

Human Trafficking and Forced Labour What Perspectives to Challenge Exploitation?

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Trafficking in human beings has become an increasingly important theme in immigration policy discussions in recent years, with evidence that the movement of people across frontiers for the purpose of exploitation is increasing in many European countries. Surprisingly perhaps, there is less clarity about what the nature of the criminal offense of trafficking actually is, and what it entails for its victims. A common presumption is that it is associated with the generic offense of 'illegal migration', with the movement of people not entitled to cross a frontier as being the essence of its operation.

This briefing paper draws attention to positions being developed by politicians and policy makers across Europe for whom trafficking in human beings (THB) is regarded as more-or-less synonymous with irregular migration and the position of undocumented migrants. In a recent statement the UK Home Secretary, John Reid, argues that "people traffickers, [...] are behind three-quarters of illegal migration to this country, [leaving] vulnerable and often desperate people at the mercy of organised criminals." (Home Office 2007, p.2)

PICUM's view is that, on the contrary, it cannot be claimed that the activities of people traffickers account for a large portion of irregular entry or residence in European countries, or even a significant part of it. Whilst some undocumented migrants will have gained entry with the assistance provided by people *smugglers* (a different activity from people *trafficking*, the difference being

discussed in more detail below) the largest part of irregular residence arises from people admitted through the normal channels of migration control, but who have subsequently fallen in breach of immigration regulations. Because of this there is no necessary connection between the presence of undocumented migrants and the activities of people traffickers in the ways which are often claimed.

A further difficulty arising from the position of national policy makers comes from the fact that trafficking need not involve a violation of immigration regulations at all, and can also take place when people have a right of entry and residence in the country of destination, but have nevertheless been coerced into making the journey. In these circumstances the act of trafficking would not involve infringement of immigration regulations at all, though the element of coercion would make it a crime against the individual.

These are not just differences in the use of terminology, but matters of real consequence to the framing of the policies needed in the fight against THB. In what follows we argue that campaigns against the activities and to increase public awareness of the issues involved would proceed more effectively if the issues of irregular migration and human trafficking were kept clearly and distinctly apart, and that instead strategies be developed that concentrate on the reduction of *forced labour* as the leading theme in anti-trafficking activities.

Clarifying the anti-trafficking agenda: the views of the leading agencies

Many of the leading agencies in Europe have come to contest the idea that the anti-trafficking activities should emphasis as much as they currently do the issue of infringement of immigration regulations. There is an increasing sense that the issue which ought to be focused on is the final *purposes* for which trafficking is undertaken as a criminal enterprise, rather than the routes by which these purposes are achieved. This means action to tackle the use of *forced labour* in employment situations across Europe, and to concentrate criminal penalties on the people who profit from such abuse, rather than those who are its victims.

The essence of trafficking, as defined in such key instruments as the UN Convention Against Transnational Organised Crime 2000 and its supplement Protocol to Prevent, Suppress and Punish Trafficking in Persons, is that the movement of the individual across a national frontier occurs *without her consent*, or when consent has been obtained by fraud or misrepresentation of the purpose of the crossing of the frontier.

In such circumstances trafficking is closely associated with the exaction of forced labour from the person concerned. Forced labour is defined for the purpose of international law in ILO Conventions No 29 and No 105, with Article 1(1) of C.29 stating that it shall mean “all work or service which is exacted under the menace of any penalty and for which the said person has not offered himself voluntarily.” In a comprehensive report on trafficking for forced labour in the UK, Anti-Slavery International has argued that:

“The most challenging question is how exploitative does the practice [of forced labour] have to be, how severe do the working conditions have to be, and to what extent does a worker have to be deceived in order to be considered a victim of trafficking and/or forced labour?” (Anti-Slavery International, 2006, p.7)

The Office for Democratic Institutions and Human Rights (ODIHR – the human rights division of the OSCE) has sponsored research into trafficking as it affects Roma people from Albania, Macedonia, Romania and Serbia and Montenegro. This has established that a key concern for anti-trafficking strategies is the need to understand of the *vulnerability* of some communities to becoming victims of THB. The negative stereo-typing and social exclusion which the Roma communities of the Balkans experience in their home states puts many in situations where consent to travel abroad is either obtained through fraudulent misrepresentation or physical coercion. Because of this an important part of the strategy to fight against THB will involve the entrenchment of human rights in countries of origin and the capacity of communities directly affected to make use of such rights to counter social exclusion. (ODIHR 2006)

The ODIHR report also discusses the need to work collaboratively with organisations in the Roma community (and by extension, with the organisations of other communities affected by THB), and to:

“develop local, regional and national networks of Roma NGOs and representatives capable of addressing trafficking in human beings within their communities. To empower Roma activists to address THB issues, capacity-building training programmes and workshops that highlight the nature of THB are needed. This should be done in an inclusive manner through coordinating activities with anti-trafficking organisations as well as with organisations working more generally towards the implementation of human rights.” (ODIHR 2006, p.1)

The ‘Christian Action and Networking Against Trafficking (CAT)’ project considers that “exploitation combined with deception/fraud or abuse of power” should be viewed as “the necessary and most important element of trafficking” (CAT 2007, p.11). The challenge from

this standpoint is to find ways in which the trafficked person can be empowered to act on her own behalf against traffickers ("strengthening self-determination to stop exploitation"). Practical steps to provide ways in which this can be done include making the tackling of the forced labour component of trafficking more central to strategies. Indicators of what constitutes forced labour should be developed, and mechanisms developed to promote a policy agenda aimed at securing 'decent work' for all developed. (CAT 2007, pps 23-4)

To summarise, the consensus amongst expert anti-trafficking networks is that trafficking needs primarily to be understood as an offense against human beings which involves the transportation of persons by means of the threat or use of force, or other forms of coercion including abduction and deception. The purpose of trafficking is to obtain control over the trafficked person to effect their exploitation through such means as forced prostitution, forced labour or services, slavery and practices similar to slavery.

The expert bodies are not inclined to view offenses against the regulation of immigration as a defining feature of trafficking, since trafficked might include persons with a legal entitlement to cross a national frontier and live and work in the country of destination. A citizen of an EU member state, with free movement rights in a second state, would be a victim of trafficking if her movement across a frontier took place without her informed consent for the purpose of subjecting her to forced labour in that second state.

From this perspective the expert bodies view the fight against trafficking as being dependent firstly on the empowerment of communities vulnerable to trafficking in countries of origin through the entrenchment of human rights and programmes aimed at securing social inclusion; and secondly on increasing the capacity of trafficked persons to act against conditions of forced labour in the destination country.

The response of national authorities, the Council of Europe and the EU

There has been a varied response to trafficking on the part of national governments across the EU but with an interest demonstrated in achieving coordination of anti-trafficking efforts through multi- and bi-lateral actions and the adoption of conventions and framework agreements where ever possible. What is present in many of these efforts however is a tendency to see trafficking as being primarily an offense against the integrity of national borders. Because of this there is a marked tendency to frame policies with broad immigration control perspectives.

Anti-Slavery International illustrates aspects of this approach in its discussion of the availability of specialist care and support in the UK (ASI 2006 part 4). A trafficked person escapes from an exploitative employer and presents herself to the authorities in the belief that she will receive assistance in meeting immediate needs for accommodation, support and a period of reflection. The response is that she is informed that without any sort of visa confirming the legal basis for her stay in the UK she cannot receive any form of assistance. A police officer told ASI researchers that he "felt that the police were rather biased against migrants and saw them as criminals or people who violated immigration rules, rather than as potential victims of crime." (ASI 2006, p. 13)

The UK is not alone in adopting this outlook. La Strada, the European Network on Trafficking in Human Beings, reports a general tendency amongst national governments to limit the concept of victimhood to a simplistic version of innocence, meaning, for example, that women who have ever at any time worked voluntarily in the sex industry cannot be regarded as trafficked persons. It argues that:

In many cases, trafficked persons cannot fall back on the support of the state because they have no legal residence status or cannot prove their identity. Moreover, they risk being detained, deported, prosecuted or punished for the illegality of their entry or stay, for having been involved in prostitution or other illegal activities, such as begging, or for other offences that are a direct consequence of their situation as trafficked persons, for example the use of false papers. In particular, women who are trafficked into the sex industry are faced with triple marginalisation: as women, as migrants and as prostitutes. The majority of people who have been trafficked would not dare to report it to the police or press charges out of (very concrete) fear of reprisals from their traffickers.
<http://www.lastradainternational.org/?main=traffickinghumanbeings§ion=keyproblems>

Across European countries, restrictive immigration policies have a negative impact on the situation of victims of THB. La Strada argues that “governments tend to treat trafficked persons primarily as unwanted economic migrants who should be deported right away. There is also an increasing demand for repressive measures against prostitution, such as criminalising clients. This adds to the marginalisation and stigmatisation of sex workers and increases their dependency on the services of third parties, thus making them more vulnerable to abuse.”

<http://www.lastradainternational.org/?main=traffickinghumanbeings§ion=rootcauses>

Support networks across Europe report that anti-trafficking activities on the part of the authorities typically take the form of raids on workplaces and the mass arrest of all persons believed to have irregular residence status, with no distinction made between victims of trafficking and voluntary migrants. Expedited deportation proceedings are

common, with the trafficked person having no opportunity to provide an account of her personal circumstances or to receive appropriate forms of aid and assistance.

Beyond the responses of national governments and authorities, European institutions show awareness of the deeper complexity of the issues involved. The Council of Europe has expressed concern that, “under the pressure of xenophobic movements, the authorities in certain host countries have been induced to take administrative measures, the effect of which was that situations not previously irregular actually became irregular, and newcomers were subjected to procedures taking no account of fundamental human rights.” (Council of Europe Recommendation 990 (1984)). Though at this time the Council was not referring specifically to THB, the situation of trafficked persons as a group of migrants whose situation has worsened in recent years as a result of ‘administrative measures’ can be seen as emblematic of these developments in policy.

Instruments exist at the level of European law and policy in the form of the EU Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings, the EU Council Directive 2004/81/EC on residence permits for victims of trafficking, and the Council of Europe Convention on Action Against Trafficking in Human Being No 197. The first of these requires the harmonisation of national policies on trafficking to be achieved by 2004, with the definition of trafficking used in each case to be consistent with the definition of trafficking provided in the Palermo Protocol.¹

The EU Council Directive provided for the issuing of temporary residence permits to victims of trafficking who have been the subject of “an action that facilitates illegal immigration provided that they cooperate with the competent authorities.” The Council of Europe Convention is a more ambitious instrument, requiring the establishment of a comprehensive framework for the protection and assistance of victims of THB.

¹ The Palermo Protocol is a United Nations agreement dating from 2000 which states that “*Trafficking in persons*” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the 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.”

Conclusions

As a platform founded to develop international cooperation on matters concerning the situation of undocumented migrants, PICUM is mindful that in commenting on the position of victims of trafficking it is straying into an area which is not strictly about the position of undocumented migrants. Nevertheless we make these comments because we are aware that the same type of approaches to the management and regulation of immigration which produce undocumented migrants (Flynn and Düvell, 2007) also have a significant negative impact on the plight of victims of THB.

This arises from the persistent elision of trafficking with the preventative immigration agenda means that victims of trafficking are too often converted into immigration control offenders. The consequences of this is that a group of people whose position as trafficked persons typically arises because of social exclusion and marginality in countries of origin are made to suffer further disempowerment in the destination countries because of the tendency on the part of the authorities to view them as, first and foremost, 'illegal immigrants'.

PICUM expresses its support for the initiatives being developed by the expert anti-trafficking networks which call for the disentanglement of trafficked persons from immigration control policy agendas and the development of strategies which maximise opportunities for victims to call on the support of police and employment protection agencies, as well as trade unions and other worker support networks, to act against criminal gangs and exploitative employers. The construction of a 'decent work' strategy, as advocated by the ILO, and its activation through the support of government agencies, trades unions, employer organisations and civil society networks, would give momentum to the sort of policies and actions which could sustain the support and solidarity which trafficked persons need in their struggles with criminal gangs and exploitative employers.

PICUM will be following the initiative of the ODIHR in the period ahead to establish 'national referral mechanisms' in the countries of Europe which will root protection and assistance for victims of THB in the practical work of agencies and civil society networks and will report on the relationship between these matters and the broader policy agenda on undocumented migrants on future occasions.

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