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THE VULNERABILISATION OF TRAFFICKED CHILDREN: ESCAPING THE STRUCTURAL VIOLENCE OF GOVERNANCE PRACTICES IN THE EUROPEAN UNION

Élisa Narminio

SUMMARY

Child trafficking has been the object of increased concern over the past decades. 2020 marks the 30th anniversary of the UN Convention on the Rights of the Child, the 20th anniversary of the Palermo Protocol, and 2021 will see the 10th year of implementation of the EU Anti-Trafficking Directive. Despite growing awareness of the issue and a substantive legal and political arsenal to combat trafficking, numbers continue to rise.

This research focuses on the effects of anti-trafficking policies on children, a question not so much dealt with in political science due to the assumption that, by necessity, policies protect children. It finds that, despite the genuine intentions and hard work of many stakeholders, obstacles to protection are built into our socio-political and legal structures, creating cycles of vulnerability, even for children identified as trafficking victims.

This paper briefly outlines the main obstacles to child protection – linked to the concept of trafficking, the political ambivalence towards trafficked children, global socio-economic dynamics, poor victim identification and support –, and suggests a few avenues to improve the current system.



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INTRODUCTION

Child trafficking (CT) is one of the most acute transnational issues in need of a robust international legal and policy response. Although trafficking in human beings is not a new phenomenon, it has in recent years acquired a grave dimension worldwide in the context of globalisation.

The scope of the phenomenon of CT is difficult to measure precisely due to its hidden nature. Existing data is often difficult to compare due to methodological differences and is not systematically disaggregated by age of the victim, however sources such as UNICEF or the UNODC estimate that there are over one million children trafficked annually, representing 25 to 50% of all trafficking victims, and that the numbers are increasing.

Trafficking in human beings is the third largest in volume, second most profitable and fastest growing criminal industry globally, benefitting from “merchandise” that can be sold over and over again through networks of this multibillion industry. The commonplace understanding

is that of trafficking conducted through deviant criminal strategies. Many children, however, fall under the trafficking banner because of family exploitation, debt bondage further to labour migration, or a host of other, more complex, situations.

All countries in the EU are affected by CT, be it as states of origin, destination or transit. Interest in the issue of human trafficking has been on the rise in the past two decades. It has culminated in the adoption of international and regional legal instruments, most notably the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000), the European Union Directive 2011/36/EU (2011) and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (2015).

Whilst the international community has established a canvas of anti-trafficking laws and policies, professionals unanimously observe the failure of measures to durably protect children.

This research project analyses the governance practices arising from the current legal and political frameworks aimed at reducing the trafficking of children in the European Union (EU) and Southeast Asia (SEA), and the effects produced by those anti-trafficking policies on the children concerned. Drawing on a pluridisciplinary framework, it analyses the ways in which criminalization of migration affects and impacts children subjected to trafficking, in particular focusing on what is at stake when children, in the name of protection, are made into subjects of control.

Despite an increasing number of publications on the topic, little attention has been paid to:

- Child victims of human trafficking, in particular where they are subjected to labour exploitation;
- The links between international/regional/national understandings of the CT norm, and the possible distortion between original intent and implementation;
- The impacts of anti-trafficking policies on the children concerned.

Filling this gap will contribute to more efficient anti-child trafficking measures.

KEY FINDINGS

Significant progress has been made – and continues to be made – by countries worldwide towards institutionalising stronger anti-trafficking measures. The European Union has been one of the fore-runners in focusing efforts not only on criminalizing traffickers, but on preventing the trafficking from happening, and protecting the survivors.

What follows doesn't call into question the merits of having a CT definition, or the efforts made by stakeholders involved in anti-trafficking initiatives. It aims at increasing the efficiency of anti-trafficking policies by unearthing unintended consequences and causal mechanisms that have been insufficiently studied until now. This could hopefully contribute to attaining the objectives set: preventing children from being trafficked, and making sure that trafficking survivors are lifted durably out of exploitation.

The findings from the research indicate that the current governance of CT not only fails to protect victims; it often leads to structural violence for the children concerned, with the effect of vulnerabilising them even further.

Amongst causes that are well known and documented, the most preeminent are:

- Insufficient funding;
- Deficient training of stakeholders, leading to difficulties in a) locating the children, b) identifying them as minors, c) identifying them as victims rather than criminals;
- Inadequate support for the children throughout the process;
- Inconsistencies in communication amongst stakeholders;
- Red tape.

Results emerging from this project's literature review and fieldwork identify key procedural and administrative impediments to protection, including:

- Poor operability of the legal category of "CT" in courts, as witnessed by the handful of cases brought to court under the trafficking offense;
- When a trafficking case is identified, a sizeable cohort of children disappears for fear of retribution by the traffickers or for fear of the destination country's judgement;

- When victims choose to go through the legal and administrative procedure, their CT status is rarely recognised for lack of material proof and adequate court environments allowing children to deliver their testimony;
- Sizeable numbers of young migrant CT victims are unable to switch from irregular to legal status;
- Although the EU funds anti-trafficking projects in source, transit and destination countries, there is little follow-through and follow-up (see for instance the European Court of Auditors' Special report no 09/2017).

The research also uncovered more counter-intuitive mechanisms, which are preventing children from being successfully lifted out of trafficking:

- From a legal perspective alone, the fight against CT is spread across a variety of international, regional and national instruments, embedding it in a layer-cake of administrative, social and criminal law. Instead of offering strong guarantees for trafficking victims, it disseminates protective measures over various jurisdictions. Children are categorized at times in overlapping categories (trafficking victim, (irregular) migrant, asylum seeker, unaccompanied minor, ...), and at times in a vacuum;
- Biases in the legal category of "human trafficking": trafficking is defined in terms of modern "slavery" with clear dichotomies (trafficker-victim; active-passive; consent-dissent) and the idea that trafficking victims have not taken part in their trafficking journey, which obscures a majority of cases where these boundaries are much more fluid. Not only does this limit the number of trafficking cases it represents, it also feeds into collective representations about trafficking, affecting law enforcement methods. E.g. police is quicker to investigate whether a young girl in sex exploitation is a trafficking victim, than where a young boy stealing on the account of an organisation or working illegally on a construction site is concerned;
- This feeds into the adverse effects of "norm variation", i.e. the differences in implementation of what constitutes a case of trafficking, on the one hand, and the changes at the national level in policies with regards to migrants and trafficking victims. Fieldwork in the EU and SEA have shown the adverse effects created on the children by such variations, both in terms of short-term and long-term exploitation;

- A number of unintended consequences of laws and policies established in good faith have adverse consequence on the protection of children. To cite only one, most "shelters", both in the EU and SEA, are more akin to prisons. Whereas European legislations provide for protective measures for unaccompanied minors, lack of funding or space often means that children do not have access to the healthcare, education and housing that they are entitled to. Adding to this the duration of procedures, staying within the system that is meant to provide them with protection, can lead to increased vulnerability to trafficking down the line.

Lastly, for anti-CT to be effective, we must take stock – and solve – political obstacles, in particular the political ambivalence towards CT victims who are simultaneously irregular migrants. In a nutshell, young migrants are a high priority on two conflicting policy agendas: the global determination to protect children, and the objective to deter irregular migration. Several mechanisms cascade from this:

- The political cost of upholding the rights of migrants, even where these migrants are child victims of human rights violations;
- There are occurrences of conscious instrumentalisation of the CT norm to political and geostrategic ends;
- Discrepancies between different state services, who act on different mandates – i.e. protection of trafficked children v. removal of irregular migrants –, creating stark instability for the children concerned.

All these elements taken together account for structural violence embedded in our legal and political cycle, despite genuine intentions at improving the fate of trafficked children, and a number of feedback loops that amplify vulnerability instead of stemming it.

POLICY RECOMMENDATIONS

There is no quick-fix solution to this complex issue. Yet a number of measures can improve the current situation:

Improve the framing of the CT issue:

- Systematically measure the impact of policies on trafficked children;
- Continue to conduct research to fill knowledge gaps;
- Correct the ambivalence of vocabulary (e.g. “sex workers” and their “pimps” when talking about child sexual exploitation and their abusers) in general communication;
- Steer away from the ambivalence towards migration as an object of security, and the migration-trafficking nexus that tend to criminalise trafficking victims;
- Beware of the dichotomy of “good/desirable” vs “bad/undesirable” migrants

Streamline efforts:

- Increase sharing of data between countries, especially in the context of the Schengen Information System’s “missing children alert”, which could ensure the early identification of child victims, if implemented with appropriate safeguards;
- Continue to improve collaboration between stakeholders within countries (social workers, police, judges, teachers, ...) and across borders, by increasing their training, and the presence and mandate of focal points and liaison officers;
- Extend the mandate of the European Public Prosecutor’s Office to include CT;

Get rid of built-in systemic ambivalences towards the protection of trafficked children:

- Take stock of vested interests and break structural deadlocks that favour anti-crime and anti-immigrant approaches over protection;
- Solve the inconsistencies between the different agencies or departments in charge of trafficked children, within countries and across borders;

Review priorities and amplify efforts:

- Work on devising a strategy to address the root-causes of CT, which are recognised as the most critical challenge to successful anti-CT policies in most legal preambles, yet are not spelled out further, contrary to repatriation procedures and criminal law enforcement mechanisms;
- Favour holistic frameworks focused on sustainable development of fragile communities, through general socio-economic measures targeting the alleviation of poverty, access to education, safe migration options, access to secure livelihoods;
- Increase the human and financial means dedicated to detecting trafficked children, and to accommodating their educational, health, housing and other basic needs;
- Focus efforts in at-risk communities on building concrete alternatives to exploitative labour by deploying better social support, education, and work opportunities. Developing high-value underutilized traditional skills, for instance, is much more effective than additional prevention campaigns.

SUGGESTED READING

Aradau, Claudia. Rethinking trafficking in women: Politics out of security. Springer, 2008.

Bhabha, Jacqueline. Child migration and human rights in a global age. Princeton University Press, 2014.

Europol. Situation Report. Trafficking in human beings in the EU. The Hague, February 2016. Document ref no: 765175.

Huijsmans, Roy, and Simon Baker. «Child trafficking: 'Worst form' of child labour, or worst approach to young migrants?» Development and Change 43.4 (2012): 919-946.

Howard, Neil. Child trafficking, youth labour mobility and the politics of protection. Basingstoke, UK: Palgrave Macmillan, 2017.

United Nations Office on Drugs and Crime (UNODC). Global report on trafficking in persons. 2018.

Élisa Narminio is completing her thesis within the framework of an MSCA-funded GEM-STONES European Joint Doctorate between the Université libre de Bruxelles (BE) and Waseda University (JP).

The author is currently working on policies associating the private sector to anti-trafficking efforts. Feel free to get in touch for further information.

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elisa.narminio@gem-stones.eu

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