackles to, from and across new geographies and demographics for a variety of purposes – sex, marriage, labour, begging, and adoptions, to name but some instances. All this is more convoluted because of the advent of globalization of a different kind; faster and more extensive communications, tourism, travel, the Internet and more. It is sometimes linked with the drugs trade. While there is money-laundering, there is also “human laundering” in that the victims are often hidden from view and are often under various (dis)guises. The supply factor and the demand factor have become much more integrated and globalized. Particularly in regard to sexual exploitation, there is the additional question of male behaviour aggravated by cultural discrepancies imbued with machismo, chauvinism, patriarchy and paternalism – all of which lead to the globalization of negative practices of a cultural, physical and psychological kind.

Second, the myth that in the global economic framework and related trade negotiations, globalization today should be more about the flow of goods, services, capital and communications than about migration of people. Governments have been much more ready to liberalise their markets in regard to the former rather than in regard

to migration. By not dealing adequately and humanely with the migration issue, they may also be fuelling the trafficking phenomenon. If people are unable to use legal channels to leave the country to go to another country, there is the likelihood that they may resort to clandestine channels and become potential victims of human trafficking. A major challenge is how to recognize and respond to the need for managed migration, implying not a totally open door policy (because this would be politically unrealistic), but to have rational, reasonable channels for people to leave their country legally and in a managed form rather than clandestinely.

Third, the myth that neglects the negative side of globalization in the form of criminality and the spread of crime. Human trafficking today is very much linked with crimes and criminals – both local and transnational, small and large.. Today, we are having to address more effectively another type of private or business sector – the business of crime which wreaks havoc on humans. Traffickers, brothel owners, intermediaries, syndicates, abductors, abusers on the Internet, and more. There is the globalization of non-State actors, as part of the globalization of demand, aggravated by the angle of feminization and “juvenization” of supply precisely because many women and children are victims of that phenomenon.

Governments should not be complacent. It is true that unlike during the colonization period when governments were directly involved with slavery and trafficking, today no government would claim that it supports human trafficking. Yet, through the laxity, tardiness, ineffectiveness and corruption of some governments and their personnel, there is also the globalization of governmental inaction on some fronts which compounds human trafficking.

Fourth, the myth that fails to uphold human rights as the aspiration and essence of globalization. All too often, globalization has been seen as part of the (free?) marketization of the global economy in a rather insensitive manner in that it omits the human faces at stake, particularly those who are marginalized, vulnerable and unable to compete in the global economy. There is thus a need to rectify that globalized facelessness by protecting human rights as the heart and soul of globalization; the various human rights standards and agreements need to influence – indeed prevail over – the economic/commercial arrangements and accords that abound today, no less in relation to the World Trade Organization and other global institutions. There needs to be much more dialogue and convergence between the various actors working on human rights and those working on globalization.

Fifth, the myth which places more emphasis on national/international security than on human security in the face of the globalization of terrorism. As an aftermath of the terrorist attacks on New York in September 2001 and more recently in Bali, the global government agenda now is understandably to counter terrorism. New measures are being adopted against terrorists – actual and potential – such as tracing, tracking and punishing them, and curbing the financial flows which are feeding them. Yet this is a reactive approach. Not enough is said and done on how to prevent and tackle the root causes and environment behind violence and the accumulated, explosive dangers of

frustration, alienation, impoverishment and dispossession. There is not enough on the preventive and proactive approach. We need also to be aware of the over-reactions based upon national/international security which may at times be excessive and undermine human security as linked with human rights. In this perspective, policies dealing with migration and in relation to victims of trafficking are likely to become more restrictive rather than liberal – to the detriment of the needed human security of those who are already vulnerable, unless we advocate strongly otherwise. There is also the emergence of ethnic profiling as part of national/international security whereby those from some regions such as the Middle East and South Asia are more likely to be shunned rather than helped, especially if they arrive at the doorstep of developed countries claiming to be refugees as well as victims of trafficking.

To demythify the above, a number of measures should be identified and it is to these that we may now turn.

Identification:

Current actions being taken around the world indicate a diversity of good and not-so-good practices. From the angle of human rights, the measures inevitably interrelate with at least laws, policies/ programmes, mechanisms/personnel, resources (material/non-material), information/education and mindset, and cooperation/coordination/participation. These can be identified and tested as follows, from the angle of not only formulation but also implementation:

1) Laws

There is a multitude of international agreements/laws to protect human rights and to counter human trafficking. The world is not lacking in international agreements, but it is lacking in effective implementation particularly from the angle of gender-and-child sensitivity.

The most recent treaty on the issue is the Protocol to Prevent and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 1998. With regard to this anti-Trafficking Protocol, a rather lengthy (and difficult) definition of “trafficking in persons” is offered as follows:

“the recruitment, transportation, transfer, harbouring 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 the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a 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, force labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

This Protocol has to be read with the Convention it accompanies; it covers transnational crime involving a structured group of three or more persons. Countries/governments which become parties to these instruments have to adopt or reform national laws and other actions to conform of the Protocol and Convention. The content of the Protocol can be summarized as follows:

- not only is coercion/force covered but also abuse of authority as a part of the trafficking;
- the exploitation behind the trafficking encompasses sexual exploitation and other forms, e.g. forced labour, slavery and removal of organs;
- consent on the part of the victims is irrelevant;
- “child” means any person under 18 years old;
- legislation to criminalize the trafficking is to be adopted by member States;
- a wide range of measures to protect the human rights of the victims is provided for; for instance, legal assistance, counseling, shelter and medical help;
- measures to permit the victims to remain in the territory of the transit/destination country are to be considered;
- in relation to the member State of which the victim is a national or has a right of permanent residence, safe return of the victim to that State is to be facilitated;
- measures to prevent the trafficking and to promote cooperation are to be adopted, e.g. media campaigns, information exchange and training, border controls, and security of travel documents;
- monitoring of the implementation of the Protocol is provided for by the main Convention through periodic conferences of the member States.

The anti-crime emphasis of this new Protocol is welcome. Yet, it is more of an anti-crime treaty than a human rights treaty, and at times it is a diluted rather than a total commitment to human rights. This is illustrated by the fact that the Protocol gives much discretion – too much discretion to the governments – to dilute their action to assist and protect the victims. Many of its provisions only refer to the need to take “appropriate” action rather than adequate or effective action.

That Protocol should thus be read holistically together with basic human rights principles such as non-discrimination, effective access to assistance and protection, adequate preventive measures, gender-and-child sensitivity, monitoring by the United Nations, and action against impunity of the perpetrators. These are underlined by key human rights instruments, e.g. the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, the International Labour Organization (ILO)’s Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, and the Rome Statute of the International Criminal

Court. These have been advanced by the guidelines on human rights and the question of human trafficking prepared recently by the Office of the United Nations High Commissioner for Human Rights, and a number of guidelines adopted by non-governmental organizations on the subject.

The anti-trafficking Protocol is thus both a good practice and an incomplete good practice.

At the regional level, there are many initiatives against human trafficking. For instance, in 2002 the South Asian region adopted its Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. On the good side, it calls for regional cooperation and action to curb the crimes which oppress women and children in the field of prostitution. Yet, it is incomplete: there are many types of trafficking beyond prostitution which also need to be dealt with, and there is the key test of implementation.

At the national level, many countries have adopted new laws specifically against human trafficking with more severe punishments against the traffickers, more victim friendly procedures and facilities (e.g. shelters and videotaping of the testimony of the victims to avoid re-traumatisation), and more cooperation to prevent the trafficking, to prosecute the traffickers and to protect the victims, including safety of return to their homes.

Perhaps the most famous – infamous – today is the United States' Trafficking of Victims Protection Act 2000. It takes a strong crime suppression approach while having broader vistas. In addition to measures of criminalization against the traffickers, it provides for the possibility of giving temporary visas – T visas – to the victims to stay on in the United States particularly to help prosecute the traffickers. It establishes an interagency task force to monitor the trafficking, and offers economic alternatives to source countries to prevent and deter the trafficking. It provides annual reports covering the globe on what countries are doing to curb the trafficking, with the possibility of sanctions to be imposed on those failing to take adequate measures as from 2003. While there are positive aspects of this new law, there remains a question concerning whether the threat of sanctions is appropriate. It is a unilateral threat which is hardly conducive to a cooperative spirit to overcome a global scourge. In any case, if the United States wishes to arrogate to itself the power of assessing others with a view to sanctions, who assesses the performance of the United States, since it does not monitor itself in the annual reports? Does this not smack of double standards and hypocrisy?

On another front, globally there is a need to appraise the not-so-good laws transparently and advocate their reform. Three kinds are of note:

- national immigration laws which fail to exempt the victims of human trafficking from their scope, thereby treating the victims as criminals and illegal immigrants – “illegals”;

- national anti-prostitution laws which at times catch the trafficked victims under their criminal provisions;
- national juvenile justice laws which at times treat the child victims of trafficking as delinquents to be dealt with by the criminal justice system.

There is thus the need to promote good laws and effective implementation as good practices while shunning the misleading or counterproductive laws and lax implementation.

2) Policies/Programmes

A number of global, regional and national policies exist to thwart human trafficking; the statements are often profusive but there is also the not-so-good practice of poor implementation. The policies range from the Beijing Platform of the World Conference for Women 1995 to the World Declaration of the Durban Conference on racial discrimination, xenophobia and related intolerance 2002; from the Stockholm Declaration and Agenda for Action of the World Congress against Commercial Sexual Exploitation of Children 1996 and its follow-up Yokohama Congress 2001 to the United Nations Special Session on Children 2002 which adopted the document entitled a World Fit for Children as a policy for the future. There are similar patterns at the regional level and at the national level; there are now many plans of action against human trafficking in one form or another. At the national and bilateral levels in South-east Asia, we also notice the emergence of Memorandum(s) of Understanding, exemplified by Thailand, between government agencies with the cooperation of non-governmental organizations to treat the victims of trafficking humanely – importantly not to lock them up in jail but to house them in welfare shelters and ensure their safe return home.

There are a number of programmes now visibly countering the trafficking. These vary from prevention programmes to protection and prosecution programmes. One example is a media campaign to encourage child-wise tourism; travelers have probably noted many video-clips on airplanes advocating against sexual exploitation. Another is to bring in the private sector to adopt a position against exploitation; this is seen in the rise of Codes of Conduct adopted by that sector. Prevention programmes include public and private sector involvement of the service industry (e.g. hotels) in training and providing job opportunities to those who might otherwise be victims. Some countries have a very active law enforcement and prosecution programme – for example, China has undertaken tens of thousands of arrests and prosecutions against traffickers in recent years.

Yet the not-so-good side is that many policies are not well implemented and well monitored; women and children who are victims of trafficking are still finding themselves treated and punished as illegal immigrants, stigmatized at times as prostitutes and delinquents. Some government officials also refuse to abide by the Memorandum of Understanding as above, claiming that they are mere policies not binding as law.

3) Mechanisms/Personnel

In terms of law and policy enforcement, there are traditionally various mechanisms such as the courts of law which can help to protect the victims, but access to these mechanisms is difficult, expensive and long-winded. Newer mechanisms include various national human rights commissions and special commissions on women, children and the trafficking issue. Some have been active against human trafficking, e.g. the Indian Human Rights Commission. The Asia-Pacific region also has a network of human rights commissions with a secretariat in Australia which is also tackling the problem of human trafficking. Special police centres and units are being established in some countries as a focal point against trafficking. Interpol, the international police agency, has been active in monitoring against human trafficking.

Yet, the not-so-good side is the poor quality of law enforcers in a number of countries. This is interrelated with five C's which permeate various mechanisms and personnel: Corruption, Collusion, Cronyism, Clientelism, and Crime.

How to select the best law enforcers, give them good financial incentives and train them well to respect human rights, has not been addressed adequately by many governments. On the other hand, there is a need for broad public participation, including local communities, especially groups working on women's rights and child rights, in the whole process. Countries vary in how and to what extent they enable civil society actors, including non-governmental organizations, the media, and the private sector to join in the action against human trafficking. It is a matter of checks-and-balances, and unless we are able to build a variety of effective governmental and non-governmental organizations to check against abuses, the impact of action against human trafficking is likely to be limited.

4) Resources (material/non-material)

Money is often the issue – the missing link - invoked by all sectors in taking action against human trafficking. The hue-and-cry that governments and aid agencies should allocate more to human rights programmes, including against trafficking, is longstanding and valid to a large extent. As a good practice, there has been more commitment on several fronts, e.g. more financial commitment from regional organizations such as the European Union, global/regional financial institutions such as the Asian Development Bank, intergovernmental organizations/organs such as the United Nations Fund for Children, United Nations Fund for Women, United Nations Development Programme, International Organization for Migration, Office of the United Nations High Commissioner for Human Rights, Office of the United Nations High Commissioner for Refugees, and the ILO, and some governments, such as the United States. However, there is the challenge of ensuring that the money is used well and that the capacity-building to act sustainably in the long term is not overstretched by large lump sums with too high expectations for “quick fixes”. For instance, while a lot more resources have been generated against sexual exploitation in the past decade, we cannot assert confidently that such exploitation is in decline. Indeed, the reverse has happened.

Yet, this should not be argument against the financial and other commitments to act to protect the victims.

The claim that a government has little or no money has also to be evaluated. Too many governments, especially those with serious human trafficking problems, spend much of the budget on arms purchases rather than on human rights. Thus there is a contradiction in terms based upon a degree of warped political expediency – unacceptable in human rights terms.

Nor do the resources necessarily have to be material. Many communities, even the poorest materially, have inherent strengths in the form of a spirit of volunteerism to counter human trafficking. One need only glance at the non-material input of various groups in South Asia working with very few financial resources but with much personal commitment to understand this; for example, the teachers' groups and volunteers who ultimately became a force in Nepal to help victims of trafficking.

5) Information/Education and Mindset

One of the general sentiments is that that human trafficking is a huge phenomenon. Some statistics are available, but when probed, it is not altogether clear whether they are real data, estimates, guesstimates or “exaggerated-timates”. The dangers are obvious in terms of distorted impressions. This calls for more long-term and deeper surveillance, and some regions such as Southeast Asia are experimenting with a longer-term monitoring process.

In the educational field, a recent good practice is that today we can welcome the advent of a specialized university course on the issue of human trafficking and how to deal with it, i.e. at John Hopkins University in the United States, which goes hand in hand with its documentation and research programme on the issue. A number of training programmes as part of non-formal education can be identified worldwide on various aspects of human trafficking, including the training of police and other law enforcers, and civil society.

Yet, there is the question of sustainability; many training programmes tend to be ad hoc. The trainee comes for the short term and he/she may disappear and have nothing to do with anti-trafficking measures after that; for instance, various training programmes for the police who are then rotated to other assignments. How to integrate human rights and the issue of trafficking more sustainably into the mindset of people for the long term? We need more extensive human rights curriculum for all so as to nurture a psyche responsive to human rights – rather than lip service. By contrast with ad hoc courses for the police, it would be advisable to have human rights mainstreamed into the general police training from the time they start in the police force and systematize that with follow-up in-service training periodically and related monitoring of performance. It is interesting to note that those who wish to become generals in the Philippines also have to pass a human rights exam – an incentive for self-improvement.

6) Cooperation/Coordination/Participation

Since the trafficking issue has become more acceptable to governments and aid agencies in recent years, there arises the issue of how efforts are coordinated and how cooperation is maximized to avoid duplication and wastage. Lessons have been learned in Asia on this front where at times many aid agencies were precipitating towards competition rather than cooperation/coordination on programmes. The commitment also has to be in the long term.

Inevitably this is linked with how families, communities and individuals, especially at the local level, are able to participate with a sense of ownership horizontally rather than being subjected to a vertical process of top-down initiatives. It goes hand in hand with integrating human rights into the agenda of democratization, decentralization and devolution and to empower community actors to take charge of their destinies - their stakeholderhip. Importantly that search for horizontal empowerment has to reflect much more strongly the role of women, children and their networks in both preventing and opposing human trafficking.

Consolidation:

The panorama above paints a picture of several good practices and several questionable, if not undesirable, practices. We need to consolidate and build upon the former while avoiding the latter.

With so many ideas already evident in global, regional and national laws, policies, programmes and other interventions, the key challenge is not words and verbosity but action and sustainability. A **concise Action Agenda for the future, aimed at governments and other actors**, should underline the following:

- **highlight that human trafficking is part of the negative side of globalization; that human rights are the human face of globalization and that they must be promoted in any discourse and action on globalization;**
- **implement well and effectively human rights standards and the numerous laws and policies found globally, regionally and nationally against human trafficking;**
- **take comprehensive, integrated and cooperative action gender-and-child sensitively with a view to the long term;**
- **support policies aimed at managed migration rather than a closed door policy which may fuel human trafficking, and guarantee human security especially in this era of extensive reactions against terrorism;**
- **while criminalizing human trafficking and not punishing its victims, complement that with a variety of measures to promote people's development, e.g. access to education, women's empowerment,**

- income generation and employment, and address the environment behind the trafficking;**
- **improve access to the victims and ensure their safety through more outreach programmes, safeguards against intimidation, and safe channels for repatriation with adequate follow-up and support systems;**
 - **target both the supply and demand factors through a variety of interventions based upon prevention of the phenomenon, prosecution of the traffickers, protection of the victims, and constructive community and family participation in assisting the victims in their recovery;**
 - **select and reward well law enforcers; train them on human rights in a sustainable manner by integrating human rights into their curriculum; and provide space for checks-and-balances for civil society participation;**
 - **foster laws, policies, programmes, mechanisms, personnel, resources, information, education and mindset conducive to human rights, especially from a young age, coupled with broad-based cooperation and coordination;**
 - **support and maximise popular participation and empowerment through participatory networks, including among civil society, to monitor and intervene against human trafficking.**

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