

**Understanding Human
Trafficking, Corruption, and the
Optics of Misconduct in the
Public, Private, and
NGO Sectors**

Understanding Human
Trafficking, Corruption, and the
Optics of Misconduct in the
Public, Private, and
NGO Sectors
Causes, Actors, and Solutions

Luz Estella Nagle
PROFESSOR OF LAW
STETSON UNIVERSITY COLLEGE OF LAW



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*Dedicated to my beautiful and brilliant daughters,
who are the lights of my life,
and to my husband, whose faith in me never wavers ...*

for the survivors, wherever they may be ...

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Foreword

by Ian McDougal

According to the US State Department's 2016 *Trafficking in Persons Report*, human trafficking is a US\$150 billion industry. Only the trade in drugs is bigger. Bigger than what, you may ask? Bigger than the trade in human slavery. I should pause there to allow those words to register. Yes ... Slavery is what it is. Slavery is still taking place in the modern world.

This trade in human slavery, still prevalent in the year 2017, isn't just a sleepy backwater of crime. It is one of the largest illegal trades the world has ever known. Human trafficking is different from people smuggling. People smuggling involves a person voluntarily requesting or hiring another individual to covertly transport them. Though illegal, there may be no deception or coercion involved. After entry into the target country, the smuggled person is apparently free. Human trafficking, on the other hand, is a crime against the victim because of the coercion, imprisonment (whether physically or as a result of coercion), and exploitation.

But, you may ask, why don't I hear more about it? My answer is that it is a "trade" that hides in plain sight. Unless you know what you are looking for, you can easily mistake it for something else. While some victims are hidden from the outside world, many toil in forced labor where they actually have contact with everyday members of society. Yet the reality of their situation is unknown and legal systems are often not in place to protect them. Some victims of human slavery actually perform their work in plain sight, but unrecognized. It is a global problem that touches almost everywhere; it can be found in expected places like strip clubs, massage parlors and, an increasing favorite in our consumer-based society, nail salons. It is also found in places you might

consider more unexpected; factory sweatshops, construction sites, hotels and resorts; even in farms and private homes as domestic slaves.

The reach and impact of human trafficking from an economic perspective is staggering. My opinion is that the absence of a strong foundation of the Rule of Law is often a contributory factor. But that is not always the case; the trade in human trafficked people just within and across the United States is enormous; a shadow world outside of the Rule of Law. Globally, there are tens of millions of people trapped in various forms of slavery throughout the world today. Researchers, and the UN, estimate different numbers, but it seems a consensus estimated figure is that over 20 million people are enslaved worldwide.

The UN International Labor Organisation estimates that about 78 percent of that number toil in forced labor slavery in industries where manual labor is needed—such as farming, ranching, logging, mining, fishing, and brick-making—and in service industries working as dish washers, janitors, gardeners, and maids. In almost every country around the world, people are forced into domestic slavery; working in households as domestic slaves—unable to escape.

Sex slavery, that is people trapped into forced prostitution, accounts for about 22 percent. Child slavery accounts for around 26 percent of all trafficking victims. However, in some parts of Africa and the Mekong region, children are the majority of trafficking victims (up to 100 percent in parts of West Africa).

But the bare statistics don't really convey the human stories, the impact on lives and the scale of the enterprises. Professor Luz Nagle's amazing work recounts instances such as:

“Criminal organizations operating in Greece traffic Roma women from Albania and Bulgaria to be placed in ‘baby mills’ where those who are not already pregnant are impregnated by gang members and forced to produce babies that are then sold through adoption agencies in Athens where there are no laws against privately arranged adoptions.”

It is when you read examples such as this that the true horror, evil and scale of the criminal undertaking becomes apparent. Remember, the people held, right now as you read these words, are not statistics; they are human beings held in conditions unimaginable to most of us.

Although it doesn't seem to make the headlines in this age of reality TV stars, the international community is taking some steps to address the problem at a macro level. Professor Nagle outlines, in far greater detail than here, that in 2000, the United Nations adopted the *Convention against Transnational Organized Crime*, also called the *Palermo Convention*. This is a comprehensive

international convention against transnational organized crime incorporating international laws to address trafficking in women and children, the illicit manufacturing of and trafficking in firearms and ammunition, and illegal trafficking in and transportation of migrants.

The purpose of the *Convention* is to promote cooperation to prevent and combat transnational organized crime more effectively. The *Convention* is supplemented by the *Palermo Protocols*: *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*.

As of 2008, there were 143 parties to the United Nations *Convention against Transnational Organized Crime*, 119 parties to the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, and 112 parties to the United Nations *Protocol against the Smuggling of Migrants by Land, Sea and Air*. The *Trafficking Protocol* is unique from other treaties, because it was created as a law enforcement instrument, which, in theory, gives it more influence than aspirational agreements. Provisions within the *Trafficking Protocol* state that parties must take action to:

- penalize trafficking;
- protect victims of trafficking; and
- grant victims temporary or permanent residence in the countries of destination.

Therefore, if a state is a party to the *Convention* and its *Protocols*, it has an obligation to create legislation that supports these provisions at the domestic level.

At this time, the United Nations tells us, 61 countries have passed national laws with this primary focus. Almost 90 percent of these laws have been enacted in the last five years, demonstrating a clear acknowledgement of the dangers of human trafficking and an increasing commitment towards addressing this critical world-wide issue. Many nations address human trafficking in their criminal or penal codes; these are not included in the 61. So there is still a way to go.

Regional and domestic instruments that have played a key role in the prevention and elimination of human trafficking include: The United States *Victims of Trafficking and Violence Protection Act* (2000), and the Council of Europe *Convention on Action against Trafficking in Human Beings* (2008). Regions throughout the world are also starting to make cooperative efforts to end trafficking. For example, in 2005, the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), a sub-regional group composed of China, Laos, Thailand, Cambodia, Myanmar, and Vietnam, was established. Its purpose is to create policies for anti-trafficking measures in the region, allowing each state to create legislation that is in agreement with these provisions.

This fascinating book goes into much more detail about these various (and many more) international instruments. As Professor Nagle emphasizes throughout its pages, addressing corruption and enhancing the Rule of Law still remain key in the fight to eliminating human slavery and trafficking. Corruption of officials basically facilitates the continuation of this trade. The biggest question in those regions, therefore, remains enforcement. All the laws and international instruments in the world do not matter where corrupt law enforcement officials are paid to turn a blind eye. These activities are still prevalent in many places and regions. It is a binding theme that runs through the book.

To the debate on human trafficking, and for the raising of awareness, this book is undoubtedly a major contribution. I also think it is quite unique in its punchy prose style and the power of its message and conclusions. What Professor Nagle has produced is a major academic contribution, built on solid research, yet reads in part like an investigative journalism crime exposé! It is a great, and innovative, effort which I hope goes some way to continuing to raise awareness and contributing to the debate.

The underlying message that comes out of this work is that human slavery and trafficking is one of the great global problems of our time. In fact, a massive global problem. Even though some high profile cases of potentially fraudulent victim claims come to light (and Professor Nagle also shines a harsh light on those!), that should not take away from the power of the underlying issue. It affects every town, city and country in the world. It affects millions of people and, because of its connection to such things as prostitution, provision of services and the like, it can hide in plain sight, leaving the majority of people unaware of how big a problem it is.

Our challenge is to raise awareness and support actions to reduce this modern plague. It is another reason (amongst many) why this excellent book by Professor Nagle is such a valuable tool. Information/knowledge is the enemy of human trafficking. Works such as this contribute another step in the fight against it.

Mr. Ian McDougall

Executive Vice President and General Counsel

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Preface

This project began as a book about human trafficking and how the presence of corruption fuels and sustains a pernicious global criminal enterprise.¹ It soon became much more than that. Beyond a straight forward legal analysis of the two criminal acts, there are layers of misconduct present in human trafficking that range from overt criminal acts (bribery, extortion, coercion, fraud) to behavior that may be unlawful but difficult to prove (false advertising, misrepresentation, poor judgment), to conduct that while not unlawful may not pass the “smell test” and has a detrimental impact on the credibility of a government entity, a private business, or a non-government organization involved in the anti-trafficking movement.

An abundance of journalists, researchers and government watchdogs has rapidly expanded the evidence of public corruption in various types of human trafficking through well-documented reporting and a growing body of cases and outcomes. Private corruption and misconduct, primarily related to labor trafficking, is in many ways far more complex and difficult to target and prosecute, in part due to challenges inherent to lifting the corporate veil that protects individuals and entities engaged in corrupt acts and misconduct related to human trafficking. The “stickiest” area of research and investigations concerns the non-government organizations and individuals in the anti-trafficking movement whose conduct spans the gamut of being overtly corrupt (graft, embezzlement, fraud), to not being corrupt per se, but giving the appearance or the “optics” of misconduct (narratives that may not pass careful scrutiny,

1. The connection between corruption and human rights is recent. See INT’L COUNCIL ON HUMAN RIGHTS POL’Y, *Corruption and Human Rights: Making the Connection* (2009), http://www.ichrp.org/files/reports/40/131_web.pdf. See also ANNE T. GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 442 (2010).

use of unreliable or discredited facts and statistics, using methods to elicit donations that play on people's emotions and sentiments), to behavior that harms the anti-trafficking movement (impropriety between government officials and NGOs, libeling competing organizations, and simply lying about an organization's work). While the majority of the individuals involved in the anti-trafficking movement are true crusaders and dedicate their entire lives and resources to combating human trafficking, a few scam artists and charlatans have used the fight against human trafficking for personal gain and notoriety. Their known presence in the movement has led some critics to refer to the anti-trafficking NGO sector as the "rescue industry."² We will look at some of the controversial organizations within this sector, not to pass judgment on their activities, but to raise awareness among potential volunteers, donors, and supporters in order to make informed assessments and conclusions.

The discussions, findings and recommendations set forth in this book are based on several sources—existing scholarship, government reports and studies, news sources, position statements made by experts, trafficking survivors and advocates, and interviews with leaders in the anti-trafficking movement. In the course of research, several anti-human trafficking non-government organizations (hereinafter HT NGOs) were approached for information about their operations, program resources, and financial management, but there were few replies. One NGO stated, apologetically, that "the information available tends to be generalized and this hasn't been an area of study that we have so far developed."

What we learn from the content in the following chapters reflects the difficult task before criminal justice actors and watch-dog groups to identify and charge corruption-related trafficking offenses, and to take proactive and decisive steps to stop corruption in public, private and non-government segments of society, as well as to monitor, vet, and safeguard the credibility of the anti-trafficking movement. If we are going to address the full scale of human trafficking and what we deem as modern-day slavery, then we must understand the meaning of the crimes, the cultural and historical underpinnings, and the

2. Term coined by Dr. Laura Agustín, a noted anthropologist who studies and writes on undocumented immigration, human trafficking, and the sex industry. Agustín has a lot to say about the rescue industry, which springs from the idea that being unable to see social ills creates the need for self-identified experts to inform us about them. Her term "rescue industry" was created "after years of study to describe non-self-critical helpers who assume they Know Better than the rest of us how we all out to live." See <http://www.auraaugustin.com/>.

motivations of corrupt actors in public, private, and non-government sectors that are in some way or form connected to human trafficking crimes.

One of the challenges realized in writing this book is that the nature of the subject is constantly shifting and evolving, so that data relied upon two or three years ago may be too outdated to be of use now, or in some cases has been discredited and set aside. As this book was nearing completion, two startling investigative reports came to light that underscore the need to pay far greater attention to the links between various forms of corruption and various forms of trafficking in human beings. The first investigation, conducted by the Associated Press for more than a year, concerns the commercial fishing industry in Hawaii, in which foreign undocumented laborers originating primarily from Southeast Asian nations have been kept as de facto prisoners on fishing vessels for years at a time without ever stepping foot on United States territory and thereby remaining exempt from federal labor laws.³

The conditions in which “hundreds” of deck hands and fish processors are kept on these American-owned and American-registered fishing vessels would be in violation of several applicable labor regulations and laws in the United States, but for the active collusion of a now-deceased U.S. Senator from Hawaii to protect the Hawaiian fishing industry from foreign competition and a loophole in federal labor law that allows the foreign workers to labor away on U.S. vessels, but exempts them from labor protections. According to the AP, the fleet of some 140 boats specialize in catching premium ahi tuna and swordfish that end up in high-end markets like Whole Foods and in restaurants catering to affluent customers.

Over the course of six months, the Associated Press examined copious numbers of labor contracts and business records and interviewed boat owners, labor brokers, and more than 50 fishermen from San Francisco to Hawaii to Indonesia. “The investigation found men living in squalor on some boats, forced to use buckets instead of toilets, suffering running sores from bed bugs and sometimes lacking sufficient food. It also revealed instances of human trafficking.” What is particularly onerous about the reports is that federal contractors paid to monitor the industry have been aware of the depredations perpetrated against the foreign undocumented workers, but seem indifferent to actually doing anything about the situation. One of the contractors who

3. Martha Mendoza & Margie Mason, *Hawaiian Seafood Caught by Foreign Crews Confined on Boats*, Associated Press, Sept. 8, 2016, <http://www.ap.org/explore/seafood-from-slaves/hawaiian-seafood-caught-foreign-crews-confined-boats.html>.

stay on the vessels for weeks at a time monitoring the catches to be in compliance with federal fishing laws told the AP journalists,

“You get that sort of feeling that it’s like gaming the system,” said Forrest O’Neill, who coordinates the boat observers in Honolulu. “It’s a shock. It becomes normal, but it’s like, ‘How is this even legal? How is this possible?’ ... They are like floating prisons.”⁴

The loophole in federal law that allows such conditions to persist exempts the Hawaiian fishing industry from the federal law that states that 75 percent of fishermen on commercial fleets operating in the United States must be Americans. The result is that an estimated 700 foreign workers, “who catch \$110 million worth of seafood annually, lack certain labor rights most Americans take for granted.”⁵ Moreover, because US Customs and Border Protection officials require the boat captains to hold the passports and personal documentation of the foreign workers, conditions that essentially violate human trafficking law are present among the commercial fishing fleet. The foreign labor that ends up on American vessels under these arrangements are at the end of the labor pipeline that involves unscrupulous recruitment schemes, a shady network of labor brokers, and individuals who place profit far ahead of human rights. In addition, the economics of the fishing industry are such that profits are measured against costs and the risks and uncertainties that have been part of commercial fishing for millennia.⁶

While the foreign fishermen are not actual slave labor, they are paid wages far below American labor standards, and the fact that they are not allowed to step on shore constitutes a form of imprisonment throughout the typically 2 to 3 years that their labor contracts indenture them to boat captains. The Hawaiian government’s response so far as of September 2016 was that signs are posted where the vessels moor offering a telephone hotline number for individuals to call if human trafficking is suspected. Tragically, nearly everyone involved in the fishing industry knows these conditions exist and yet do nothing about it. One wholesaler told the AP, “The owners are a bunch of leeches making money off these crews.”⁷

Following publication of the AP report, barely a week later, Hawaiian state and federal authorities promised they would look into the matter and initiate significant reforms in the laws and the fishing practices of the industry. Major

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

buyers of the seafood have also reacted positively. Whole Foods halted buying seafood from the fleet until it can be shown that the workers are treated better, and the Hawaii Seafood Council announced that beginning on October 1, 2016, the Honolulu Fish Auction “will sell fish only from boats that have adopted a new, standardized contract aimed at assuring no forced labor exists on board.”⁸

The other investigative report concerns a religious-based non-profit human trafficking rescue organization in central California in which the founder and director of the organization has been accused by former workers of engaging in several forms of fraudulent conduct, and violating the privacy of the rescued trafficking victims and using them as showpieces to gain financial contributions.⁹ Jenny Williamson founded Courage House as a safe haven for women from sex trafficking in the Sacramento valley of California. Through aggressive marketing and public speaking and private fund-raising, she grew Courage House into a global brand that attracted celebrity recognition and wealthy, well-meaning donors.

In 2015, Courage House took in US\$1.7 million in revenue, and Williamson drew a salary of US\$115,000. Yet, staffers indicated that money never seemed to “trickle down” to the young women. Their needs were going unmet, and at times, the facility’s beds were under capacity. The rescued women were known as Courage Girls, and they were exploited as such.¹⁰ According to one staffer, residents were routinely forced to participate in speaking tours to a predominately white church to be displayed to the congregation in an effort to gain donations. “As nonwhite girls in a predominately white church, they stuck out like sore thumbs—it was very obvious that they were the ‘courage girls,’” the staffer said.¹¹ This practice was also in direct violation of federal laws that protect the identities of trafficking victims. State inspectors also cited Courage House at least 16 times in 2016 for violations ranging from maintaining inadequate staffing, breaches of confidentiality, and infringement on the personal rights of residents.¹² Moreover, while the facility had no residents

8. Martha Mendoza & Margie Mason, *Hawaii Lawmakers Promise Reform for Confined Fishermen*, AP, Sep. 9, 2016, <https://apnews.com/4c1f4af89db740cab9798a5fb401430d/hawaiian-lawmakers-promise-reform-confined-fishermen>.

9. Steven Blum, *Non-Profit Accused of Exploiting Sex Trafficking Victims It Was Meant to Help*, VICE.COM, Sept. 19, 2016, https://broadly.vice.com/en_us/article/non-profit-accused-of-exploiting-sex-trafficking-victims-it-was-meant-to-help.

10. *Id.*

11. *Id.*

12. *Id.*

in 2016, the organization “neglected to alert donors of this fact until after a wide-ranging exposé on the house was published in the *Sacramento Bee*.”¹³ Even as donors like the Rotary Club of Sacramento decided to withhold donations, Courage Worldwide’s website announced grand plans to build new facilities to house 60 residents.

The characteristics of Courage House represent many practices HT NGOs use to gain support and funding that, not overtly corrupt, come very close to the line of misconduct, including:

- using grossly overinflated statistics about sex trafficking in the United States to help fundraising efforts, which impedes other organizations from assisting victims of less salacious forms of labor trafficking, which some experts consider to be more widespread than sex trafficking.
- stating that the organization was helping many families of trafficking victims, but providing no actual details.
- indoctrinating the women under the organizations’ care into religious practices and kicking them out or forcing them to leave voluntarily when they did not comply with religious expectations.
- using promotional materials that violate the privacy of rescued individuals.¹⁴

These two journalistic reports provide the backdrop and the precedent for writing this book, in which we will strive through many examples and analysis of domestic and international legal instruments to advance our understanding of the links between human trafficking crimes and corruption in government, private, and non-government sectors, and to propose possible solutions to curb the temptation of actors to engage in corrupt and unethical practices that result in the continuing dehumanization, exploitation, direct victimization and re-victimization of human beings world-wide.

13. *Id.*

14. *Id.*

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the content presented in this book is sometimes of a difficult and frustrating nature, and I am deeply and gratefully indebted to all of you.

Finally, it must be understood that the topics I am addressing involve events happening in real time. Simply put, things change. Sources used in the early stages of research and writing may no longer be available due to the sometimes ephemeral nature of the world wide web. Cases that were pending in courts of justice while I was writing the book may have been resolved by the time this book comes to print. New laws may already have come on the books in some countries that alter the fight against both human trafficking and corruption such that issues that were a problem two years ago has since been resolved. Individuals cited or discussed may no longer be engaged in activities covered in the book. I ask forbearance and trust from the reader that I have done my best to address provocative and controversial topics in a fair and balanced manner. Any errors or omissions are inadvertent, and the expression of my own opinions do not represent any organization or the academic institution in which I teach and work.

Luz Estella Nagle
Professor of Law
Stetson University College of Law
St. Petersburg, Florida