

# CHEAP LIVES

## Countering human trafficking: considerations and constraints

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In May 2006 the South African Law Reform Commission released a discussion paper and draft legislation on human trafficking for public comment by the end of June this year. In order to successfully identify, investigate and prosecute cases of trafficking, law enforcement agencies need a clear understanding of what constitutes trafficking. But human trafficking is a slippery concept – frequently confused with human smuggling or used as a blanket term for the sexual exploitation of women and children. In evaluating national and international research on the issue, this article finds that understanding the extent and nature of the problem is complicated, not only by contending definitions, but also by the lack of representative data about trafficking nationally and internationally.

**T**he idea of human beings being traded, exploited and abused challenges our very notion of civilisation and demands a response from governments, non-governmental organisations, law enforcement agencies and social service support structures. Yet human trafficking is a slippery concept, something that is hard to pin down and come to grips with. It is frequently confused in the media with human smuggling, which involves assisting people to illegally cross borders, often for exorbitant fees. Trafficking is also sometimes used as a blanket term for the sexual exploitation of women and children that constitutes much of the writing about this phenomenon.

This article will evaluate national and international research efforts to understand the nature and patterns of human trafficking, and will suggest that more rigorous quantitative research is not only possible, but essential to dealing effectively with the problem. The article argues that the numbers of

trafficking victims quoted by NGOs and governments tend to be based on estimates that are frequently inflated. Such overestimations, while successful in capturing public attention and generating moral outrage, do not provide a sound basis for policy making and resource allocation. Furthermore, it is vital for law enforcement agencies to have a clear understanding of what practices constitute trafficking, in order to successfully identify, investigate and prosecute such cases. Without a clear definition and understanding of what needs to be prevented and controlled, an effective response is impossible.

### **Concerns about trafficking: a background**

It is important at the outset to consider the origins of international actions dealing with the problem of human trafficking. According to sex worker rights activist, Jo Doezema, concern about the trafficking (particularly of women and children) was born out of the early social purity movement which developed the stereotype of “white adolescent girls who were

drugged and abducted by sinister immigrant procurers, waking up to find themselves captive in some infernal foreign brothel, where they were subject to the pornographic whims of sadistic, non-white pimps and brothel masters.”<sup>1</sup> Doezema argues that research done at the time established that most of the alleged trafficking victims were in fact sex workers who had migrated in search of better opportunities.

Nevertheless, the result of the successful campaign of the social purity movement was two international instruments: The International Agreement for the Suppression of the White Slave Trade, Paris (1904) and the International Convention for the Suppression of the White Slave Traffic (1910). This was followed by the adoption of two Conventions by the League of Nations: The International Convention to Combat the Traffic in Women and Children (1921) and the International Convention for the Suppression of the Traffic in Women of Full Age (1933).<sup>2</sup>

Eleven years later the United Nations adopted the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (which combined and replaced earlier agreements). The 1949 Convention conflated trafficking and prostitution, stating that “prostitution ... and the traffic in persons for the purposes of prostitution are incompatible with the dignity and worth of the human person.”<sup>3</sup> Doezema notes that after 1949 international concern about trafficking abated until the mid-1980s when feminist concerns about sex tourism brought it back onto the agenda.

Doezema and Alison Murray documented the political processes leading up to the adoption of the more recent *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Organised Crime* (hereafter referred to as the Palermo Protocol).<sup>4</sup> They note that organisations such as the Coalition Against the Trafficking of Women (CATW) played a significant role in determining the nature and scope of the definition of trafficking that was ultimately adopted. This definition reads as follows:

- (a) “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 purposes 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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.<sup>5</sup>

The emphasis on sexual exploitation and the focus on women and children (in the title) are indications of the influence exerted by lobbying groups.

#### **Defining what it is we want to control**

The Palermo Protocol, exists (as its name suggests) within the context of the effort to curb and prosecute organised crime. The definition contained in the Protocol is extremely broad, and purposefully so. It seeks to provide states that use it in the formulation of domestic legislation with legal ammunition to prosecute all those involved in the process of recruiting individuals and transferring them into situations of extreme exploitation.

Yet, ironically, in the effort to cast the net widely enough to capture all the perpetrators in the chain of deception and abuse, the definition of trafficking becomes so broad as to include almost any act through which an individual ends up in an

exploitative situation. Indeed, there is not even agreement about what constitutes exploitation and a commonsense interpretation of the concept usually prevails.

Trying to establish exactly what it is that we want to control is muddled by the politics of sex, which divides organisations acting in support of women's rights into two camps. Simply put, those represented by organisations such as the Coalition Against Trafficking in Women (CATW) define prostitution as sexual exploitation regardless of whether women who engage in prostitution do so willingly, or through coercion. Proponents of this position hold that prostitution is a violation of women's rights and that any woman who apparently willingly engages in prostitution is merely a victim of male domination.

Researchers who share this analysis purposefully and consciously conflate prostitution and trafficking, arguing that trafficking cannot be separated from prostitution. They reject "arguments that redefine and seek to legitimate prostitution as 'sex work'".<sup>6</sup> Many of the research reports on human trafficking written by supporters of this point of view argue that the trade in women and children is not only huge, but growing. They point to the demand for prostitutes and the allegedly large profits that can be derived from the trade as causal factors of trafficking.<sup>7</sup>

On the other side of the ideological divide are those groups and organisations representing the rights of sex workers. Organisations such as the Network of Sex Work Projects (NSWP) and the Global Alliance Against Trafficking in Women (GAATW) recognise that women may choose to sell sex, and argue that this is a legitimate choice and one that should not prevent the women who make this choice from being protected against exploitation and violence.

This ideological divide may seem irrelevant to the important task of preventing trafficking from occurring; however, that is not the case. The confusion of definitions presents researchers and law enforcement officials alike with an enormous challenge. Where are we to focus our attention? How are we to count the number of affected people? How do police officers distinguish between self-identified sex workers who have been abused, raped

or exploited, and victims of trafficking? Who qualifies for victim support?

The answers to these questions are not clear and the debate about where we draw the lines in distinguishing trafficking from other forms of abuse and exploitation has to be engaged with more actively if we are to put in place effective policies to assist victims, and laws to prosecute perpetrators.

Kauko Aromaa correctly identifies that uniform definitions and accurate measurements of trafficking are essential since "any reallocation of control or support resources is done in the face of competition where the 'larger' social problem receives more than the 'smaller' one."<sup>8</sup> He notes the enormous difficulties associated with quantifying something that is so difficult to define: "[T]he situation where a crime is characterised by an absence of the unity of time, place, perpetrator and activity makes the counting exercise particularly demanding [as in the case of trafficking]."<sup>9</sup> Not only do these factors hinder quantification of the problem of trafficking, they also hinder law enforcement.

Aromaa notes that there is little experience of how to apply legal trafficking provisions. He reports on a number of informal interviews conducted with Finnish law enforcement officials to gather their views, during which one official said that the broadness of the definition meant that at least something could be pinned on traffickers, while others pointed to the difficulties in locating and identifying victims.

In one interview a law enforcement official raised the problem that victims of trafficking do not wish to be regarded as such – a point that Kauko later picks up again in relation to victim assistance, saying that the reluctance of 'victims' to identify themselves as such hampers investigations which invariably rely on victim statements. He quotes the police officer saying:

It is very hard to identify a victim who does not co-operate, or as often happens, denies his/her victim status, does not accept our view of him/her as a potential or real victim. Then he/she has no reason to co-operate, on

the contrary, he/she will try to escape us who are trying to help him/her. It is also not clear that if the victim's role is not beneficial to the presumed victim he/she will have no reason to come to us – all we can do is send him/her back and he/she knows this. The only way to improve this situation could be if we would adopt a solution where the victim status is accompanied by some significant benefits – such as a permit to stay in the country, witness protection schemes, etc.<sup>10</sup>

What is not clear is why, when so-called victims do not wish to be defined as such, there is an insistence that they should be. This kind of thinking is pervasive in the anti-trafficking movement and appears to be a consequence of the view that no woman would choose to do sex work and that all sex workers are by definition exploited. In fact, Kauko and the law enforcement official he quotes go even further, suggesting that some inducement should be offered to supposed victims to define themselves as such, so that a prosecution can follow.

However, this suggestion could have dangerous consequences. Not only could it lead to the exploitation of a vulnerable person by law enforcement agencies to show that they are actively pursuing so-called traffickers, but it places a resource burden on the state which few countries outside the developed world could afford.

Perhaps a more appropriate definition of trafficking for purposes of sexual exploitation, and one that would prevent self-identified migrant sex workers from being identified as victims of trafficking, is that adopted by the Foundation Against Trafficking in Women (STV), a Netherlands-based organisation. They hold that:

Trafficking [can be defined] as the process in which migrant women are brought into prostitution through the use of coercion, deceit, abuse or violence and in which they are denied fundamental human rights and freedoms such as the right to decide to work as a prostitute or not, the right to decide on the conditions of work, the right to enter and

leave the sex industry, the right to refuse certain customers, the right to refuse certain sexual acts, the right of freedom of movement, the right not to be exploited, and so forth. If trafficking is defined in a broader sense it can apply not only to prostitution, but also to other forms of labour...<sup>11</sup>

Participants in a workshop held in February 2006 by the Institute for Security Studies suggested that the inability (physical or material) of a victim to remove him/herself from a situation of exploitation should be identified as a feature of trafficking in addition to coercion, deception and force, which are features of the recruitment process. Narrowing the definition in this way may facilitate law enforcement and assist in the identification of victims.

The ideological divide in relation to prostitution and sexual exploitation is set to remain. In the meantime, there is little point in South Africans establishing new laws and dedicating resources to combating trafficking until there is clear agreement about what it is that needs to be prevented, stopped and controlled.

#### **Assessing research on trafficking**

Understanding the extent and nature of the problem of trafficking is complicated, not only by contending definitions, but also by the fact that there is so little credible, representative data about trafficking nationally and internationally. Much of the literature laments the absence of data about the prevalence of trafficking and yet, reaches the conclusion that it is a 'growing' problem. The reason given for the inability of researchers to quantify the problem is that the industry is hidden and inaccessible. In the same breath researchers quote one another, claiming that perpetrators are making huge profits from the trafficking industry.

US researcher, Thomas Steinfatt, commented extensively on this tendency, and consequently developed a workable methodology to determine the number of women and children trafficked into the sex work industry in Cambodia.<sup>12</sup> Steinfatt stated that "[I]t appears to be common practice in statements about trafficking to claim that estimating

the number of persons trafficked into sexual labour is difficult to impossible, and then to present unfounded guesses as to these same estimates as though they were numbers to be relied upon."<sup>13</sup>

Steinfatt et al critique the tendency of NGO researchers to reach estimations of prevalence on the basis of interviews with so-called experts:

This process of asking people who work for an NGO or governmental agency in a specific content area how big they think a problem is, may be likened to asking expert baseball players of long standing to estimate the number of persons currently playing baseball in their country. Being an expert at baseball does not imply knowledge or credibility concerning the number of baseball players. Without a scientific study to back up the estimate, players can offer no more than a wild guess even though they are quite familiar with the game of baseball, with many other baseball players and managers, and with the lore of baseball which may contain a 'number of players' guess that 'everyone knows is true'. The average of a set of wild guesses is simply an average wild guess. It does not take much effort to 'make public' a wild guess, and then have a second party refer to this guess as a 'statistic', attempting to provide the guess with an aura of credibility.<sup>14</sup>

The authors argue that the large numbers frequently quoted in anti-trafficking literature often serve the interests of the quoted organisations, those that benefit from funding for anti-trafficking work. They state that "[I]f persons with a financial stake in the outcome are allowed to create numbers that affect the size of these donations, then the recipe and motivation for cheating have been created."<sup>15</sup>

In a 2003 paper, migration experts Loren Landau and Karen Jacobsen considered the methodological shortcomings of much of the research on forced migration and internally displaced people. Like research on human trafficking, research on forced migration is defined by a dual imperative: to understand and record the phenomenon and,

perhaps even more importantly, to help the people caught up in these situations. This means that more often than not, research reports are aimed at providing new insights and solutions to policy problems. This, Landau and Jacobsen argue, places enormous importance on ensuring that the research that is conducted is methodologically sound.

Research that is not methodologically sound not only brings into question the area of research (which in the case of human trafficking is sometimes viewed as research in furtherance of political agendas rather than a response to a real growing problem) but also risks reaching wrong conclusions that in turn will lead to inappropriate, and perhaps harmful, policies."<sup>16</sup>

Research into forced migration and research into human trafficking are subject to similar constraints. In both cases victims are hard to access and identify, may speak a language that is not native to the country in which they end up, and may be involved in hidden criminal activity. Although these constraints present researchers with a formidable challenge, particularly when doing quantitative research, they cannot be ignored when designing methodologies.

Landau and Jacobsen, somewhat more generously than Steinfatt, put the lack of rigour in their field down to 'advocacy research': "where a researcher already knows what she wants to see and say, and comes away from the research having 'proved' it. Although those falling into this trap are often well meaning, this kind of research risks doing refugees a disservice and potentially discredits other academics working in the field. It encourages widespread acceptance of unsubstantiated facts that bolster a sense of permanent crisis and disaster."<sup>17</sup> This statement could equally be applied to research on human trafficking.

On substantive issues of methodology, Landau and Jacobsen argue that few of the studies on forced migration provide a detailed descriptive and critical account of the methodologies used, moreover, they also use techniques such as 'snowballing', which, if the intent is to develop a representative sample, are flawed.

That is not to say that snowballing – the practice of identifying research subjects through consultation with informants – is not useful or appropriate in many contexts. It cannot, however, be used as the methodological basis for the development of representative samples, or as the basis from which generalised conclusions can be drawn – as has been the case in much of the reporting on human trafficking.

Authors Frank Laczko and Marco Gramegna, researchers for the International Organisation for Migration in Geneva, grapple with the methodological challenges of doing research on human trafficking in a journal article titled, *Developing Better Indicators of Human Trafficking*.<sup>18</sup> They, like others, note that “despite the growing literature on human trafficking, much of the information on the actual number of persons trafficked is unclear and relatively few studies are based on extensive research.”<sup>19</sup>

Laczko and Gramegna note that, while there are a number of agencies that collect data on victims of trafficking, this data is seldom systematically analysed. They refer to a 2001 International Organisation on Migration (IOM) project in the Balkans to create a database on trafficking. While this would be one way of creating baseline data from which trends and patterns could be detected, they identify as a major constraint the fact that few governments systematically collect data on trafficking. “[I]t is still common in many countries to mingle data relating to trafficking, smuggling and irregular migration.”<sup>20</sup>

In South Africa combating human trafficking has become a priority for the National Prosecuting Authority. The IOM and other organisations are providing law enforcement officials with training in how to identify and assist victims of trafficking, and a number of non-governmental organisations provide services to victims of trafficking.

These factors suggest that the collection and systematic analysis of data from all these sources about victims of trafficking could considerably aid our understanding of the nature and extent of the phenomenon. Such an exercise would require co-operation between the state and NGOs (for which

there is considerable precedent in this field); an agreed method of gathering and recording information from victims; and a centrally administered database. In the long term it is not impossible to imagine that such a system may act as an early warning system for law enforcement officials if trends are monitored and regularly reported on.

The findings reported by Laczko and Gramegna from data collected in the Balkans challenge conventional wisdom about the victims of trafficking and the recruitment process. Given that the assumptions made about causal factors of trafficking in Southern Africa seem to be based on a commonsense understanding of what causes vulnerability, the lessons from the Balkans should be taken seriously.

The findings from the Balkans data analysis show that:

- roughly a third of the identified victims came from rural areas and most did not classify themselves as very poor;
- almost half of the recruiters were women; and
- 8% of victims had been trafficked previously.

This latter finding suggests that naivete is not necessarily a factor in causing vulnerability, indeed it suggests agency on behalf of the victim. While the findings seem to support the notion that most trafficking occurs into the sex industry, this is likely to be biased by the fact that it is ‘easier’ to identify and find victims in this industry than it is to find victims in other sectors, because the industry is monitored by law enforcement officials.

A 2003 report by the International Organisation for Migration (IOM) on the trafficking of women and children for purposes of sexual exploitation in South and Southern Africa states that the push and pull factors fuelling the trade in women and children include the commoditisation of women, poverty, and, in the case of southern Africa, porous borders. The IOM report notes that the working conditions of women trafficked into the industry are extremely exploitative and include debt-bondage, long working hours, a limited right to refuse clients, and removal of their freedom of movement.<sup>21</sup>

Unfortunately it is impossible to know whether women who are not trafficked may be vulnerable to similar levels of exploitation; or what the particular factors are that make some women, who share the same economic and social situation, more vulnerable to being trafficked than others; or whether the conditions under which trafficked women work in the sex industry differs significantly from those experienced by voluntary sex workers.

### A way forward for South Africa

Drawing on the methodologies of authors such as Steinfatt who have managed to find a way of estimating, within a fair margin of accuracy, the number of trafficked persons in the sex work industry, and repeating such research in South Africa, would contribute baseline data to discussions about control and prevention. Combining that with qualitative research of inter-governmental organisations (IGOs) and NGOs would provide a depth of understanding about the character of the problem.

Social science researchers could also benefit from considering the methodologies employed by public health researchers who have had to grapple with reaching hidden populations. It is vital that, as researchers who wish to positively assist policy makers, we begin to find ways to gather information that can inform resource allocation and victim assistance programmes.

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### Endnotes

- 1 Quoted in J Doezema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, in K Kempadoo and J Doezema (eds), *Global Sex Workers: Rights, Resistance, Redefinition*, Routledge, 1998, p 36.
- 2 Ibid.
- 3 Quoted in Doezema, p 38.
- 4 Ibid.
- 5 Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime*.

- 6 J Raymond et al, *A Comparative Study of Women Trafficked in the Migration Process: Patters, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela and the United States)*, Coalition Against Trafficking in Women, 2002, p 3.
- 7 See for example DM Hughes, *The 'Natasha' Trade: Transnational Sex Trafficking*, *National Institute of Justice Journal*, January 2001.
- 8 K Aromaa, *Trafficking in Human Beings: Uniform Definitions for Better Measuring and for Effective Counter-Measures*, paper presented at the ISPAC International Conference on Measuring Human Trafficking – Complexities and Pitfalls, Courmayeur, Mont Blanc, Italy, 2 – 4 December 2005, p 2.
- 9 Ibid., p 3.
- 10 Ibid., p 5.
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- 12 Thomas Steinfatt, Simon Baker and Allan Beesey, *Measuring the Number of Trafficked Women and Children in Cambodia: 2002*, presented at the Human Rights Challenge of Globalization in Asia-Pacific-US: The Trafficking in Persons, Especially Women and Children, Globalization Research Centre, University of Honolulu, Hawaii, 13 – 15 November 2002.
- 13 Ibid., p 3.
- 14 Ibid, p 2.
- 15 Ibid, p3.
- 16 K Jacobsen and L Landau, *Researching Refugees: Some Methodological and Ethical Considerations in Social Science and Forced Migration*, *Forced Migration Working Paper Series 2*, pp 3 – 4.
- 17 Ibid., p 4.
- 18 F Laczó and M Gramegna, *Developing Better Indicators of Human Trafficking*, *Brown Journal of World Affairs*, Vol X, Issue 1, Summer/Fall 2003.
- 19 Ibid., p 180.
- 20 Ibid., p 181.
- 21 Martens, Pieczkowski et al., 2003.