

GENDER AND INTERSECTIONAL DIMENSIONS OF CONTEMPORARY FORMS OF SLAVERY AND TRAFFICKING IN PERSONS

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POSITIONING THE PROBLEM



Old v. modern forms of slavery / old v. new phenomena contributing to slavery-like practices
- why gender and intersectionality matter?-



Assessing the rules on slavery and trafficking in persons from a gender and intersectionality perspective



Questioning the effectiveness of the protection the international system affords to women's rights



OLD V. MODERN FORMS OF SLAVERY



TRY TO GUESS THE FIGURES

50 million?

25 million?

150 billion
\$?

468 billion
\$?

60%?

77%?

91%?

2025?

2030?

WHO CAN BECOME THE VICTIM – WHY GENDER AND INTERSECTIONALITY MATTER?

Anyone!!!!

But: 1. certain categories of persons are more likely to become victims than others

- relevance of **intersectionality** for exposure to risk of becoming the victim -

2. certain forms of slavery, slavery-like practices and human trafficking are specific for certain categories of persons

- relevance of **intersectionality** for the exposure to more severe and violent forms of slavery-like practices -

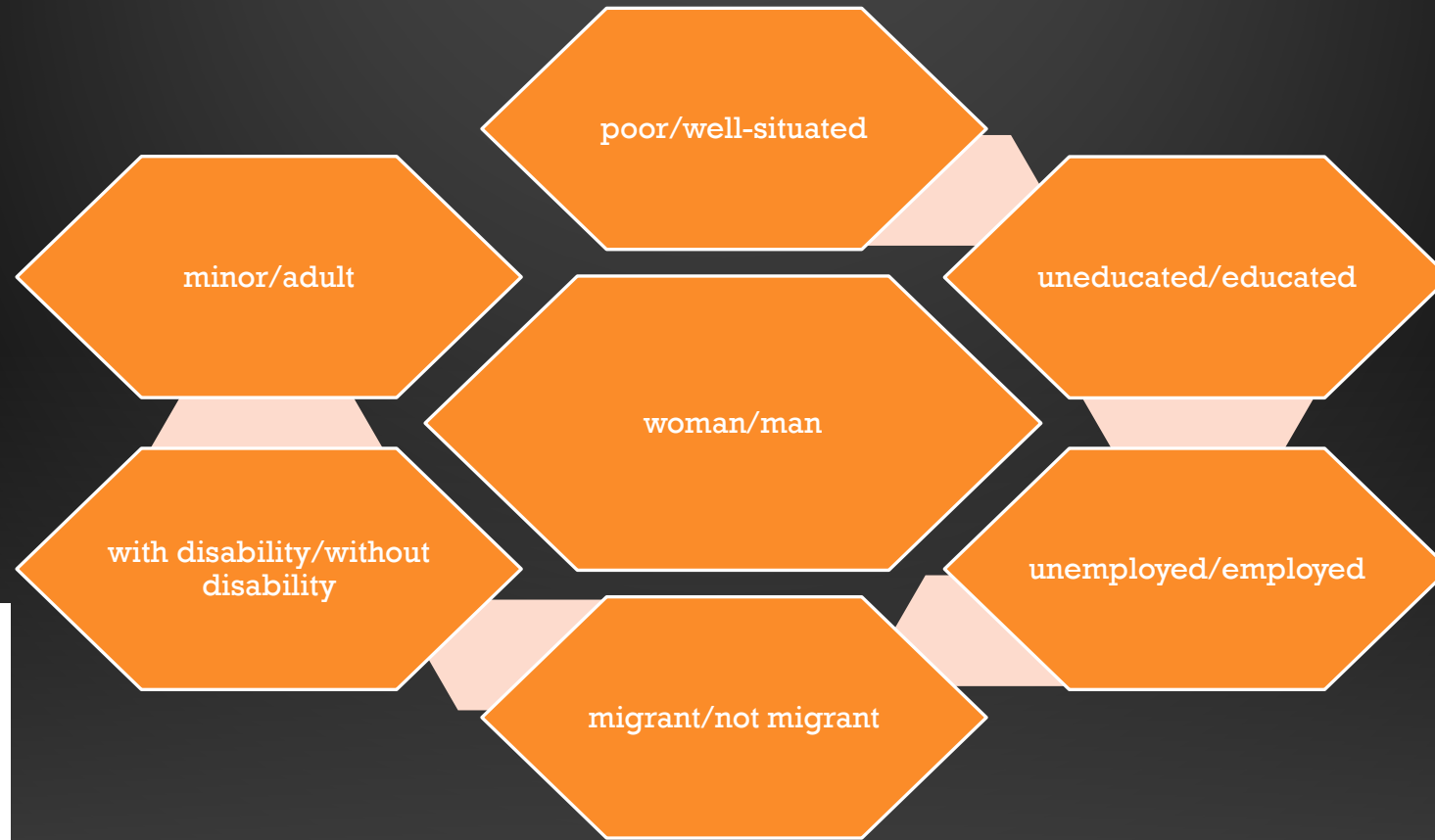
3. certain categories of victims require specific protection (legal and other) once they are saved

- layers of vulnerability due to **intersectionality** -

OLD AND NEW PHENOMENA INFLUENCING GENDER AND INTERSECTIONALITY ASPECTS OF SLAVERY



INTERSECTIONALITY ASPECT



ASSESSING THE RULES ON SLAVERY AND TRAFFICKING IN PERSONS FROM GENDER AND INTERSECTIONALITY PERSPECTIVES



Which international
conventions?



Differentiating between basic
concepts?



Gender-sensitive rules?

INTERNATIONAL CONVENTIONS

Conventions on slavery and slavery-like practices

- League of Nations Slavery Convention (1926)
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)

International human rights instruments

- Universal declaration of Human Rights (1948)
- International Covenant of Civil and Political Rights (1966)
- European Convention of Human Rights (1950)
- Charter of Fundamental Rights of the EU (2000)
- other regional HR treaties

Conventions on suppressing human trafficking

- 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- 2005 Council of Europe Convention on Action against Trafficking in Human Beings

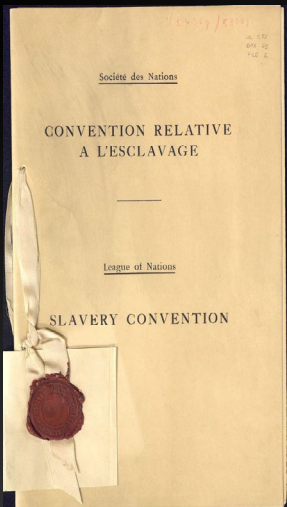
Conventions on women's rights

- 1979 Convention on the elimination of all forms of discrimination against women

THE BEGINNINGS: A MIXED APPROACH – FROM GENDER-NEUTRAL TO PARTLY GENDER-SENSITIVE PROVISIONS

1926 LEAGUE OF NATIONS SLAVERY CONVENTION

- “*slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*”
 - ownership as a main feature of slavery
 - **gender-neutral language!!!!**
 - **WHY?**



1956 SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

- states parties have further obligation to abolish several practices which were identified as similar to slavery
- forced marriage as slavery-like practice with a strong gender dimension!!!!!!
- Art. 1: any institution or practice whereby:
 - (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) a woman on the death of her husband is liable to be inherited by another person.
 - (iv) a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.



Trokosi practices in West Africa

- *'I was sent to the shrine when I was nine years old because my grandmother stole a pair of earrings. I was made to work from dawn until dusk in the fields and when I came home there was no food for me to eat. When I was 11, the priest made his first attempt to sleep with me. I refused and was beaten mercilessly. The other girls in the shrine told me it was going to keep happening and if I refused I would be beaten to death and the next time he tried I gave in. The suffering was too much so I tried to escape to my parents but they wouldn't accept me and sent me back to the shrine. I couldn't understand how my parents could be so wicked.'*
- (Anti-Slavery International 2000, 11)

AFRICAN
CHARTER ON
HUMAN AND
PEOPLES' RIGHTS
(1981)

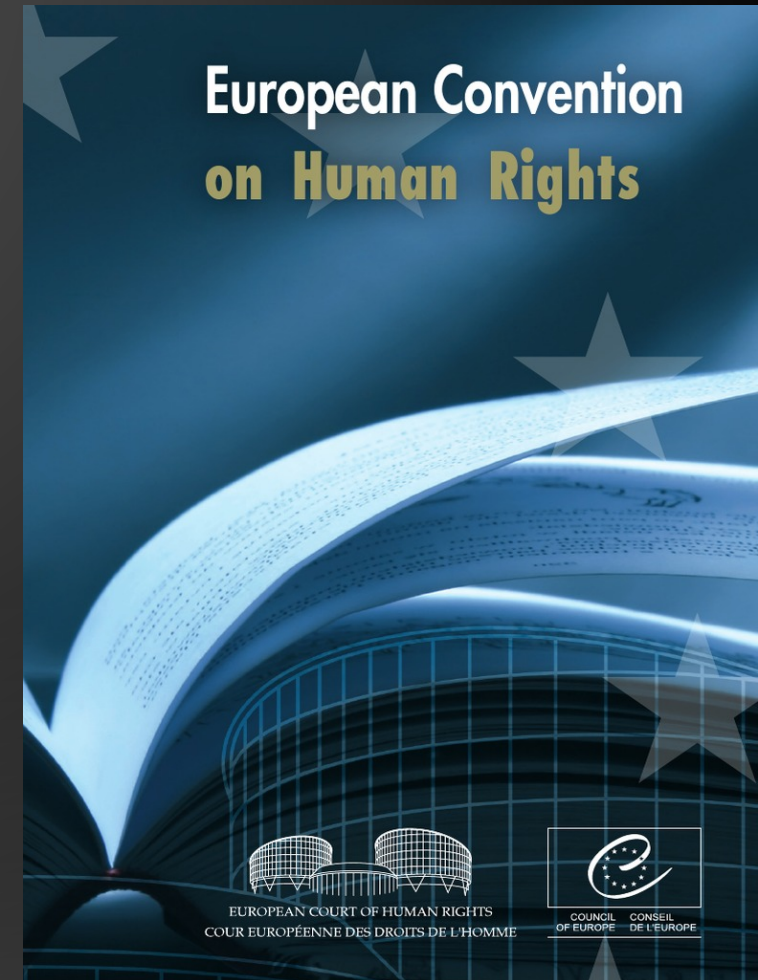
African Charter on Human and
Peoples' Rights



- Article 5:
 - “*All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*”

ARTICLE 4

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.*



CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

SLAVERY AND SERVITUDE

- Slavery – 1926 Convention
- Servitude – “what is prohibited is a 'particularly serious form of denial of freedom'. It includes, ‘in addition to the obligation to perform certain services for others ... the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition'.”

FORCED LABOUR

- 1930 ILO Convention
- “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”



Slavery like conditions of household women workers in Europe

- S., a citizen of Togo., was fifteen when she came to France accompanied by Mrs. D. The deal was that she would help Mrs. D. in household chores until she pays off the cost of the plane ticket. Mrs. D. pledged to resolve her immigration status and enroll her in school.
- Mrs. D. took away S's passport upon arrival in France and she "lent" her to Mr. and Mrs. B. in order to help them with their two children. S. worked seven days a week, without a day off, only on Sundays was she allowed to go to church and attend mass. She didn't get paid.
- At one point, S. managed to get her passport. She confided in her neighbor about her situation, who informed the Committee against Modern Slavery. They submitted the appropriate request to the prosecutor's office. Mr. and Mrs. B. were acquitted upon trial because slavery and servitude were not as such classified as offences under French criminal law.



Siliadin v. France (2005)

- “118. *The Court notes that, in the instant case, although the applicant was not threatened by a “penalty”, the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat. She was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police. Indeed, Mr and Mrs B. nurtured that fear and led her to believe that her status would be regularised. Accordingly, the Court considers that the first criterion was met, especially since the applicant was a minor at the relevant time, a point which the Court emphasises.*”
- “148. *The Court considers that the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim.*”

INTERNATIONAL LEGAL FRAMEWORK ON HUMAN TRAFFICKING – COMMON POINTS

DEFINITION OF THB

- Three elements
 - **the action**: recruitment, transportation, transfer, harbouring or receipt of persons
 - **the means**: “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”
 - **the purpose**: exploitation (exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).

STATES PARTIES' DUTIES

- 3 Ps:
 - 1. prevention
 - 2. protection
 - 3. prosecution

INTERNATIONAL LEGAL FRAMEWORK ON HUMAN TRAFFICKING – HIGHER LEVEL OF GENDER SENSITIVITY WITH DIFFERENCES

PALERMO PROTOCOL

- Title: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children - the focus is on women and children
- This is again stressed throughout the Preamble
- **Prevention** – Article 9 - particular attention is explicitly placed on women and children when requiring states parties to design, adopt and implement measures aimed at preventing human trafficking
- Protection - Article 6 - „ Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.“
- Prosecution – no gender-sensitive provisions

COE CONVENTION

- Title: gender neutral language
- It does not only place special attention on women and girls, it insits upon gender equality in general
- **Prevention** – Article 5 - „*Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes*“
- **Protection - Article 17** – „*Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.*“
- Prosecution – no gender-sensitive provisions
- **Identification of the victims** - Article 10 – „(...) victims should be identified in a procedure duly taking into account the special situation of women and child victims.“ – **novelty!!!**

INTERNATIONAL LEGAL FRAMEWORK ON WOMEN'S RIGHTS – GENDER SENSITIVITY AND INTERSECTIONALITY IN ALL MEASURES

ARTICLE 6 OF THE 1979 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

- *“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”*

CEDAW GENERAL RECOMMENDATION 38 (2020):

- *“The Committee affirms that discrimination against women and girls includes gender-based violence, the prohibition of which has evolved into a principle of customary international law. Recognizing the gender-specific nature of the various forms of trafficking in women and girls and their consequences, including with regard to harms suffered, the Committee acknowledges that trafficking and exploitation of prostitution in women and girls is unequivocally a phenomenon rooted in structural, sex-based discrimination, constituting gender-based violence.”*
- *“the realities of trafficking in women and girls extend beyond the scope of the Trafficking in Persons Protocol”*
- *additional vulnerability of women due to the intersecting characteristics*
- *Need to apply gender-sensitive and intersectionality-based approach in all phases of suppressing human trafficking, including investigations and prosecution – novelty: the 3rd P should also be gender-sensitive!!!!!!*

QUESTIONING THE EFFECTIVENESS OF THE PROTECTION THE INTERNATIONAL SYSTEM AFFORDS TO WOMEN AS VICTIMS OF THB

victim
identification?

victim
assistance and
protection?

access for
victims to
justice?

investigations,
prosecutions
and punishment
of perpetrators?

cooperation
between
involved states?

CASE STUDY: GENDER DIMENSION OF POSITIVE DUTIES WITH REGARD TO HUMAN TRAFFICKING

- A 20-year old O. was admitted to Cyprus on a so-called 'artiste visa'. The visa was procured for her by an owner of a 'cabaret', and allowed O. to work in that cabaret. It is general knowledge in Cyprus that these artiste visas are in practice a gateway into prostitution.
- After working for a few days at the cabaret, O. left her apartment, leaving a note saying that she was going back to Russia. A few days later she was found by somebody who contacted the brother of the owner of the cabaret. He brought her to the police, alleging that O. was illegally in Cyprus and that the police should hold her in the cell. He then left. The person in charge at the police station gave the order that the owner of the cabaret should be contacted and ordered to 'collect' O. The brother of the owner came back to the station, picked her up and brought her to the apartment of one of his employees. They put O in a room on the sixth floor and allegedly left her alone. Sometime later, she was found lying dead on the street below the apartment.
- The Cypriot authorities started an investigation into her death, which gave no results.





EUROPEAN CONVENTION ON HUMAN RIGHTS AND ARTICLE 4 IN HUMAN TRAFFICKING CASES – INFLUENCE OF THB CONVENTIONS

EUROPEAN COURT OF HUMAN RIGHTS

- „*The Court considers that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions.*“
- „*Trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.*“

POSITIVE DUTIES OF STATES

- 1. Positive obligation to put in place an appropriate legislative and administrative framework
- 2. Positive obligation to take protective measures
- 3. Procedural obligation to investigate trafficking



Rantsev v. Cyprus and Russia
(2010)

- Word 'woman' and 'women' mentioned 99 times in the ECtHR judgment.
- Only 8 times in the part of the judgment in which the ECtHR applies general principles to the present case, sets standards and identifies positive duties for States
 - exclusively with reference to reports of other bodies (Cypriot Ombudsperson, CoE Commissioner for Human Rights)
- The Court names 'exploitation' as the central harm of trafficking, but does not explore how this exploitation is gendered and whether this entails any additional duties on States!
- Positive obligations of States need to be more narrowly tailored to address the specific needs of the female victims of trafficking!

KEY MESSAGES

- Contemporary forms of slavery and human trafficking possess strong gender and intersectionality dimensions.
- Gender and intersectionality dimensions are integrated within the international legal regimes on the prohibition of slavery and combatting human trafficking, but unevenly and only to a certain extent.
- The focus shifted from an early focus on women and girls in the first anti-trafficking treaties towards a holistic approach recognizing victims belonging to any gender group – the gender equality approach.
- ECtHR standards should further evolve to include gender and intersectionality-related dimensions into existing positive obligations of States.