



Ending Human Trafficking - An Attempt to Make It an SDG

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Esclavitud moderna y cambio climático: El compromiso de las ciudades

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Can 'Trafficking' and 'Smuggling' be clearly distinguished?

The foundational document opposing 'trafficking': the 2003 United Nations' 'Protocol to Prevent, Suppress and Punish Trafficking in Persons', offers the following definition. Trafficking involves:

'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other means 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or 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'[1]

In the above, 'trafficking' and 'forced labour' are explicitly elided, as implicitly is illegal migration if 'fraud' and 'deception' are incorporated into the meaning of 'coercion'. Conversely, the earlier Migrant Smuggling Protocol (2000), (part of a UN package of legal instruments proposed to combat organized transnational crime), maintains that in contrast with trafficked persons, smuggled migrants are those moved illegally for profit. This latter construes the smuggled as willing partners in a commercial transaction because it assumes that they have acted voluntarily.

However, the presumption that 'voluntary action' suffices to differentiate 'smuggling' from trafficking is also unworkable if one backtracks to the International Labour Organization's (ILO) Forced Labour Convention (1930, no. 29). Its definition of 'forced labour' covers 'all work or service that is exacted from any person under the menace of any penalty for which the said person has not offered himself voluntarily'. Here, 'forced labour' subsumes 'trafficking' and *also* illegal migration, if and when 'fraud and deception' effectively defy voluntary action.

By 2012, 154 countries had ratified the UNODC *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. By the same date, 134 countries and territories had enacted legislation criminalizing trafficking, meaning that the percentage of those without an offence designating this activity as criminal had halved between 2008 and 2012.[2]

Trafficking in Human Beings 'modern slavery'

The ILO's estimate is of 20.9 million people being in forced labour globally.

More than three-quarters of trafficking flows in 2012 were estimated to be confined to the same region. The UNODC report argues that this 'maybe explained largely in terms of convenience and risk minimization for the trafficker ... Long-distance trafficking flows need to be supported by a well-structured organization that can take care of air travel and false documents and that sometimes also exercises long-distance control over the families of the victims in the origin country. This form of trafficking cannot be sustained over time unless a structured trafficking network is in place.'[3] Criminal organizations engaged in trafficking appear to follow growth pattern from domestic, to interregional and finally to transcontinental operations,

Criminal Justice: necessary but insufficient?

The criminalization of human trafficking is a short story belonging to the 21st century. The parent instrument was the UN Convention Against Transnational Organized Crime, adopted by the General Assembly in 2000. From it sprang the Protocols and Conventions that have already been mentioned, all of which required not only ratification but embodiment in national legislation.

Significantly whilst the 2002 Protocol required state signatories to 'criminalize trafficking' and to 'strengthen border controls' the 'victim protection measures' proposed remained optional, among which featured 'adopting legislative or other measures permitting victims to remain in their territories temporarily or permanently'. The implication is that 'criminalization' and 'border control' take precedence over the human rights that 'victim

protection' was intended to address. No protection was provided in the Protocol against the involuntary and immediate repatriation of those detected as having been trafficked. Moreover, lack of adequate 'witness protection' reduces the rate of criminal prosecution

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The drawbacks of the Rapid Repatriation Response

All reports agree that statistics for the identification, arrest and, above all, conviction of traffickers are exceeding small in relation to what is known about the size of the problem.

1. Rapid deportation does not allow the trafficked to become fully aware of their rights, overcome their fear of reprisals from their exploiters through secure witness protection schemes, or to recognize that they will not be 'set free' on paying the original debt-bond they had contracted. In fact, it can be argued that rapid repatriation deprives criminal justice of its key informants.
2. In qualitative studies, approximately half of the trafficked had known their recruiters in their country of origin and defined them as acquaintances, partners, family members and friends. Deportation puts them at risk from such persons who fear the trafficked disclosing their experiences.
3. Despite local, national and regional variations, those who have been pressed into forced labour often originated from minority or marginalized groups whose experiences of institutional discrimination may have facilitated their recruitment. Returning them to such contexts can mean that criminal justice places them in double jeopardy.

The criminalization of trafficking is necessary in all parts of the world, but involuntary deportation appears both counter-productive to the prosecution of perpetrators and is often doubly punitive of their 'victims'.

From the PASS Plenary Recommendations

The aim of resettlement and re-integration for trafficked people is to become economically and social independent; no longer at risk of being re-trafficked or resorting to illegal, risky or humiliating activities, but contributing positively to the host society.

Assets seized from convicted traffickers to be devoted to victim rehabilitation and the establishment of a victims' compensation fund.

- a) Development of Global benchmarks for victim support including: civil legal aid, secure witness protection, medical and trauma assistance, support for individuals from social service agencies.
- b) A flexible and voluntary Resettlement Plan to be developed in every country of destination covering: medical care, language learning, life-skills, access to job training, accommodation, and community integration, making maximum use of help from Voluntary Associations.
- c) Concerted efforts must be made to reduce delays in receiving benefits and entitlements, as well as accessing legal support for those identified as trafficked persons. Clear printed guides should be provided detailing victims' rights and responsibilities, both immediately and in the longer term.
- d) National Embassies in countries of destination to develop resource centres dedicated to assisting survivors who choose to remain, especially in obtaining the necessary documentation.
- e) Promotion of adult fostering programs via Voluntary Groups and faith communities.
- f) Encourage those who have been helped to volunteer their own help with Resettlement Programs once they have become established in a locality.
- g) Normative emphasis in educational institutions stigmatizing production and consumption activities that entail trafficking.

[1] United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, New York, 2012, p. 16.

[2] Executive Director's 'Preface', UNODC, *Ibid.*, p. 1.

[3] *Ibid.*, p. 41.

[4] Executive Director's 'Preface', UNODC, Ibid., p. 1.