

Current Perception, Its Effect on the Various Dimensions of Human Trafficking

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Abstract : Although a human rights based approach to trafficking in human beings is often proclaimed in words, states seem to be reluctant to really implement such an approach. This article provides the necessary steps to put this approach into practice. One of the steps is the introduction of a Victim Assistance and Protection Package (VAPP), based on existing mechanisms for victim protection at the international, European, and national levels. A VAPP should apply to all victims of trafficking in human beings (THB) regardless of whether they cooperate with the authorities or not. The article furthermore considers the contribution of the criminalisation of those who intentionally make use of the services of victims of THB to a human rights based approach. This is suggested by Article 19 of the Convention on Action against Trafficking in Human Beings from the Council of Europe. In this regard the Swedish and the Dutch policy regarding prostitution are compared. The state obligations based on the international human rights documents are analysed in order to complete the picture of a human rights based approach to THB.

IndexTerms - Trafficking in Human Beings, Victim protection, State obligations, Criminalizing consumers, Prostitution.

I. INTRODUCTION

Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain. Trafficking can occur within a country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. Trafficking affects all regions and most countries of the world. While it is difficult to secure reliable information about patterns and numbers, our understanding about why trafficking happens has improved. Inequalities within and between countries, increasingly restrictive immigration policies and growing demand for cheap, disempowered labour are just some of the underlying causes that have been identified. The many factors that increase individual vulnerability to trafficking include poverty, violence and discrimination. The exploitation of individuals for profit has a long history and international efforts to address it can be traced back at least a century, well before the birth of the modern human rights system. However, it is only over the past decade that trafficking has become a major concern. During that same period, a comprehensive legal framework has developed around the issue.

These changes confirm that a fundamental shift has taken place in how the international community thinks about human exploitation. It also confirms a change in expectations of what Governments and others should be doing to deal with trafficking and to prevent it. Hence, the victim-centred approach is also gathering increased support from the international community.



Fig.1 Trafficking in Human Beings

Human rights form a central plank of the new understanding and there is now widespread acceptance of the need for a human rights-based approach to trafficking. As explained further in this Fact Sheet, such an approach requires understanding of the ways in which human rights violations arise throughout the trafficking cycle and of the ways in which States' obligations under international human rights law are engaged. It seeks to both identify and redress the discriminatory practices and unequal distribution of power that underlie trafficking, that maintain impunity for traffickers and that deny justice to victims.

International agreement on what constitutes "trafficking in persons" is very recent. In fact, it was not until the late 1990s that States began the task of separating out trafficking from other practices with which it was commonly associated such as facilitated irregular migration. The first-ever agreed definition of trafficking was incorporated into the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol). That definition has since been incorporated into many other legal and policy instruments as well as national laws.

II. Use Of Anti-Prostitution Laws To Combat Trafficking

In the absence of adequate anti-trafficking legislation, laws against prostitution, or against the exploitation of prostitution of others, are the laws most frequently being used to prosecute those who traffic women into prostitution. This was prevalent especially in Italy, Poland, Thailand, Ukraine, United Kingdom and to an extent, Belgium.³ The use of these laws has several effects. In several countries, such as Italy and the United Kingdom, exploitation of prostitution laws are generally used to target the 'worst cases' i.e. where deception, coercion and threats occur.



Fig.2 Combat Trafficking

The authorities have made a decision, formally or informally, not to focus on all cases of prostitution but rather the 'worst' cases. However, this continues the past practice of seeing trafficking as the same thing as the exploitation of prostitution. It would be clearer and more effective to have laws that reflect deception, coercion and threats to penalise trafficking rather than using exploitation of prostitution laws. The use of anti-prostitution laws to combat trafficking is problematic because of traditional, discriminatory attitudes of most law enforcement officials against sex workers. Attitudes towards prostitution may prevent many law enforcement officials from regarding women trafficked into prostitution as victims of a crime. Women trafficked into prostitution, are often treated instead as criminals to be prosecuted, rather than assisted, as was found to be the case in Colombia, Nigeria, Poland, Thailand and Ukraine. Equally, since prostitution tends to be seen as a crime against public order, if traffickers are penalised under anti-prostitution laws, those who are trafficked into prostitution are less likely to be able to seek legal redress or compensation because they are not regarded as victims of a crime. The use of laws punishing the exploitation of prostitution often means that traffickers higher up the chain in organized crime remain unpunished (see Chapter on Italy).

The most comprehensive criminal legislation against trafficking in persons encountered during the study, and the one reported to be most effective in prosecuting traffickers appeared to be that used in the United States. It not only sets out a definition that in practice seems simple and straightforward for prosecutors to use, but also introduces various ancillary offences such as forced labor and unlawful confiscation of documents. The fact that the definition of forced labor in the United States law includes the element of psychological coercion i.e. "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person" ⁴ is very significant because it ensures traffickers who have not engaged in explicit acts of violence or threats can also be punished. Due to the fact that trafficking is an extraordinarily complex crime and an ever-changing phenomenon, the use of an integrated multi-agency approach, i.e. specialised task forces of police, immigration, labour ministry officials or labour inspectors, prosecutors and NGO's to prosecute traffickers has proved effective in Belgium and the United States. This proved important also in enhancing the co-operation between immigration officials and police, which appeared to be an obstacle where in effective prosecution (for example in the United Kingdom). A multi-agency approach, piloted in Los Angeles in the United States, which includes Government ministries (departments) of labor, justice and specialized NGOs, was particularly successful. Exchange of information between law enforcement agencies in different countries worked best where personal relationships were developed between individuals in each of the countries (Italy, Nigeria and Ukraine).

III. VICTIM IDENTIFICATION

Victims of trafficking are often not identified and, as a result, are simply invisible. When victims of trafficking do come to official attention, they may be misidentified as illegal or smuggled migrants. This is significant because, as explained in the Recommended Principles and Guidelines, "a failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights" (guideline 2). If a trafficked person is not identified at all or is incorrectly identified as a criminal or an irregular or smuggled migrant, then this will directly affect that person's ability to access the rights to which she or he is entitled. In short, failure to quickly and accurately identify victims of trafficking renders any rights granted to such persons illusory.

The obligation to identify victims of trafficking is implied in all legal instruments that provide for victim protection and support. The Recommended Principles and Guidelines identify a range of practical steps that should be taken to ensure that victims of trafficking are quickly and accurately identified. These include preparing written identification tools such as guidelines and procedures that can be used to support identification; and training relevant officials (such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants) in accurate identification and the correct application of agreed guidelines and procedures.



Fig.3 Disaster Victim Identification

Victims who break free from their traffickers often find themselves in a situation of great insecurity and vulnerability. They may be physically injured as well as physically and/or emotionally traumatized. They may be afraid of retaliation. They are likely to have few, if any, means of subsistence. Unfortunately, the harm experienced by victims of trafficking does not necessarily cease when they come to the attention of the authorities. Mistreatment by public officials may result in a continuation of an exploitative situation or the emergence of a new one. The harm already done to victims can be compounded by failures to provide medical and other forms of support—or by linking it to an obligation to cooperate that victims may not be willing or able to meet.

The State in which a victim is located is responsible for providing that person with immediate protection and support. This responsibility becomes operational when the State knows or should know that an individual within its jurisdiction is a victim of trafficking. The principle is applicable to all countries in whose territory the victim is located. It applies to all trafficked persons, whether victims of national or transnational trafficking.

The first and most immediate obligation of that State is to ensure that the victim is protected from further exploitation and harm—from those who have already exploited that person as well as from anyone else. What this means in practice will depend on the circumstances of each case. The standard of due diligence, discussed at various points in this Fact Sheet, certainly requires States to take *reasonable measures* to this end. In most situations, reasonable protection from harm requires:

- Moving the trafficked person out of the place of exploitation to a place of safety;
- Attending to the immediate medical needs of the trafficked person;
- Assessing whether the trafficked person is under a particular risk of intimidation or retaliation.

IV. LEGAL ASSISTANCE AND INVOLVEMENT

That Trafficked persons have an important role to play and a legitimate interest in legal proceedings against their exploiters. A human rights approach to trafficking requires that all efforts should be made to ensure victims are able to participate in legal proceedings freely, safely and on the basis of full information.



Fig. 4 Human Trafficked

Victim involvement in legal proceedings can take different forms. Individuals who have been trafficked may provide evidence against their exploiters, either through written statements or in person, as part of a trial. They may also be called upon to provide a victim statement about the impact of the offence that could become part of a sentencing hearing. In civil proceedings against their exploiters, trafficked persons may be applicants and/or witnesses. Even a trafficked person who is unwilling or unable to testify still has a legitimate interest in the legal proceedings.

V. Conclusion

The judicial deliberations which have been the main subject of this Thesis are not only a textbook example of the challenges involved in the interpretation of the Rome Statute, its outcome is of paramount importance for the future development of the International Law in general and the law on crimes against humanity in particular.

Anecdotal evidence has proved that trafficking in human beings has affected more victims than the Jewish Holocaust, Rwanda Genocide, the Wars in Iraq, the Korean War, Vietnam, and both World Wars combined.³⁷⁰ This data is indeed most alarming. To recognize the promise of the Rome Statute and to effectively prosecute grave cases of trafficking in human beings,



FIG. 5 The future development of the International Law

The Court must look outside the situations to which international law has historically been applied otherwise, the Rome Statute will prove symbolic, at best. The thesis deals with the need for a specialized convention on Prevention of Crimes against Humanity, just like the Genocide and War Crimes Convention. It also elaborates the need to amend various Articles of the Rome Statute in order to remove ambiguity.

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