CHILDREN TRAFFICKED FOR SEXUAL EXPLOITATION IN THE PHILIPPINES: AN ANALYSIS OF STATE ACTION USING A NEO-LIBERAL INSTITUTIONALIST FRAMEWORK

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Abstract- The Philippines is listed as one of the seven worst countries for child trafficking in Asia. The problem is so severe that the country is already a point of origin, destination, and transit of Victims of Trafficking (VoT). Filipino children in the Philippines are trafficked primarily for the purpose of exploitation, economically, through forced labor, and sexually, as being forced into prostitution. However, in spite of the currently existing number of international legal instruments in place that deals with Trafficking in general, there seems to be a disjuncture between the states' adherence to such legal instruments and the government's enforcement methods. This paper uses a neo-liberal institutionalist framework in analyzing state response to child trafficking vis-à-vis enforcement. The modern variant of liberal institutionalism considers states as primary actors in the international system and considers that international institutions can regulate state behavior and thereby also promote inter-state cooperation. The paper reveals that the government's efforts to address the issue of trafficking through the passage of pertinent legislation is marred by questionable enforcement practices along with the lack of a specific legislation dealing trafficking. In addition, the victim-protection model is also problematic in a way that victims with agency are not penalized. Moreover, the failure of the Department of Social Welfare and Development (DSWD) to maintain a database of trafficking cases along with the proper identification of victims, amounts to the failure of the government to determine the extent of trafficking cases in the country, especially that of trafficked children.

Index Terms- Child trafficking, VoT, liberal institutionalism, victim-protection model, law enforcement

I. INTRODUCTION

Child sex tourism is a problem of significant magnitude in the Philippines, the country is generally regarded as being one of the major destinations for global child sex tourism and is documented as fourth among nine nations with the highest numbers of children in prostitution (The Protection Project of Johns Hopkins University, 2007).This results from the fact that the Philippines is one of the seven worst countries for child trafficking in Asia (UNICEF: Reversing the Trend, Trafficking in East and South East Asia (2009)). The central problematique of this paper then are the following: first, given the available data on child trafficking, how has the Philippine Government dealt with recorded actual instances of child trafficking?; and second, how is the Philippine Government fulfilling its commitment to counter-human trafficking as an actor in the international system?

In order to analyze state action and response, the current paper uses neo-liberal institutionalism as its framework of analysis. Liberal theory treats the domestic circumstances of states as crucial variables in explaining their international behavior (Rosenau and Durfee 2000), accordingly, the domestic structures and circumstances of states matter as explanations for their external behavior. Acharya (2008) also mentions that classical liberalism rests on three pillars: (1) commercial liberalism (economic interdependence), (2) republican liberalism (democratic peace thesis), and (3) liberal institutionalism. This paper takes the modern variant of liberal institutionalism, which is neo-liberal institutionalism. This variant accepts the realist premise of anarchy in the international system, and that states are the primary, actors in the international system; however, it considers that international institutions (inclusive of regimes and organizations) can regulate state behavior and thereby also promote inter-state cooperation. To this end, Acharya adds that neo-liberal institutionalism is concerned with institutional dynamics, how institutions affect state behavior (Acharya 2008).

There are currently a number of international legal instruments already in place dealing with Trafficking – The UN Trafficking Protocol or the Palermo Protocol (2000), and the Optional Protocol to the Convention on the Rights of the Child (2002). Added to this are the Hague Conventions and Convention 182 on the Worst Forms of Child Labor (1999).In addition, the UNICEF developed the Guidelines on the Protection of the Rights of Child Victims of Trafficking which was endorsed in Sofia, Bulgaria by the Stability Pact Task Force sub-regional Ministerial Forum of South Eastern Europe on December 2003 (UNICEF 2003).

Additional 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), the Council of Europe Convention on Action against Trafficking in Human Beings (2008), and the European Convention for the Protection of Human Right and Fundamental Freedoms (1950). Some regions in the world are also making 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 the anti-trafficking measures in the region, allowing each state to create legislation that is in agreement with these provisions (King, n.d.).

Locally, the Philippine Government enacted the Anti-Trafficking in Persons Act in 2003. The liberal institutionalist perspective provides that cooperation between states can and should be organized and formalized in institutions - where 'institutions' in this sense means sets of rules which govern state behavior in specific policy areas (Burchill in Burchill et al. 2005:64).The institutionalization of an Anti-Trafficking Law in the country based on an international legal instrument – the Palermo Protocol – that criminalizes trafficking, serves as a venue of cooperation for the Philippines to be part of a broader community of democratic states that have chosen to outlaw and penalize instances of human trafficking.

II. METHODOLOGY

The primary method used in analyzing the Philippine government's action toward trafficking is content analysis. A thorough analysis of available documents pertaining to the state's action in addressing human trafficking in general, and child trafficking in particular, is essential in order to understand how the Philippines as an actor in the international system cooperates with the global movement against trafficking. Through this method, the paper aims to elucidate how the Philippines, having subscribed to a neo-liberal institutionalist framework,
with its adherence to inter-state cooperation, applies and enforces existing laws aided by existing global and regional norms. In addition, this method sheds light on its internal institutional dynamics – application of law and enforcement measures as an inter-agency effort.

CONCLUSION

First, the Philippines does not have a specific law addressing child trafficking. Notwithstanding the "doctrine of incorporation" in the 1987 Philippine Constitution (Article 2, Section 2), the government has not passed a legislation specific for instances of child trafficking as espoused in the Convention on the Rights of the Child (CRC) and the Palermo Protocol.The failure to enact a separate law for child trafficking would entail a failure to address the issue because it would be overshadowed by cases of human trafficking involving adult women and men in general. It would have been imperative for the Philippines to have enacted specific laws, specially affecting children, because the limitations inherent in RA 9208 (Anti-Trafficking in Persons Act) and RA 9262 (Anti-Violence Against Women and Children Act), would severely impair the Philippine Government's capacity to address child trafficking.
Second, joining the bandwagon of the "victim-protection model" – that is considering all trafficked persons as Victims of Trafficking (VoT), rather than considering the possibility of the persons' agency in the process of trafficking, will definitely encourage more people to be trafficked, because they know that they will not be penalized. This is especially true among young adults (those that are below eighteen but above fifteen years of age and) who are able to discern right from wrong. Capacity for discernment should be a necessary factor in consideration of the "victim," for if one knowingly yet actively participates in the act of trafficking, the government must reconsider its options on the treatment of these supposed "victims".

Third, data on child trafficking is difficult to arrive at because certain institutional practices (i.e. such as the agency practices of DSWD) hinder the collection of data in instances of human traffic, especially that of child trafficking. The Department of Social Welfare and Development (DSWD) under the Inter Agency Committee Against Trafficking (IACAT), a trafficking case will only be classified as "trafficking" if: (1) the person concerned is a victim of international traffic and DSWD assists with repatriation, or; (2) domestic, the victim was rescued in transit (before exploitation occurred); and (3) that the agency does not maintain a database of trafficking cases. This is obviously problematic because first, in instances where the DSWD is not involved with repatriation procedures of the supposed victim of trafficking, this "victim" will not be provided with adequate psychological or counselling assistance that are provided to victims of trafficking had the agency been involved in the victim's repatriation. Second, if the victim had been rescued after he/she had been exploited, then he/she would not be considered a victim of trafficking. This procedure severely impairs the ability of the agency to address human trafficking, much less child trafficking. But more interestingly, the failure of the agency to maintain a database of trafficking cases along with the proper identification of victims, amounts to the failure of the government to determine the extent of trafficking cases in the country, and more so with trafficking involving children.
Fourth, regional as well as global arrangements for cooperation in dealing with human trafficking as well as child trafficking must be strengthened through a uniform manner by which states should deal with the issue. A standard definition of trafficking provided by the Palermo Protocol that specifically distinguishes trafficking in adults and trafficking in children must be translated in the same spirit through local legislation observing such distinction among Victims

of Trafficking (VoT). Standard definitions are useless, if the states that adopt these policies fail to comprehend the context by which these conventions have been established. It also defeats the purpose of inter-state cooperation if there are differences in the standard by which these conventions are applied domestically, such as in the context of the Philippines.

And fifth, lastly, domestic differences in dealing with instances of child trafficking affects the way states would deal with the issue thereby defeating the purpose of inter-state cooperation, and subscription to the rights regime. Despite the institutionalization of regional arrangements (Boswell 2001;
Emmers et al 2006; Phan 2009) to counter human trafficking and child trafficking, implementation and enforcement procedures still vary among states, especially in the treatment of data regarding trafficking cases.

Established regimes and institutions regionally and globally, only ensures that inter-state cooperation would be made possible by using a standard as to definition, enforcement and implementation, as well as rescue and rehabilitation. But the purpose of cooperation is defeated if states refuse to adjust and adopt to and adhere to stricter measures in order to seriously address the issue of child trafficking.

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