

Trafficking in Women Migrants

Over 15 years into states' implementation of the UN Trafficking in Persons Protocol,¹ there are clear discrepancies between how trafficking is understood in public discourse, national legislations, and the internationally agreed legal meaning.² In part because of this—and also because of governments playing to domestic political agendas—the concept of trafficking in persons is being expanded beyond the agreed framing, often prompted by spurious statistics on trafficking.³

One way in which this manifests is in the co-option of trafficking in persons by states as justification for anti-migration initiatives, including, but not limited to the imposition of restrictions on women's migration.⁴ As well as harming safe migration and migrant women's rights, expanding criminalisation and detention, this also undermines work to end trafficking in persons. Not every situation involving exploitation (including of migrants), constitutes trafficking. Mis- or over-using the issue, including by conflating trafficking with smuggling of migrants, undermines the seriousness of trafficking in persons.

Anti-trafficking policies are also being used to target migrant workers by raiding places of work (usually with migrants in irregular status getting detained and deported). This does not help trafficked persons, who are often returned alongside migrants, as states avoid their human rights obligations.

Trafficking as a concept is often misused to represent women in migration as inherently “vulnerable”, positioning them overwhelmingly as actual or potential victims of a crime rather than as rational economic actors with agency.

That this is done, often, simultaneously with states not complying with their obligations to trafficked persons demonstrates that states are not serious about addressing trafficking, merely using the issue – a human rights violation and a crime – as a political tool.

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol)

² Article 3(a) of the Trafficking in Persons Protocol sets out the three-part definition of trafficking following the act-means-purpose framework: “‘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”. The remainder of the Article sets out other considerations, particularly regarding children who are trafficked.

³ Joel Quirk and Julia O’Connell Davidson, *Moving beyond popular representations of trafficking and slavery, Popular and Political Representations*, Beyond Trafficking and Slavery Short Course: Volume 1, 2015, pp.11-12.

⁴ For example, in India, only women aged 30 and above are officially permitted to travel for employment to Gulf Countries, and further, their applications has to be processed via one of the six government agencies or through an online e-migrate system. See: Measures for Safety of Indian Women Workers in Gulf Countries, Press Information Bureau, Government of India, Ministry of Overseas Indian Affairs, 24 November 2011 at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=77505>; Rajya Sabha Debate, Question No.3226 Indian Migrant Domestic Workers in Gulf Countries, 15 December 2016 at <http://mea.gov.in/rajya-sabha.htm?dtl/27853/QUESTION+NO3226+INDIAN+MIGRANT+DOMESTIC+WORKERS+IN+GULF+COUNTRIES>

Real issues of women migrant workers who are trafficked are often ignored. For example, states continue to narrowly focus on sexual exploitation of women in the context of trafficking to the exclusion of initiatives focused on women workers in forced labour or other forms of labour exploitation that may constitute trafficking.⁵ Also, there is little understanding or attention given to the fact that migrant women workers may be trafficked even in regular migration programmes such as temporary or guest worker programmes (often called sponsorship or kafala systems or circular migration).⁶

When migrant women workers visas are tied to a particular employer, they have no opportunity for visa or work permit portability, have to pay fees for recruitment, and often are at increased risk of trafficking in persons. This is particularly acute for women migrant workers who often migrate through regular channels for jobs in under-regulated sectors such as domestic work, cleaning, hospitality, and agriculture.

States' obligations to trafficked persons and to preventing trafficking are more extensive than is covered here. The frameworks in international criminal and human rights law set out the requirements on states and those should be affirmed but do not need to be repeated in the Global Compact on Migration. These recommendations identify some key issues regarding trafficking within the migration context, focusing on the needs and rights of trafficked women.

The Global Compact should:

- Adhere to existing standards on and definitions of trafficking in persons and call on states to fulfill their obligations under the Trafficking in Persons Protocol without discrimination and in line with the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*;⁷
- Ensure the human rights of trafficked women are at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims;⁸
- Ensure that anti-trafficking measures do not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, refugees and asylum-seekers;⁹
- Refrain from using concerns about trafficking and people-smuggling to justify more intense border security, enforcement and criminalization which further penalizes migrants. Anti-trafficking policies should not be anti-migration.

⁵ Note that trafficking in persons, including into the sex sector, is not the same as sex work/prostitution though the two are often equated in state and non-state responses to trafficking. This conflation allows states to claim anti-trafficking action without addressing the egregious forms of harm that the Trafficking in Persons Protocol was intended to challenge – see: A.T. Gallagher and J.N. Ezeilo, The UN special rapporteur on trafficking: A turbulent decade in review, *Human Rights Quarterly*, Vol.37, No.4, 2015, pp. 913-940.

⁶ International Labor Recruitment Working Group, *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse*, ILRWG 2013, available at <https://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrwg-report.pdf>

⁷ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, E/2002/68/Add.1, 20 May 2002

⁸ *Ibid.*, Principle 1

⁹ *Ibid.*, based on Principle 3

- Improve processes to ensure the rapid and accurate identification of trafficked persons by actors with appropriate training involved in the reception, processing and detention of migrants;¹⁰
- Commit to providing individualised support and assistance to trafficked women, that is not contingent on their cooperation with the criminal justice system, in the country in which they are identified and if they return home or to a third country for as long as they need it; and ensure that trafficked persons have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible;¹¹
- Ensure that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody and will not be detained, charged or prosecuted for irregular entry or stay in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.¹²
- Recognize that even regular channels of migration may create conditions for trafficking of migrant workers, especially for women migrant workers in under-regulated sectors; temporary, guestworker or circular migration programmes must be reformed to eliminate institutionalized risks such as worker-paid recruitment fees, lack of documentation portability, and sponsorship schemes tying visas to a particular employer.

¹⁰ Ibid., see Guidelines 2(1),(2)

¹¹ Ibid., Guidelines 6(7), 9(1); Surtees, R. 2013. *After Trafficking: Experiences and Challenges in the (Re)integration of Trafficked Persons in the Greater Mekong Sub-region*. Bangkok: UNIAP/NEXUS Institute

¹² Ibid., based on Principle 7. See also Guidelines 2(5),(6); Council of Europe Convention on Action against Trafficking in Human Beings, Article 26.