

Don't shout too loud

Reflections on the outrage against human and child trafficking

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Human and child trafficking is regarded as an international crime and serious human rights violation. However, the clandestine and transnational nature of trafficking makes it extremely difficult to apprehend or prosecute offenders, or to verify information about the scope and nature of the problem. Yet, despite the lack of quantifiable data, extensive global attention has been focused on the phenomenon of trafficking. This article highlights some concerns regarding conceptual and definitional problems, as well as the seeming international preoccupation with trafficking, in an attempt to position the issue within the larger context of other global human rights abuses.

A brief internet search will reveal many pages of search results for advertisements and campaigns directed at combating human and child trafficking. MTV has produced a range of commercials to highlight the scourge, which also includes a music video of Radiohead's song 'All I need'. Celebrities such as Emma Thompson, Ashley Judd and Demi Moore have appeared on commercials and for campaigns against child and human trafficking. That is not including all the commercial marketing and campaigning undertaken by agencies such as the United Nations Office on Drugs and Crime (UNODC), United Nations Global Initiative to Fight Human Trafficking (UNGIFT), the International Organisation for Migration (IOM) and even the Salvation Army.

This is most certainly not unwarranted. According to the International Labour Organisation (ILO), child trafficking:

is a crime under international law and a violation of children's rights. It reduces victims to mere 'commodities' to be bought, sold, transported and resold. Trafficked children may end up working as domestic servants, street beggars, agricultural labourers, miners, or may be sent to work on construction sites, in sweatshops or entertainment places. In some cases, these children are forced into truly reprehensible forms of child labour such as prostitution, pornography, armed conflict, bonded labour, or other illicit activities.¹

Echoing this sentiment, Fitzpatrick observes that 'one of the most troubling contemporary forms of slavery and human servitude is the trafficking of women and children for purposes of sexual exploitation and other types of forced labour.'² It cannot be denied that human trafficking and child trafficking is a reality that deserves both international and national attention and action. However, what is surprising is the extent of global and local attention given to the phenomenon.

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This article will argue that, since the veracity of claims that trafficking is on the increase has yet to be scientifically confirmed, the attention that human trafficking garners is perhaps disproportionate to the quantifiable scale of other serious human and child rights violations globally. The article examines some of the reasons that may have contributed to the concentrated awareness of the issue. Finally, it argues that the spotlight on the act of trafficking itself may detract from addressing the underlying exploitation and abuse for which people and children are trafficked.

THE SCALE AND EXTENT OF TRAFFICKING

It is widely agreed that there is an absence of reliable information regarding the extent to which trafficking in persons occurs globally. According to Todres, Georgetown University's Institute of Migration Studies concluded:

[T]here is little systematic and reliable data on the scale of [human trafficking]; limited understanding of the characteristics of victims (including the ability to differentiate between the special needs of adult and child victims, girls and boys, women and men), their life experiences, and their trafficking trajectories; poor understanding of the modus operandi of traffickers and their networks; and lack of evaluation research on the effectiveness of governmental anti-trafficking policies and the efficacy of rescue and restore programs, among other gaps in the current state of knowledge about human trafficking.³

This said, efforts have been made in recent years to quantify the extent of trafficking at the global level. However, estimates by various international organisations and government institutions vary. According to *Every child counts: New global estimates on child labour*, of an estimated 8.4m girls and boys in 'unconditional worst forms of child labour' in 2000, an estimated 1.2m children under the age of 18 were trafficked.⁴

UNICEF presents a slightly different set of figures in its 2009 report card on child protection. The

UNICEF report reiterates the point that statistics are hard to gather and often unreliable, and that continued misconceptions of the difference between trafficking and prostitution, and between trafficking and illegal migration, also affect data reliability. The report cites United States Government estimates that 600 000-800 000 people are trafficked each year across international borders. Drawing on its own analysis and that of three other organisations – the International Labour Organization, the International Organization for Migration and the United Nations Office on Drugs and Crime – UNICEF estimates that one sixth to one half of these people are children. It does however caution that there may be questions about this figure, due to methodological weaknesses of analyses, data gaps and numerical discrepancies.⁵

Yet there is quantifiable information on a range of other abuses and conditions that afflict children globally. In 2008 there were nine million deaths of children under five years of age; in 2007 101 million children of appropriate age were not attending primary school; in 2008 two million children 14 years and younger were living with HIV/AIDS; and in industrialised countries alone, five to ten per cent of girls and up to five per cent of boys suffer penetrative sexual abuse during their childhood, with the percentage of children experiencing any form of sexual abuse being as much as three times higher.⁶

This seemingly gives rise to the proposition that while the plight of the world's children generally is highlighted through the media, advocacy and in academia, the attention given to trafficking of children is arguably disproportionate to the apparent scale of the problem. A similar argument could also be made regarding the 'hype' surrounding human trafficking as opposed to other human rights violations faced by men and women globally.

TRAFFICKING AND THE INTERNATIONAL COMMUNITY

It is arguable that one of the contributing factors to the wide-scale global focus on trafficking is the

manner in which the international community has dealt with human trafficking and related human rights abuses.

History has highlighted the existence of slavery, including trafficking in persons, with notable examples being its usage in Roman times and in the United States prior to and during the Civil War in the 1800s. It was only in the 20th century that the international community started taking collective action aimed at preventing and prohibiting it – and did so with great enthusiasm.

The international concern with trafficking arose in the context of the trafficking of 'white slaves' in the early 1900s. In 1910 the International Convention for the Suppression of the White Slave Traffic was adopted, but it only came into force in 1949. In 1921 another international instrument dealing with the issue of trafficking was adopted, namely the International Convention for the Suppression of the Traffic in Women and Children, which came into force in 1922 and was also aimed at supplementing the 1910 Convention. In 1949 the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This Convention came into force in 1951 and its purpose, as stated in the preamble, was to consolidate previous trafficking conventions. In addition, specific references to the prevention of trafficking can be found in many other international laws. The Universal Declaration of Human Rights (1948) directs that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

The Slavery, Servitude, Forced Labour and similar Institutions Convention of 1926 provided for the prevention and suppression of the slave trade and the abolition of slavery in all forms. Further to this, the UN Supplementary Convention on the Abolition of Slavery (1956), through its various articles, commits parties to abolishing and abandoning debt bondage, serfdom, servile marriage and child servitude. It further criminalised slave trafficking, enslavement and the putting of others into slavery.

The ILO Forced Labour Convention (1930) requires that State Parties undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. Similarly, the ILO Convention No. 105 on the Abolition of Forced Labour (1957) requires that 'each member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour.'

This indicates that there have been varied international attempts at eradicating slavery, forced labour and trafficking, creating a complex system of international law on these issues. This trend has continued in modern international human rights law with the issue of trafficking being dealt with by, or the subject of, a number of international treaties. Perhaps the most widely acknowledged treaty dealing comprehensively with trafficking in persons is the Convention Against Transnational Organised Crime (2000) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) (the Palermo Protocol).

However, there are other instruments that create equally binding obligations regarding trafficking in respect of women and children, and which consequently tend to create overlapping conceptual issues and obligations on State Parties to them. First is the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), which directs that State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and their exploitation or prostitution.

Then there is the United Nations Convention on the Rights of the Child (1989), which addresses child trafficking in Article 35 by requiring states to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form. The Convention on the Rights of the Child has been supplemented by the Optional Protocol on the sale of children, child prostitution and child pornography, which came into force in

January 2000. Its aim is to reinforce, *inter alia*, article 35 of the Convention and it also extends the measures that State Parties should undertake in order to guarantee the protection of the child from sale, prostitution and pornography.

Finally, in the context of international labour law, the Worst Forms of Child Labour Convention No. 182 (2000) was adopted by the International Labour Organisation in an attempt to adopt new instruments for the prohibition and elimination of what the Convention terms 'worst forms of child labour', which includes trafficking in children, slavery and forced labour.⁷

In the African context the African Charter on the Rights and Welfare of the Child provides specifically for the protection of the rights of victims of child trafficking in Articles 24 and 29 and the Protocol to the African Charter (on Human and Peoples' Rights) on the Rights of Women in Africa, which in article 4 directs State Parties to 'prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.'

The legal framework that emerges from the above is complex and varied, with differing obligations for states; overlapping definitions and concepts; and multiple monitoring and reporting procedures.⁸ What has resulted is a plethora of information emanating from the lead agencies (the United Nations and International Labour Organisation); Special Rapporteurs; the different treaty bodies responsible for monitoring the implementation of the Conventions; and from states themselves in the form of their reports on implementation progress.

In relation to the problem of quantifying the extent of trafficking, the differing concepts of trafficking and obligations created by these treaties constitute real challenges. For example, in the case of child trafficking there are three main international conventions – each of which represents a different field of international law – traditional human rights law in the case of the Convention on the Rights of the Child; international criminal law in relation to the

Palermo Protocol, and international labour law in relation to the Worst Forms of Child Labour Convention. For instance, whether a particular child will be regarded as having been trafficked for the purposes of child labour, or for illegal adoption, or for the trade in body parts, will depend on the applicable legal instrument. One danger created by this situation is that in reporting on the implementation of the different treaties, a trafficked child could potentially be counted three times (once for each treaty, provided the conduct fits the concept of trafficking under each instrument), leading to a possible inflation of the extent of the problem.

Is it then so surprising that there is a perception that the scale of trafficking is much larger than can be scientifically proven? Or that trafficking presents a global crisis, given the many ways in which the international community is attempting to address it?

GETTING TO THE UNDERLYING PROBLEM – EXPLOITATION

A further complication resulting from the attention that has been focused on trafficking by the international community and popular media, particularly in respect of children, is that the underlying purposes for which persons are trafficked are potentially obscured by the fixation on the act of trafficking itself.

The resultant exploitation for which persons are trafficked is a critical element of the crime. Forms of exploitation range from forced labour and sexual exploitation to removal of body parts. As each of the forms of exploitation themselves constitute a human rights abuse and/or crime, international and domestic obligations require states to adopt measures to, *inter alia*, also prohibit and prevent the forms of exploitation. For instance, articles 32 and 34 of the Convention on the Rights of the Child require states to protect children from economic exploitation and hazardous work, and sexual abuse and exploitation respectively. Similarly articles 11 and 14 of the Convention on the Elimination of All Forms of Discrimination Against Women require

states to take measures to ensure the rights of women in work and employment. So too, article 8 of the International Covenant on Civil and Political Rights protects all persons from slavery and forced labour. Apart from these well-established international protections, one would be hard pressed to find national legislation that does not provide persons with protection from, for example, sexual abuse and exploitation, or slavery and forced labour.

There is therefore a clearly defined, existing framework at the international and domestic level to protect persons from the forms of exploitation that potentially create an enabling environment for trafficking to take place. One should also bear in mind that most of the victims of these forms of exploitation are not also victims of trafficking. The two are not inextricably linked.

Perhaps it is then more useful to concentrate on combating the actual exploitation for which persons are trafficked, as that would then reduce the need for trafficking. One must not conflate the need for a policy and framework for combating trafficking with the need for a policy and framework for preventing exploitation and abuse. The latter requires a strong legal and policy framework, trafficking notwithstanding. However, one must acknowledge that there are linkages between the two because exploitation is a critical element of the crime of trafficking and one of its primary drivers.

While the seriousness of trafficking in persons as a human rights violation is not in dispute, the risk that one runs by paying an inordinate amount of attention to the act of trafficking is that it may detract from efforts to prevent exploitation and abuse generally.

WHAT LIES BENEATH?

An issue that this article does not attempt to address is what the motivating factors are behind the 'hype' on one hand and the international community's concern with the issue on the other. Are these political, or financial, and where do they originate? Any attempt to answer these

questions will require in-depth research into funding priorities, political agendas and the underlying motivations for law and policy development in relation to trafficking, as well as how these and other factors interlink. However, there are some readily apparent indications of what has contributed to the somewhat recent and heightened discourse on trafficking.

Perhaps one clue is the keen interest of the United States on the issue. This is evident, *inter alia*, from the US Department of State's Trafficking in Persons Report, which is released annually and attempts to analyse country responses to trafficking in terms of prosecution, protection and prevention. The United States Trafficking Victims Protection Act of 2000 requires that an annual report must be submitted to the US Congress, describing the nature and extent of severe forms of trafficking in persons with respect to each foreign country, and an assessment of the efforts made by the government of each country to combat trafficking. Section 108 of the Act sets out minimum standards that need to be complied with for the elimination of trafficking and countries are then assessed to determine whether:

- they fully comply with the minimum standards
- do not yet fully comply but are making significant efforts to bring themselves into compliance therewith, or
- do not comply and have not made any efforts to do so

In terms of section 110, the United States will not provide non-humanitarian, non-trade related foreign assistance to the government of a country for the subsequent fiscal year until such government complies with the minimum standards, or makes significant efforts to bring itself into compliance.⁹

The US annual report on other countries' progress in combating trafficking, as well as the withholding of financial assistance where progress is not happening, places pressure on states to address the issue of trafficking in persons. The appropriateness of the US playing 'international

safe-keeper' of anti-trafficking efforts is questionable, yet it can be argued that the consistent monitoring of progress and publication of the annual report would be a motivating factor for states to make an effort to comply with international obligations.

Another possible indicator of why the international community is paying so much attention to trafficking in persons is securitisation in a global economy. Nicole Jackson, in a study on trafficking in narcotics and persons in post-Soviet Central Asia notes that (in the context of that region) the European Union's motivation for securitising trafficking in narcotics and persons is based largely on its strategy against terrorism, in order to prevent Central Asia from becoming a conflict zone, safe haven for terrorists, or funder of terrorist activities.¹⁰ Jackson also alludes to some other reasons for international organisations' interest in trafficking, including a common belief that international organisations should help vulnerable states counter clandestine transnational activities, based on a perceived moral duty to counter these activities; and that by addressing trans-national trafficking, the international organisations' member states themselves would be protected from any threats to their stability.¹¹ Jackson's study highlights the post- 9/11 resurgence of the notion of statehood and nationalism with concomitant implications for migration and the passage of persons across national borders, whether legal or not.

It is clear from these examples that there are various and complex driving forces behind the attention that has been focused on human trafficking in the last decade or so. However, unravelling the intricacies would require a far more in-depth and evidence-based analysis than the scope of this article will allow.

CONCLUSION

This article has called attention to the need for the international legal framework to be revisited in order to ensure a more streamlined process of addressing the issue of trafficking. More importantly, research on the phenomenon needs

clearer methodological attention. Research designs should take cognisance of the different concepts and purposes of trafficking under the different international legal instruments, as these can lead to confusion and conflation of research outcomes. It is also perhaps time, given the obvious problems in identifying victims and perpetrators of trafficking due to its acknowledged hidden nature, to broaden the focus to monitoring and evaluation research on existing legislation and policy, or research on how cases are investigated and prosecuted in order to better address existing strategies on combating the phenomenon.

Trafficking in persons is a serious and notorious human rights violation. The purposes for which people are trafficked represent some of the worst types of criminal behaviour known globally. However, there are also many other equally serious human rights violations that are in all likelihood more prolific and of greater scale and extent, for example violations of the right to health care and socio-economic rights that lead to 250 million malaria cases annually, with almost one million people dying of the disease.¹² While the plight of victims of trafficking should be highlighted, it is of concern that the limelight into which human trafficking has been catapulted in the last 10-15 years might detract attention from other human rights issues that deserve equal consideration.

Nonetheless, all the attention that has been focused on trafficking in persons has most certainly focused the thoughts of the mainstream public on the issue of trafficking. If nothing else, this has certainly contributed to creating an awareness of the risks involved in trafficking, which is an important step towards ensuring its prevention.



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NOTES

- 1 International Programme on the Elimination of Child Labour, *Child trafficking: the ILO's response through IPEC*, International Labour Organisation, Geneva,

- 2007, 2, <http://www.ilo.org/ipецinfo/product/viewProduct.do?productId=6484> (accessed on 31 July 2010).
- 2 Joan Fitzpatrick, 'Trafficking as a human rights violation: the complex intersection of legal frameworks for conceptualising and combating trafficking', *Michigan Journal of International Law* 24, 2002-2003, 1143-1167, 1144.
 - 3 Jonathan Todres, 'Taking prevention seriously: developing a comprehensive response to child trafficking and sexual exploitation', *Vanderbilt Journal of Transnational Law* 43, 2010, 1-56, 10-11.
 - 4 International Programme on the Elimination of Child Labour, *Every child counts: new global estimates on child labour*, International Labour Organisation, Geneva, 2002, 25, www.ilo.org/ipецinfo/product/download.do?type=document&id=742 (accessed on 31 July 2010). Unconditional worst forms of child labour include forced and bonded labour, armed conflict, prostitution and pornography, and illicit activities.
 - 5 Unicef, *Progress for children, a report card on child protection*, 2009, 17, http://www.childinfo.org/files/Progress_for_Children-No.8_EN.pdf (accessed on 31 July 2010).
 - 6 Unicef, 'The State of the World's Children Special Edition: Celebrating 20 years of the Convention on the Rights of the Child', 2009, 15-16 and 25, <http://www.unicef.org/rightsite/sowc/> (accessed on 31 July 2010).
 - 7 Trafficking is also dealt with and prohibited in other international instruments such as the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the Rome Statute of the International Criminal Court.
 - 8 See generally Nancie Caraway, 'Human rights and existing contradictions in Asia-Pacific human trafficking politics and discourse', *Tulane Journal of International and Comparative Law* 14, 2006, 295-316, 310-312.
 - 9 The problems presented by this approach of the US have not gone uncriticised. See for instance Ted Leggett, 'Hidden Agendas? The risk of human trafficking legislation', *SA Crime Quarterly* 9, 2004.
 - 10 Nicole Jackson, 'International organisations, security dichotomies, and the trafficking of persons and narcotics in post-Soviet Central Asia: a critique of the securitization framework', *Security Dialogue* 37, 2006, 299-317, 306.
 - 11 Jackson, International organisations, 307-308.
 - 12 World Health Organisation, *10 facts on malaria*, 2009, <http://www.who.int/features/factfiles/malaria/en/index.html> (accessed on 2 August 2010).