More than just victims

The truth about human trafficking

Benjamin S Buckland argues that the language used to debate human trafficking can cloud the issue itself. Exploitation is only one side of the story. Deep-rooted socioeconomic and political reasons explain why some people fall into illegal or forced migration channels, and tackling these fundamentals requires a new language to acknowledge the agency and ambition of trafficked persons.

'I feel like they've taken my smile and I can never have it back.' This quote, attributed to an anonymous 'Lithuanian woman trafficked to London', opens the UK Action Plan on Tackling Human Trafficking (Home Office and The Scottish Executive 2007: 5). The plan – like the overwhelming number of plans, reports, toolkits and studies published by states, non-government organisations and international bodies in the last decade – is based on a conception of trafficking that overwhelmingly posits women and children as its innocent and helpless victims.

While in no way wishing to discount the horrors that many trafficked persons have faced – including rape and sexual violence, slavery and imprisonment – I would argue that the dominant 'victim' trope is not only inadequate to describe the complexities of the phenomenon but, more importantly, has led to often inappropriate and sometimes damaging public policy responses. What do I mean by this?

I define human trafficking as the transport of persons for the purposes of exploitation. As a social phenomenon, trafficking differs from smuggling as the former involves exploitation. The labels 'victims' and 'survivors' of trafficking have undoubtedly promoted greater public awareness and consequently led to a greater focus on protection. However, such labels have also had the effect of denying agency to trafficked persons, ignoring the economic reasons for which many choose to leave their homes, and transforming these persons, in the words of Makau Mutua, into 'hordes of nameless, despairing, and dispirited masses' (Mutua 2002: 11); mere objects of intervention by others.

By setting up trafficked women as violated innocents and objects of exchange, not even guilty of ambition, they become both the counterpoint and the justification for equally severe punishments meted out to economic migrants, asylum seekers and smuggled people – those on the other side. In this narrative, men (who in fact make up more than half the total number of trafficking 'victims' worldwide) are relegated to the roles of either predator or protector: the crime boss with a network of illegal brothels, or the border guard who sweeps in to rescue another innocent.

The policy responses that such conceptions have engendered focus overwhelmingly on border security, especially carrier sanctions, overseas immigration officers, border patrols, and document security. Such measures potentially increase trafficking by forcing more people into illegal migration channels, but have unintended and often disastrous consequences for refugee protection and human rights. At the same time, the 'victim' trope leads to

underemphasis on the complex economic, political and social reasons for which people may choose, or be forced, to migrate. This is a hierarchy of emphasis that should be reversed.

More than just victims; more than just sex

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, entered into force on Christmas Day 2003. The result of negotiations that had taken place four years previously, this document has provided the framework for all subsequent anti-trafficking efforts. Those who gathered in Vienna to negotiate the Protocol were tasked with creating an instrument that would replace the largely outdated 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. But, while they were united in mandate, they were sorely divided when it came to choosing the road ahead.

The use of forced migrant labour is probably equally prevalent in agriculture, food processing, seafood gathering and domestic service as in the sex trade

The major cleavage was over definitions. Is trafficking just about prostitution? Is all prostitution trafficking? Do men get trafficked too? The answers those negotiating the Protocol came up with reflect deep divisions in how trafficking is fundamentally conceived. While the Protocol includes a broad range of activities in its definition, both its title and statement of purpose make clear that trafficked people are victims and that the primary victims of trafficking are women and children in forced prostitution.

Reinforcing this focus is the issue of consent: is it possible, in other words, to consent to prostitution? The Protocol's 1949 predecessor was informed by state policies such as that of Greece, which, in the early part of the 20th century, was 'protecting' young women from trafficking by forbidding them to leave the country without a special permit. While much changed in the intervening decades, the 2003 Protocol still provides an extremely limited definition of consent, arguing that it is irrelevant in a wide range of circumstances, including broad and undefined 'situation[s] of vulnerability' (United Nations 2003, article 3).

Of course, the victim-orientated approach of the Protocol is buttressed by the policy responses that it has, in part, engendered. The trafficking protocol is part of the United Nations Convention Against Transnational Organised Crime, and crime-fighters have overwhelmingly taken the lead in 'rescuing' women, 'saving' innocents, protecting 'victims', and, above all, in keeping them safe at home in the first place.

Before admitting that no real data or programme of action exists – something that is largely true of national action plans worldwide – the UK Action Plan does concede that a large percentage of trafficked persons are destined for areas other than the sex trade. In fact, it is clear that agriculture, construction, industry and domestic labour account for the majority of trafficked persons worldwide: the International Labour Organization, in a 2005 study, suggests that, of the 9.5 million people in forced labour in Asia, less than 10 per cent were in the sex trade (Feingold 2005: 26-7).

While most media coverage of human trafficking in the UK has focused on the sex trade, research indicates that the use of forced migrant labour is probably equally prevalent in agriculture, food processing, seafood gathering and domestic service (Anderson and Rogaly 2005). Yet the lives of enslaved agricultural workers seldom feature in the fundraising literature of charities that claim to work with victims of trafficking.

Further undermining the adequacy of the victim trope described above is the fact that – even leaving aside the sectors for which they are destined – categorising people as trafficked is fraught with difficulty. Any critical examination of the processes involved reveals that paper categories of asylum seekers, smuggled

people (those who use help to cross international borders illegally), trafficked people and economic migrants quickly disintegrate in the murky waters of 21st century migration.

Distinctions are certainly not clear at the point of origin. For those facing poverty, persecution, instability or war, legal migration channels may be impossible to access. Being smuggled or seeking work through unscrupulous brokers may, thus, be the 'best' option or, at the very least, 'a reasonable alternative to bureaucratic, time consuming and therefore life endangering legal migration' (Brolan 2003: 577).

Once people have left their homes and begun to cross borders, distinctions become even harder to maintain. As Anne Gallagher, former Advisor on Trafficking at the Office of the High Commissioner for Human Rights, points out, many people begin their journey in one category and end it in another (Gallagher 2001).

And, at the destination, distinctions may fall apart altogether. Focusing just on the distinction between smuggled people (painted largely as criminals by international instruments) and trafficked people, it is evident that smuggled people may be trapped in debt-bondage, or subjected to exploitative working conditions (Andrees and Mariska 2005). Have they then been trafficked? Are they victims or just 'economic migrants'? What if they are fleeing persecution? Does that make them refugees too?

Locking up your daughters…

> *'[The overwhelming emphasis has been on] eliminating any distinction between intentional (if exploitive) migration for work and forced enslavement of millions of Africans creat[ing] a moral imperative to stop the flow of undocumented workers regardless of their desire to immigrate Attempts to restrict immigration can then be packaged as antislavery measures; would be migrants are would be victims whose safety and wellbeing are ostensibly served by more rigorous policing of the borders.'*
> (Chapkis 2003: 926-7)

It would be nonsensical to suggest that border security has no place in the war against human trafficking. Rather, the rigorous policing of borders has largely triumphed over other possible responses to trafficking, including development, education and protection – three areas of action recommended by the UN Protocol.

Border control measures often cited as counter-trafficking instruments include:

- Carrier sanctions – essentially fines levied on public carriers, such as airlines and shipping companies, that provide passage to undocumented, or inappropriately documented migrants.
- Overseas immigration officers – officers of the state posted abroad to advise public carriers on whether migrants should be allowed passage.
- Document security and visas – measures such as biometrics, machine-readable passports, and other anti-forgery techniques, as well as requiring visas for migrants from a greater number of states.
- Border patrols – more officers and improved equipment involved in patrolling land and sea approaches to state territory.

…has unintended side effects…

Before examining the relevance and virtue of these policies as expedients in the fight against trafficking, it is worth considering their side effects. The most obvious conflict is with asylum and refugee law. As Gallagher points out, even before they entered into force, 'such measures risk denying bona fide refugees the chance of escaping persecution. Rather than addressing this conflict, the two protocols contribute to confusion by endorsing strengthened border controls while at the same time nominally upholding the right to asylum' (Gallagher 2002: 28).

Because states are essentially pursuing their national interest while nominally fighting trafficking and protecting refugees, the result is an idiosyncratic jumble of both law and practice, which meets goals of restricting immigration while failing in its mandate to protect (Farer

1995). Trafficked people become, in many cases, merely the innocent counterpoint to harsher punishments apportioned elsewhere – the victim to the illegal immigrant 'criminal'. Even where the measures described above meet the letter of the law – and most of them do – there are strong arguments to suggest that they are contrary to 'good faith' obligations under refugee and human rights law (Crépeau and Nakache 2006: 12-14).

Both carrier sanctions and overseas immigration officers neatly illustrate this point. By privatising asylum decisions (in the case of carrier sanctions), or removing them from normal processes of accountability and procedure (in the case of overseas immigration officers), states are placing such decisions in the hands of people with neither the expertise nor the mandate to examine motivations for migration, protection needs or credibility of claims (Brouwer and Kumin 2003, Farer 1995). Such measures may also infringe upon rule of law standards by permitting an excess of administrative discretion and eliminating opportunities to challenge negative decisions (Cholewinski 2001).

Increasing documentation requirements have also had negative effects on the ability of asylum seekers to make their claims. As Human Rights Watch, an American advocacy group, held in a jointly issued report to the United Nations:

> *'In many cases, it is impossible for people fearing persecution from their government to obtain a passport ... or to approach embassies in search of a visa. Even when people do approach embassies, persons from a growing number of countries will never be able to obtain a visa for the purpose of fleeing persecution. Desperate people will resort to desperate measures. With all other options closed, migrants and asylum seekers have been forced to make use of illegal and dangerous means of entry via sophisticated trafficking and smuggling rings.'*
> (HRW 2001: 8)

…and does not solve the problem

> *'The escalation of [border] policing has largely failed ... and has generated perverse and counter-productive consequences that only reinforce calls for further escalation.'*
> (Andreas 2000: 85)

A principal objection to the use of border security as a counter-trafficking instrument is the fact that traffickers often use legitimate means to gain entry into states, providing trafficked persons with visas and passports as well as letters or funds to support claims of legitimate travel.

More insidiously, however, is a problem alluded to above: the fact that fighting trafficking through border security sets up a neat but fallacious binary between innocent victims and dark criminal forces; a binary that is flawed and dangerous in both directions.

On the side of the 'innocents', 'trafficked' represents a spectrum of people far more complex than the images of kidnap and imprisonment the binary suggests. Most are also economic migrants, trapped somewhere on a sliding scale of debt and abusive working conditions. On the 'criminal' side, the term represents the elision of economic migrants, traffickers (not only of people), terrorists and refugees. Current emphasis on the securitisation of migration policy is an emphasis on one blunt policy instrument among the many available.

It is especially blunt when we consider that prioritising border security over other possible policies may drive more people into illegal migration channels. This is a particular problem for asylum seekers, as well as other types of migrants, who are increasingly shut out by the measures we described above and, in many cases, left with very little choice but to pursue a migration outcome through illegal channels (Brouwer and Kumin 2003, Koser 2000, Crépeau and Nakache 2006, Ditmore and Wijers 2003, Feingold 2005).

An example of this process in action is a Burmese anti-trafficking law that prohibits young women from visiting border regions unless they are accompanied by a male relative. Instead of hindering trafficking, the law has allowed it to flourish by increasing the costs of travel for women – often leading to debt and increased vulnerability – as well as reducing their safety by forcing them to rely on the services of 'facilitators' if they wish to

cross borders alone (Feingold 2005).

A perverse consequence of increased border controls (when you consider their stated aim) is that they often lead to the expansion and the growth in power of trafficking networks. This occurs in part because there is increased demand for illegal or unauthorised migration as border controls become tighter. In many cases, where it was once possible to cross legally or alone or with limited help, the services of increasingly sophisticated (and increasingly expensive) professionals is now required (Andreas 2000).

In his study of the US-Mexico and Spain-Morocco borders, Peter Andreas describes an 'arms race' in which both sides seek to gain the technological upper hand (Andreas 2000). On the side of the traffickers and smugglers, the expense involved has led to a parallel process of centralisation, as smaller, poorer and less sophisticated operators are forced out of the market (Gallagher 2002, Andreas 2000). On that of the state, however, the 'arms race' has had the opposite effect. Rather than increasing efficiency of counter-networks, the higher stakes have led to higher corruption as (often poorly paid and poorly supervised) officials handle documents worth thousands to smugglers and traffickers (Andreas 2000).

The resulting emphasis on border controls has resulted in the interception of illegal migrants without offering a genuine solution to the problem of trafficking in persons

The larger sums involved and the increased professionalisation of trafficking networks also serves to increase vulnerability on the part of those being trafficked, as there is a clear functional relationship between the costs involved in trafficking and the amount of forced labour required before the network begins to make a profit (Koser 2000, Skrobanek *et al* 1997, Chapkis 2003). The same factors also serve to force the practice further underground and thus further beyond the reach of protection (Lindstrom 2006).

Changing focus

Trafficking is less about innocent victims than it is about the realities of migration: the desire to migrate, the need to migrate, the imperative to migrate. Measures that effectively prevent it are, thus, measures that manage migration – the migration of refugees, of the poor, of the displaced, and of those just looking for a better or a different life. Thus, the current focus of counter-trafficking action should be shifted away from border security and towards a number of areas – many of which are already being addressed, albeit in inverse proportion to their importance.

To give just one example, the US Trafficking Victim's Protection Act (Sec. 106 [a]: 1-5) contains an array of excellent proposals to address the root causes of trafficking, including microfinance for small businesses; training in business development; job counselling; programmes to promote equal participation in economic decision-making among men and women; programmes to keep girls in school; and grants for civil society and grassroots organisations. Unfortunately, such measures are provided with a tiny fraction of the resources expended on border security-based responses to trafficking. A similar focus has occurred in the EU (Cholewinski 2001).

Programmes such as those described above should be supplemented by increased education for vulnerable groups on the dangers associated with migration, and by action that recognises the vulnerability of both men and women to trafficking into forced labour. Better availability of migrant work permits, including for temporary and seasonal workers, may also satisfy legitimate desires to migrate on the part of young, aspirational men and women who may otherwise use illegal migration channels.

It would be absurd to advocate abandon-

ing border security altogether. But it is clear that the aims of anti-trafficking and asylum policy need to be more closely reconciled. At the very least, the most damaging side effects of current policy can be mitigated by reducing reliance on carrier sanctions and overseas immigration officers, and by training staff to recognise and deal appropriately with asylum cases. Additionally, training embassy, consular and border officers to recognise trafficking may help in prevention.

Conclusions

Border and migration issues, and trafficking in particular, have become increasingly securitised (Crépeau and Nakache 2006). The resulting emphasis on border controls has resulted in the interception of illegal migrants without offering a genuine solution to the problem of trafficking in persons. As Ryszard Cholewinski correctly notes, 'the driving force behind implementation of an EU policy on this subject has been overwhelmingly security-based, with minimal attention paid to the protection of important rights in the context of a more comprehensive approach' (Cholewinski 2001).

Much current concern with trafficking has been driven by the emotive language with which it is described: the language of victims, of survival and of heroic rescue. And, while it is clear that trafficking, whether into sweatshops or sexual slavery, is a vile and barbaric industry, it is equally clear that responses have often been less about achieving their stated goals and more about pursuing political ends, or charity fundraising.

In the end, the beneficiaries of current policies have been migrant smugglers and trafficking networks, lawmakers and law-enforcers (Andreas 2000: 85). And this will continue to be the case until we face up to the difficult, complex and uneasy challenges of 21st century migration.

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