CONSENT DILEMMAS: CONTEXTUALISING THE TRAFFICKING OF AFRICAN, ASIAN, & EASTERN EUROPEAN WOMEN FOR PROSTITUTION

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ABSTRACT

The contours of the consent that a woman gives to traffickers in order to enable them to assist her to travel out of her community/state have continued to raise issues that have engaged the international community in recent times. Theoretically, the law presumes that an adult person who consents to be trafficked rationally knows what she wants and does not deserve any further protection unless the consent that she gave to traffickers was not informed. However, the major limitation of this presumption is that it prevents the international community from inquiring into what happens after the woman’s consent has been obtained by traffickers. Unfortunately, the international community has not made many efforts to figure out the disparity between what appears to be consent and the events occurring afterwards, all of which tend to negate such consent. In order to fill this gap, this analysis uses the stories of trafficked African, Asian and Eastern European women to illustrate the limitations of consent in trafficking discourses. The paper explores the potential ramifications of consent in order to illustrate the factors that in reality visibly negate consent in trafficking transactions. In other words, in trafficking transactions, what appears to be consent ex ante is actually not consent ex post.

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A. INTRODUCTION

Recently the issue of what legal boundaries should be drawn where a woman wilfully consents to be trafficked has been the subject of incisive debates in trafficking discourses. In response to this development, the international community has demonstrated a strong willingness for a new international instrument that addresses this issue: the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention against Transnational Organised Crime (U.N. Trafficking Protocol).\(^1\) The Trafficking Protocol provides that consent to initial recruitment is not synonymous with consent to the entire course of trafficking. Unfortunately, by this gesture, the international community left vague the appropriate strictures of consent. In reality, such vagueness poses difficulties to those consenting to be trafficked, as it fails to inquire into what happens after a trafficking transaction is formed. The United Nations Office on Drugs and Crime succinctly captured the social attitude towards this consent dilemma in the following words:

> Every year hundreds of men, women and children are trafficked illegally all over the world. Most of us assume that these people are willing participants in a criminal transaction. We believe that they are simply looking for an escape from poverty. Rarely do we pause to think about the specific problems they encounter when they are being smuggled or what happens to them afterwards. The reality reflects a very

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This observation locates the social context of the problems that consenting trafficked women face after the facts. In response to this societal attitude towards victims of trafficking, this analysis pierces the consent wall by using trafficking stories to illustrate the lopsidedness of consent in trafficking transactions. The paper is aimed at making society more responsive to the plight of victims of trafficking by illustrating the disconnection between consent and the unbargained-for aftermath which consenting women encounter. The thrust of this analysis is to ascertain the limits, if any, of consent in trafficking transactions.

B. SCOPE OF ANALYSIS

This paper focuses on the trafficking of women for prostitution, especially African, Asian and Eastern European women. The paper uses reports of African women, especially Nigerians, trafficked to Western Europe, and reports of Asian women, especially Burmese (Myanmar), trafficked to Thailand, as well as reports of Eastern European women, especially Moldovans, trafficked to Western Europe and the Balkans as a case study. This choice was not made without careful considerations of relevant factors. Africa, Asia and Eastern Europe appear to be breeding grounds of trafficking in the present world order. Nigeria, Burma and Moldova were selected because of the rampancy of trafficking from them. Nigeria is the worst hit African country in the

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trafficking pandemic.³ Moldova is the worst hit European country with its women constituting more than 60 percent of Europeans in the sex industry.⁴ Burma was specifically chosen for policy reasons. The collaboration of Burma and Thailand in the development of tourism has boosted trafficking in South-east Asia in an unprecedented way.⁵ Burma is therefore a good example of how government actions can trigger trafficking. It therefore becomes necessary to use these three countries as a case study so as to gauge the rate and effect of trafficking in these selected regions.

It is trite that contracts made with minors are void unless they are made for the benefit of the minor. It is also trite that a minor cannot give a valid consent to trafficking. In view of these basic principles, except otherwise stated, this analysis proceeds on the assumption that the trafficking transactions mentioned in this paper involve adults only. It is also trite that contract to carry out an illegal act is invalid. However, this analysis does not proceed on the premise that trafficking transactions are ex ante invalid. Adhering to

³ Empirical data reveals that Nigerian women constitute more than 50% of all Africans who have been trafficked anywhere in the world. See Sani Mohammed, “Gaudy Promises Lure Children, Women into Slavery” Crossroads Vol. 10, No. 4 (May 2003), available at http://nigeria.usembassy.gov/wwwhxmayl3.html (observing that the U.S. Diplomatic Mission to Nigeria estimates that as at May 2003, “as many as 300,000 [Nigerian women] have been trafficked since 1997”) (last visited May 2, 2005); See also Juliet Ume-Ezeokeke, “Desk Review for the Program of Action against Trafficking in Minors and Young Women from Nigeria into Italy for the Purpose of Sexual Exploitation” at 28 (A joint trafficking project by the UN Interregional Crime and Justice Research Institute and the UN Office on Drugs and Crime) (observing that an estimate of over 500,00 African women and children have been trafficked), available at http://www.unicri.it/wwd/trafficking/nigeria/docs/dr_nigeria_eng.pdf (last visited Oct. 26, 2005). A juxtaposition of the two studies supports the premise that Nigerians constitute more than one-half of all trafficked Africans. Notwithstanding, since the determination of exact trafficking data is usually difficult due to several reasons, there is the need for more research in this area in order to assess the claims of these empirical data.


the orthodox view that trafficking transactions are invalid \textit{ex ante} poses a lot of limitations, which are not within the scope of this analysis. Suffice to say that although the appraisal of trafficking through the lenses of contract law are yet to be explored by scholars, intuitively society appears to hasten into the conclusion that trafficked women are to blame for their ordeals because they consciously consented to be trafficked. This hasty generalisation is fallacious and somewhat unfortunate because it is often unsupported by empirical data. There is therefore the need to appraise trafficking transactions in order to gauge their merits.

\textbf{D. HISTORICAL OVERVIEW \& STATISTICS OF TRAFFICKING}

According to the United Nations Office on Drugs and Crime, in the past 21 years there has been a rise in trafficking in persons, caused by a myriad number of factors, including the end of the cold war which led to opening of borders and rise in the movement of people, the debut of organised crime in the international arena, and the increased demand for sex tourism. The most current international statistics on human trafficking are contained in the Fifth Annual Trafficking in Persons Report released in June 2005 by the U.S. State Department, which states that globally, about 600,000 to 800,000 people are trafficked yearly, and about 80 percent of these are women and children.\footnote{See U.S. Department of State, “The 2005 Trafficking in Persons Report” available at http://www.state.gov/tip/rs/rls/trprpt/2005/46903.htm (last visited Nov. 20, 2005). [hereinafter U.S. Trafficking in Persons Report]. See also Marina Jiménez, “B.C. is a Hub for Human Trafficking, Report Says”, \textit{The Globe and Mail}, (Thursday, June 9, 2005) which carried the highlights of the Report.} The International Organisation for Migration (IOM) reports that in 1997 alone,
500,000 women of Russian and Ukrainian origin were trafficked into Western Europe. Moreover, 48 percent of the prostitutes in Italy are from Eastern Europe.

On the African scene, Nigeria presents the biggest challenge to the African continent and the international community. Between 1999 and 2001, over 8,633 trafficked persons were deported back to Nigeria. In 2002, there were about 20,000 Nigerian prostitutes in Italy. Furthermore, between 1999 and 2003, 19,774 Nigerians had been deported from Europe as persons who were trafficked for the purpose of prostitution. Against this backdrop, it appears the estimation of the U.S. Diplomatic Mission to Nigeria that as at May 2003, “as many as 300,000 [Nigerian women] have been trafficked since 1997” is a correct assumption of facts.

On the Asian scene, Burmese women are mostly trafficked to Thailand. One of the root causes of trafficking in Burma was the repression by the Burmese State Law and Order Restoration Council (“SLORC”). Following a successful coup by NE Win in 1962, human rights violations in Burma increased at an alarming rate leading to a mass street
protest against the government in 1988. This protest led to a crackdown by the Burmese military which caused thousands of people to flee the country,\textsuperscript{14} most of whom took refuge in Thailand. It is estimated that the number of Burmese women working in Thai brothels range from 20,000 to 30,000, with approximately 10,000 women being recruited each year.\textsuperscript{15} Another factor that encouraged the trafficking boom was the steady deterioration of rural areas in the early 1990s as a result of severe poverty. Yet another significant factor was the coalition between the governments of Thailand and Burma in the promotion of tourism in the Golden triangle.\textsuperscript{16} This institutionalisation of tourism led to an increased demand for women, and further led to sex tourism.\textsuperscript{17} It has been observed that “[t]ourism-oriented prostitution has become an integral part of the economic base of countries in South-east Asia.”\textsuperscript{18}

On the Eastern European scene, trafficking is significantly fuelled by war. The NATO attacks against Yugoslavia in the spring of 1999 led to a rapid increase in refugees and asylum seekers leaving the war-torn Balkans for the Western parts of Europe. There are presently over 75,000 asylum applications in the UK.\textsuperscript{19} This refugee wave has also

\begin{itemize}
\item \textsuperscript{14} See A MODERN FORM OF SLAVERY, supra note 5, at 10.
\item \textsuperscript{15} Ibid. at 14
\item \textsuperscript{16} Ibid. at 13. The Golden Triangle refers to the intersection of the borders of Thailand, Burma and Laos.
\item \textsuperscript{18} C. M. Hall, “Sex Tourism in South-east Asia” in D. Harrison, ed. Tourism and the Less Developed Countries (1992) 64 at 74.
\item \textsuperscript{19} See Trafficking in human beings from Moldova, supra note 4.
\end{itemize}
led to trafficking of women for prostitution. The presence of troops in the Balkans has fuelled the demand for brothels in the region,\textsuperscript{20} especially in Bosnia, Herzegovina and Kosovo where the major source countries are Moldova, Romania and Ukraine.\textsuperscript{21} According to IOM report of May 2004, “50,000 to 100,000 Moldovans, over 100,000 Ukrainians, and 500,000 Russians [are currently] active in prostitution outside their home country.”\textsuperscript{22} Citizens of post-Soviet states reportedly constitute one quarter of all women trafficked worldwide,\textsuperscript{23} and about 175,000 to 250,000 of post-Soviet states’ women are trafficked annually.\textsuperscript{24} Since 1991 when Moldova declared its independence from the former Soviet Republic, she has had a chequered history, as poverty continues to plague it. Moldova is the poorest country in Europe with an average per capita monthly income of $40 in 1996.\textsuperscript{25} As of 1998, about 46 percent of Moldovans lived in “absolute poverty” with less than $220 annually.\textsuperscript{26} Moldova has the lowest average salary of $30 a month in

\textsuperscript{20} See Guglielmo Schimina, ed., “Psychological Support to Groups of Victims of Human Trafficking in Transit Situations.” in Psychosocial Notebook Series 4 (Feb 2004), available at http://www.iom.int (last visited May 24, 2006) (observing that in Bosnia and Kosovo, approximately 100,000 women from former Soviet Union and 75,000 from other parts of Eastern Europe service some locals and many peacekeeping troops).


\textsuperscript{22} See Angel Coalition, “Trafficking from Russia and the CIS”, available at http://www.angelcoalition.org/trafficking.html (last visited May 24, 2006).


\textsuperscript{24} Ibid.

\textsuperscript{25} Ibid.

\textsuperscript{26} Ibid.
the former Soviet Union.27 Poverty and the search for employment have made Moldovan women more desperate to migrate.28 According to the U.N., as of 2000, about 600,000 and 1,000,000 Moldovans had immigrated to other parts of Western Europe, with women constituting 70 percent of this number.29 Moldova became one of the leading exporters of human beings to Western Europe in 1994-95 when it had a wave of illegal emigration because of the economic crisis that struck the nation as a result of the demise of the Soviet Union. Moldova is also a source country for Turkey, the Middle East (including the United Arab Emirates and Israel) and Russia,30 as well as the Gulf States and the Balkans.31 Moldovan women are believed to constitute over 60 percent of Europeans in the sex industry followed by Ukrainian women.32 Other factors contributing to push Moldovan women into trafficking are gender violence, cultural attitudes, the search for

27 See Ala Mindicanu, “The Current Situation of Trafficking in Women in the Republic of Moldova” [Unpublished report by Ala Mindicanu, Member of the Moldovan Parliament.]

28 See D. Scharie Tavcer, “Causal Factors in the Crime of Trafficking of Women for Sexual Exploitation from Moldova” available at http://www.iuscrim.mpg.de/forsch/krim/tavcer_e.html (last visited May 20, 2006) (Stating that Moldovan “women represent 68% of the total number of unemployed persons [in Moldova]. Figures for 1999 show that the proportion of unemployed women (63%) is significantly higher than that of men (37%).”)


31 See Eugen Tomiuс, “Moldova: Young Women from Rural Areas Vulnerable to Human Trafficking” RadioFreeEurope / RadioLiberty (Oct 6, 2004), available at http://www.rferl.org/featuresarticle/2004/10/c28fad55-44c3-4fcc-b3dc-73e93e4d8119.html (last visited May 23, 2006); See also Frank Laczkо et al, supra note 21 (Observing that “Moldovan women make up a large number of the women trafficked in the Balkans, and are also trafficked on to Italy.”)

32 See Trafficking in human beings from Moldova, supra note 4.
better education, corruption of government officials in charge of borders, organised crime and the increasing demand for sexual services.\(^{33}\)

Indeed the profits accruing to human traffickers have surpassed those of drug traffickers.\(^{34}\) In 2000, human traffickers realised estimated profits of $7 billion from prostitution alone.\(^{35}\) The profit margin increased in 2004 to more than $10 billion.\(^{36}\) The realisable profit further rose to $11.8 billion in 2005.\(^{37}\) Another source reports that as of 2004, the realisable profits from trafficking for prostitution “range[d] from six to nineteen billion dollars annual[ly]”.\(^{38}\) This trend of constant increase in profit margin illustrates that there are monetary incentives in the industry despite attempts by the international community to stem the tide of the industry.

### E. CLASSICAL REQUIREMENTS OF A VALID CONTRACT

*Contract* is “an agreement which the law will enforce or recognise as affecting the legal rights and duties of the parties … [or] a promise or set of promises the law will


\(^{34}\) Ibid. (Observing: “some experts even claim that trafficking in humans has overtaken drug smuggling in terms of profitability, to the extent that a smuggled drug can be consumed once while a sex slave is, from the point of view of the pimp, a re-usable commodity."; See also CATW, “Central and Eastern European Countries” in *Factbook on Global Sexual Exploitation*, available at http://www.uri.edu/artsci/wms/hughes/ceurope.htm (last visited May 25, 2006) (Noting that “[s]muggling in humans is much less risky than smuggling in drugs and it is highly profitable.).


\(^{36}\) See “Trade in Humans Targeted” Toronto Metro News (Tuesday, March 9, 2004) (Quoting Canadian Justice Minister Irwin Cotler).

\(^{37}\) For highlights of this report see Jiménez, *supra* note 6. See also the U.S. Trafficking in Persons Report, *supra* note 6.

\(^{38}\) See Elliott, *supra* note 23.
enforce.”39 Every contract consists of two acts that establish a right, “a promise and its acceptance.”40 One of the parties must make an offer or promise, which the other may act upon. If the other accepts the offer or promise as made, then a contractual relationship arises.

An offer is an expression by one party of his assent to certain definite terms, provided that the other party involved in the bargaining transaction will likewise express his assent to the identically same terms. An offer looks forward to an agreement – to a mutual expression of assent.41

Every valid contract is expected to have specific terms, be mutual, and voluntary. The ‘mutuality’ requirement of contract means that there are shared rights and obligations which each party is expected to fulfil. Hence it is necessary to note that contract is founded on two mutual principles: ‘voluntariness’ and ‘consideration’. Where one is lacking, the contract is likely to collapse.

(i) CONSIDERATION

Consideration is the price paid by a party in a transaction. In a typical trafficking transaction, consideration would be the price paid by a trafficked woman and the trafficker. Consideration could be either in monetary terms or in material value. According to Lush J. in Currie v. Misa, “a valuable consideration in the eye of the law may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the


41 See Corbin on Contracts, (1952) no. 11 (emphasis mine).
other.”

Although in contract law, consideration is not necessarily required to be sufficient, in practice, where the consideration paid by a party is grossly insufficient compared to that of the other party, courts of equity have intervened to provide equitable remedies to the other party.

(ii) VOLUNTARINESS

The second requirement of a valid contract is ‘voluntariness’. This means that both parties must desire the transaction out of their own free will. In a typical trafficking transaction, it is evident that most of the women who consent are lured by promises of greener pastures abroad. The law has always revoked transactions where there are no fair exchanges as a result of the overriding influence of one of the parties. This gesture aims at protecting a party who was unusually vulnerable to persuasion, “unless and until …the transaction has been shown to be truly for the benefit of the person influenced.” Voluntariness implies freedom of contract and can only flourish in an atmosphere of free will. The will of the trafficked woman must be conjoined with the will of the trafficking syndicate for it to be voluntary. In most trafficking transactions, there is no conjunction of wills, and there is no adherence to the universal law of freedom. It is trite that traditional doctrines of contract give relief where a party is in a weak position because of ignorance, inexperience, need, or a relationship of trust, and the other party takes

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42 See Sagay, supra note 39, at 42.


advantage of this to make a transaction under which the weaker party is exploited in value for money terms.45

**F. TRAFFICKING STORIES OF AFRICAN, ASIAN & EASTERN EUROPEAN WOMEN**

At the outset, it should be noted that the stories embodied in this section are not representative of all trafficking cases. The reason why these stories have been selected is due to their underlying transactional groundings, coupled with their financial outlays which make it possible to undertake a brief financial calculation without disrupting the flow of the analysis. Human Rights Watch begins its report on Burma and Thailand with the pathetic story of a Burmese woman, Lin Lin, who was trafficked into Thailand for prostitution after her father took a $480 loan from a trafficking syndicate.46 Lin Lin having worked in four different brothels in Thailand as a prostitute in an attempt to pay off her father’s debt tested positive to HIV.47 Lin Lin worked for two years as a prostitute in those brothels. The syndicate’s clients paid $4 per hour and $30 all night for sexual services they received from Lin Lin. During weekdays Lin Lin had six to seven clients a day. She worked every day except for the two days off each month for her menstrual period. From an analytical perspective, to pay the loan of $480, simple arithmetic reveals that Lin Lin needs to service 120 men for 120 hours, on the assumption that each client receives one-hour service on each occasion, and each client pays the regular service fee


46 In this analysis, except otherwise stated, all references to dollars are to US dollars.

47 See A MODERN FORM OF SLAVERY, supra note 5, at 1.
of $4 per hour. Assuming Lin Lin services just 6 men a day, she would need to work for 20 days to pay off her father’s $480 debt.\footnote{Notwithstanding that at times some men pay $30 to have her all-night sexual services which calculations are not included in the above summations since they were night jobs. In other words, this all-night sexual services are synergies that increase the profit margin that Lin Lin generates for the syndicate.} This estimation is based on the assumption that each client receives just one-hour service. But in reality, it is rare for a trafficked woman to work for just 6 hours a day.\footnote{See United Nations Office on Drugs and Crime, “Trafficking in Persons: the New Protocol”, available at http://www.unodc.org/unodc/trafficking_protocolbackground.html (last visited Oct. 26, 2005) (observing that trafficked women in the sex industry work for up to 18 hours a day).} In other words, rendering sexual services to 6 men (for one hour each) for 20 days at $4 each would pay off the debt of $480: (6 x 20 x 4 = 480). However, Lin Lin worked for two years and sadly ended up with HIV/AIDS. The alleged transaction, therefore, is unfair in all ramifications.

Turning to some narratives of African women, like the Burmese women, most Nigerian women are also deceived by traffickers with respect to the kind of work they will perform abroad. Trafficked African women in the sex industry work for up to 18 hours a day. A trafficker in Belgium reportedly imported African women into Europe and sold them for $8,000 each.\footnote{Ibid.} The women earned up to $3,492 a month. They are usually required to pay off debts to Madams for accommodation and travel expenses in the range of $58,200 – $69,840 in order to be free.\footnote{See Joint British-Danish Fact-Finding Mission, Report on Human Rights Issues in Nigeria, (Jan. 2005) at 47 § 5.7.12, available at The Danish Immigration Service website: www.udlst.dk (last visited June 5, 2005). Copies could also be obtained my e-mail: dok@udlst.dk. [hereinafter Joint British-Danish Fact-Finding Mission]. See also Reuters, supra note 35, which reports that Nigerian women trafficked into Italy are “sold to pimps for about $12,000 each.”, and the pimps “make a four-fold profit on their investment, meaning the girls have to pay $48,000 before they are free.”} Unlike Lin Lin’s case, there is no data for the amount that each client pays per hour. Accordingly, the simple arithmetic employed here is to divide the ‘cost’ price of the woman by the proceeds from ‘sales’ which she is
required to generate. The cost price is the $8,000 that the trafficker received from the Madam, and the proceeds from sales is the $58,200 – $69,840 that the woman is obligated to pay in order to be free. The average of $58,200 and $69,840 is $64,020. When this amount is divided by $8,000, the result is 8. This means that trafficked African women are required to pay debts as much as eight times over the alleged contractual amount. It must be noted that the trafficker had already taken his cut at the time he sold the women to the Madam for $8,000. The $64,020 that the women are required to pay are payable to the Madam. This reveals the vicious cycle of exploitation that surrounds trafficking contracts. At each stage of the transaction, trafficked women are exploited by the transactional intermediary. Like Lin Lin’s case, this illustrates that the transaction is lopsided. It is anything but mutual.

Next is the story of Eastern European women. The CIA observed that profits from one trafficked Eastern European woman alone averages $25,000.52 A Ukrainian doctor, who had a brothel in Essex, England, earned $210,000 in eight months prior to her arrest,53 by trading on Eastern European women. Pimps pay about $500 to $1,000 for each Eastern European woman.54 A single bar owner in Bosnia who deals in five Eastern European women is capable of earning as much as $240,000 annually from prostitution.55 The typical price for a Moldovan woman is between $800 and $5,000.56 Pimps and

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52 See Elliott, supra note 23.
53 Ibid.
54 Ibid.
55 Ibid.
56 See Trafficking in human beings from Moldova, supra note 4; See also Eugen Tomiuc, supra note 31 (containing excerpts of interviews with trafficking victims from Moldova. One of such victims, Alina, a 23 year old, said: “I was sold for $2,000.”).
dealers make enormous amounts of profit from $500 to $600 on each girl, as they usually sell each girl for $1,000 or $1,500, with the girls being resold several times.\textsuperscript{57} The price paid by clients for the services of a Moldovan woman is “50 euros per hour, or 100 euros for a longer time.”\textsuperscript{58} The women work for no less than six hours every day.\textsuperscript{59} Simple arithmetic reveals that Moldovan women make monthly returns of €7,500 (euros): €50 x 6 hrs = €300. €300 x 25 days = €7,500. The transactional gains made by traffickers from dealing on Slavic women have been succinctly summarised by Yitzhak Tyler, the chief of undercover police operations in Haifa, Israel: “‘a small place with 10 girls’ times 15 to 20 clients a day,’ times 200 shekels, equals 30,000 shekels a day, times ’25 days a month minimum … so we are talking [of] about 750,000 shekels a month or about $215,000. A man often owns five of these places. That’s a million dollars a month. No taxes. No real overheads. It’s a factory with slave labour. And we’ve got them all over Israel.”\textsuperscript{60}

Grotius, while emphasising that there should be equality in the subject of every contract explains:

There remains equality in the subject of the contract, … if an inequality has been detected in the transaction, although without the fault of either party – because, for example, the fault was hidden or because there was a mistake in the price – this inequality should be made good, and something should be taken from the one who has more and given to the one who has less.\textsuperscript{61}

\textsuperscript{57} Ibid.

\textsuperscript{58} See Eugene Tomiuc, supra note 31 (recounting the story of Marana, a 29 year old Moldovan trafficking victim.)

\textsuperscript{59} Ibid. (recounting the story of Angela, a 22 year old Moldovan woman).

\textsuperscript{60} See Elliott, supra note 23.

\textsuperscript{61} See Grotius, supra note 43 (emphasis added).
This translates to the point that notwithstanding that the women had allegedly consented to be trafficked as a prostitute, since it is obvious that there is pronounced inequality, the inequality matrix should be remedied. The general scenario conveys a picture of the women’s vulnerability. This in turn raises the issue of their bargaining power in the alleged transaction. It is worth noting that equity has always been invoked to protect a person who, without independent advice, enters into a contract on terms which are very unfair, or for a consideration which is grossly inadequate. Of course, this equitable intervention is made notwithstanding the traditional doctrine of contract law that consideration need not be sufficient. A cursory look at some cases reveals that the law of equity has often been invoked to protect a vulnerable party in any transaction where the bargaining powers of the parties are visibly unequal. In an appeal from New Zealand, *Hart v. O’Connor*, the Privy Council recognised the existence of the doctrine of inequality of bargaining power. According to the Court: “There was no equitable fraud, no victimisation, no taking advantage, no overreaching or other description of unconscionable doings which might have justified the intervention of equity…” The Privy Council’s opinion in *Hart* is an acknowledgment that equity would intervene in situations of insufficient consideration, so long as the prerequisites of equitable fraud, victimisation, taking of advantage, or overreaching are present in the transaction. As such, it is no longer the case that insufficiency of consideration is immaterial in the assessment of transactions.

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63 Ibid. at 894.
Beale, while commenting on Hart said that the decision of the Court appears to require no more than that one party should have consciously taken advantage of the other’s ignorance and lack of advice:

If the three conditions – sale at undervalue, the taking of advantage of poverty or ignorance and lack of independent advice – are satisfied, there seems no reason why this jurisdiction cannot be used in this country today…the inexperienced person who signs a guarantee of another’s debts without realizing the implications of the document, might well qualify for relief.64

Indeed, Lin Lin appears to qualify for Beale’s hypothetical ‘inexperienced person who signs a guarantee of another’s debts’. After all, she consented to be trafficked for the purpose of repaying her father’s debt. Hence trafficking transaction, as seen from the above lenses, is extremely weak and largely unfair. It does not qualify as contract strictly speaking. It therefore must collapse.

Trafficked women should be free to renege on any promises they have made to traffickers, irrespective of their initial consent. Traffickers cannot sustain a claim under such transactions. This conclusion is reached without regard to arguments of morality and public policy.65 Applying Grotius’ theory of equality in every contract,66 notwithstanding that most African and Eastern European women allegedly consented to be trafficked for prostitution like their Asian counterparts, since pronounced inequality is obvious, the matrix of inequality should be remedied through the intervention of equity. From the

64 See Beale, supra note 45, at 126 (emphasis added).


66 See Grotius, supra note 43.
analysis above, it could be inferred that trafficking transaction is a sham. There is a matrix of inequality, domination, threat, exploitation, dehumanisation, and lack of liberty and freedom in the transaction.\textsuperscript{67} This discovery would prevent any of the parties from relying on the consent as a shield to prevent the intervention of international instruments, human rights law, equity, and torts. Continuation of the relationship is nothing short of forced labour. What actually exists in trafficking contexts is not a contract but merely a sham disguised as contract. Accordingly, this discovery opens the door for both domestic laws and international instruments to intervene in order to save trafficked women from further exploitation. The discovery should also serve as an enlightenment tool to society generally, so that the preconceived notion that trafficking victims are the architects of their sufferings, who deserve no public support, ought to be abandoned. Trafficked women are incapable of withdrawing their consent. Such decisions are often accompanied by threat to the woman or her family back home, which in some cases leads to death of the woman or her family member. In a true transaction, each of the parties should be at liberty to end the deal whenever it begins to work hardship on them. Anything short of that is compulsion and slavery. One cannot compromise one’s liberty through contract. Article 3 of the Universal Declaration of Human Rights provides that “[e]veryone has the right to life, liberty, and security of the person”\textsuperscript{68} Consent is not a probative issue in the definition of sex trafficking because one cannot legally consent to

\textsuperscript{67} See Eugene Tomiuc, supra note 31 (recounting the experiences of two Moldovan women Alina and Angela in the hands of traffickers and pimps).

slavery, and sex trafficking is clearly a variant of slavery. Multilateral treaties and customary international law condemn slavery. Since its inception, the United Nations has been committed to the abolition of slavery. The total restriction of liberty and freedom, coupled with grossly insufficient consideration, makes trafficking contracts analogous to contracts for slavery. The law of contract, therefore, would not recognise trafficking transaction, not because it is immoral or because it is invalid ex ante, but because it falls apart in the same way that contract for slavery collapses. It is simply a simulated transaction, which institutes no obligations at all.

G. CONCLUSION

This paper focused on Africa, Asia and Eastern Europe, and used Nigerian, Burmese and Moldovan women trafficked for prostitution as a case study. These countries were selected because of the rampancy of trafficking in them. As illustrated above, statistics have shown that Nigeria, Burma and Moldova have high rates of trafficking in the selected continents. It therefore became necessary to use them as measuring tapes with the aim of carrying out a thorough assessment of the impact of consent in trafficking transactions. This paper has explored the limits of a woman’s consent to trafficking. The paper examined the stories of trafficked women from Nigeria, Burma and Moldova, and uncovered the hidden matrix of inequality, domination,


71 Ibid. at 304.
exploitation, oppression, threat, and lack of liberty and freedom that essentially characterise trafficking transactions. The paper also applied the principles of contract to trafficking transactions. The outcome of the finding was that trafficking transactions do not qualify as contracts strictly speaking because they lack the two pillars of a valid contract: voluntariness and consideration. As such, trafficking transactions are mere simulated deals masquerading as contracts. Hence the initial consent of a woman to the transaction does not institute any legal obligations. The paper therefore argued that trafficking transactions are analogous to contracts of slavery since they compel trafficked women to contract out their liberty and freedom.

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**CONVENTIONS, RESOLUTIONS AND ACTS**
