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Rights and responsibilities in trafficking for forced labour: Migration Regimes, Labour law and Welfare States

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Summary

Trafficking in human beings is often associated with women and girls and especially the sex industry. Gradually information is getting through more widely about cases of exploitation in domestic work, agriculture, hospitality and construction, too. In this paper I add to the conventional picture of trafficking in human beings by illustrating that trafficking for labour occurs in a long list of industries by discussing the outcomes of a recent collaborative research project across Europe

(<http://www.esf.org/activities/eurocores/programmes/ecrp/ecrp-i-2005.html>).

I put forward an argument that vulnerability to labour exploitation is often exacerbated by current complex and restrictive migration regimes, the complexity and restrictive nature of labour laws and the harsh exclusions from welfare provisions in several European states. I suggest that cosmopolitanism is a good starting-point for addressing these issues. Usually cosmopolitanism is associated with duties across borders but in an age of migration the duties of states and their 'global citizens' are as much towards their disenfranchised counterparts within their countries. This means that creating accessible human rights involves initiatives in countries of origin, transit and destination; these should be supported by cross-border collaboration and social investment. Therefore campaigns of solidarity with trafficked persons and measures to prevent trafficking should be directed both to national provisions and international law. I also sketch some implication of cosmopolitanism for individual duties to combat trafficking and transform the regimes that exacerbate it.

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Introduction

With the commemorations of the abolition of the transatlantic slave trade in 2007 we might think that slavery is a phenomenon of the past. Unfortunately slavery has in practice never been abolished with examples currently known in the worst forms of child labour, forced and bonded labour, slavery based on descent, and trafficking in human beings the most important forms of contemporary slavery. (See van den Anker, 2004) Recent research indicates that trafficking in human beings occurs not only into the sex industry but also into a long list of other industries (van den Anker, 2006a). Some of the industries in Europe in which cases of trafficking were found recently include construction, shipping, agriculture, food packaging, hospitality, domestic work and care, prostitution, and criminal activities such as forced begging. The attention for trafficked persons in other industries is well below the level of attention paid to trafficking for sexual exploitation. This is probably due to a set of factors, including the construction of women trafficked into the sex industry as ‘deserving victims’, separating them from sex workers who ‘freely’ opted for this type of work as well as from ‘cunning deceivers’ who come into the country illegally to work without permit in all kinds of other industries. As we will see later, ‘illegality’ is not always part of the story and should not be the focus of attention in cases of trafficking anyway, as the human rights violations people experience should instead be the basis for the response of services. The separation of sex workers into categories is also unhelpful and does not reflect the complexity of personal experiences that lead to ending up in this type of work. The debate on trafficking for sexual exploitation was for a long time polarised into abolitionists and liberals; the question of how to support all trafficked persons needs to address why people’s options to enter and leave a job are restricted and not whether or not it is moral for them to do the work they do.

The most recent international law on trafficking in persons refers to both the sex industry and other industries and places a duty on governments to harmonise their laws in the area with the Palermo Protocol (the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime)and the Council of Europe Convention on Action Against trafficking in Human beings.

Whereas the media, the police and layers of government focus on the criminalisation of trafficking by prosecuting both traffickers and ‘illegal’ migrants, NGOs have persistently campaigned for the recognition of trafficking as a human rights issue. (van den Anker, 2006b) Of course, human rights can also be approached by emphasising the punishment for

violations: however, the punishment angle in international human rights law is arguably less important than and should at least be accompanied by prevention of the violation in the first place and adequate provisions for the support of victims. Moreover, whereas the first internationally agreed definition of trafficking was developed in an optional protocol to the United Nations Convention Against Transnational Organised Crime there is a host of human rights instruments that are violated when trafficking occurs. Researchers are increasingly noticing that the transnational organised crime networks may not play the largest role in the trafficking of human beings (van den Anker, 2008).

Human rights approaches to trafficking for forced labour are of high importance in preventing trafficked persons from being deported on the basis of migration law violations; however, human rights discourse has a notorious duality at its core. This is the mix of nationalist perspective where human rights are those rights that protect the citizen from their government with a cosmopolitan perspective which emphasises the universality of human rights and the transnational solidarity with people whose human rights are not protected. (van den Anker, 2005) Here I argue that a cosmopolitan approach would assist in long-term prevention of trafficking for forced labour especially if we recognise that cosmopolitanism also entails duties to people without citizenship status in our own country.

Migration regimes

Migrants are not the only people with a vulnerability to trafficking; there are known cases of trafficking within borders. In the UK, for example, some young homeless men were taken from London to the West Country and had to work without pay on building drives. (Big Issue, 18-24 June 2007) Still, complex and restrictive migration regimes contribute to migrants' vulnerability to trafficking and other forms of exploitation. It is no coincidence that the growth in trafficking has taken place during a period where there has been an increasing international demand for migrant workers, which has not been adequately acknowledged or facilitated. Lack of regular migration opportunities to take up work in other countries and the fact that many migrants are looking for work abroad as a means of survival, rather than an opportunity to improve their standards of living, has left migrants with little choice but to rely on smugglers or traffickers to access these jobs. (Kaye, 2003)

Trafficking is often associated with forced transportation, and sometimes this is true. However, more often migrants decide to travel either on the basis of fleeing oppression, or as part of an employment strategy looking for a job abroad. The hold over trafficked persons is a mixture of threatening, violence, debt bondage and deception. (For more details see van den Anker 2006a) The role of the globalisation of capitalism mustn't be underestimated. The demand in industrialised countries for 'dirty, dangerous and degrading labour' together with global mass media adding to the glamour of living in Western countries form the factors that attract people who do not have the opportunity to create satisfactory livelihoods in their own country through war, conflict, domestic violence, patriarchy, ethnic discrimination, poverty, and increased living expenses. These pressures mean that people take increasing risk in their migration strategy.

The regimes governing migration in Europe have become stricter in how many people they welcome and in what categories of people have free legal access to border crossing. (Picum, 2007) This means more people resort to the services of smugglers. The distinction between smugglers and traffickers is officially very clear: traffickers force people to travel and to work under exploitative circumstances after ending up in the country of destination;

smugglers provide a service for people who want to cross borders illegally. In reality these distinctions are not as clear-cut. There may be all sorts of pressures from smugglers on their 'clients' and only afterwards does it become clear whether labour exploitation is involved. Yet, even if the group responsible for transport and border crossings does not provide a link with exploitative labour, migrants are often vulnerable to exploitation even if they enter the country legally. There is a trajectory of compliance where many migrants are semi-compliant and therefore vulnerable to exploitative employers threatening denunciation to the authorities which would mean deportation. Many people also move in and out of compliance for example when temporary visa run out or students work longer hours than allowed on their student visa.

Trafficking is sometimes called an unhelpful concept, as labour exploitation is highest among undocumented migrants, whether or not caused by illegal border crossing or 'forced' migration. Without access to the regular labour market they are forced to take on jobs that no one else wants to do, for less pay and without say over hours or place of work. Often sub-standard accommodation is part of the deal.

In addition to the restrictive nature of the migration regimes in Europe, their complexity also adds to vulnerability to exploitation and forced labour. For example, the UK registration scheme for citizens of newly acceded EU-member states such as the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. (Workers Registration scheme, see: <http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/workers/>) The scheme requires handing over documents to employers who can then use them to blackmail workers. All the different forms of leave to remain in the UK also mean that people are often unsure what their rights are. And when they seek help, for example from the Citizens Advice Bureau they may be registered there in quite some detail but not recognised as victim of trafficking.

Finally, migration regimes have treated trafficked persons mainly as people committing 'immigration crimes', i.e. they are regularly deported. In several European countries, such as Belgium, the Netherlands and Italy there has been for some time the possibility of acquiring a visa to cover a reflection period. This is usually tied to then becoming a witness in a case against the trafficker. The European convention against trafficking makes such a reflection period European-wide. Some organisations have called for asylum on humanitarian grounds for victims of trafficking but others are saying the asylum process is too traumatising. In Ireland, where visas are tied to employers, the Migrants Rights Centre Ireland is calling for a bridging visa in order to allow the exploited migrant to search for a new job.

In short, complex and restrictive migration regimes are exacerbating labour exploitation in general and trafficking for forced labour in particular.

Labour laws

I understand labour laws both to cover the right to work in a country and the circumstances under which work is done, i.e. health and safety, working hours directives, etc. Labour laws hamper the accessibility of labour rights for migrants in several ways. In countries like Ireland, Portugal and the UK, where visas can be tied to specific employers, migrant workers suffer as they can't change jobs legally. If they are exploited this means it is very hard to leave; and if they aren't, they are at more risk of becoming badly treated as they are in a

situation of dependency. Often in trafficking cases, there is multiple dependency on employers combined with social isolation.

Inspections of labour laws governing the circumstances at work are of high importance to trafficked persons, as they often lead to detection of labour exploitation. However, currently trafficked persons and others who are exploited by employers risk deportation or job loss instead of rehabilitation of the circumstances under which they work (For examples see www.MRCI.ie). Sweden is now moving towards granting the right to work to asylum seekers. (For details see: <http://www.migrationsverket.se/english.jsp?english/eat/easylsokande.html>) It will be interesting to watch if this has a positive effect on cases of labour exploitation.

Labour rights are an interesting area to notice how international law can be translated into national laws and at the same time are dependent on enforcement strategies at local level. Historically labour rights have been included in the earlier documents as part of the human rights doctrine. The Universal Declaration of Human Rights 1948 already includes them; for example, Article 23 gives the rights to work, free choice of employment, just and favourable conditions and protection against unemployment; we also all have the right to equal pay for equal work, fair remuneration and to form or join trade unions. The ILO has played an important role in their specification and implementation. ILO Conventions and Recommendations cover a broad range of subjects concerning work, employment, social security, social policy and related human rights. (See: www.ilo.org) Yet, if countries do not appoint enough labour inspectors labour rights remain inaccessible to migrants who are vulnerable to exploitation.

In some countries there are reported agreements between the police and employers that not all workers without permits will be taken away in a raid. (personal communication) This illustrates that economic pragmatism is leaving migrant workers vulnerable to exploitation. Political will is of high importance here. The private sphere of work is especially vulnerable, but so are industries where workers can be isolated in rural premises.

In addition there are incentives for migrants to work under exploitative circumstances as it is often seen as a stage in the migration trajectory and the alternative of deportation unattractive. The third leg of this incentive triangle is then the sending country, that has an incentive to receive remittances and to avoid investing in return migrants who cut short their earning potential abroad. The current economic downturn has already resulted in large numbers of migrants returning to Moldova for example where they often end up unemployed and in need of state support. The investment of such powerful interests in the existence of labour exploitation means a strong stance is required with the political courage to follow up violations of what are universal and basic human rights.

Welfare states

The access to welfare state provisions for migrants depends on two main aspects: how you define the welfare state and what migration status or level of citizenship the person holds. These are often dependant on position in a family or marital status, too.

Many European countries have sharpened their restrictions to access to welfare provisions. They have done this by narrowing their conception of what comes under the welfare state to include mainly pensions, child benefit, and collective insurance for disability, long-term

illness, and unemployment due to no fault of one's own. In the earlier debates on the merits of a universal or a targeted welfare state subsidies to housing, health, education, libraries, arts and other provisions to share widely access to culture would have been counted under welfare provisions, too. (van den Anker, 2001) These benefits are now accessible to decreasing numbers of people. Individualisation, privatisation and increased surveillance (partly through database connections, partly through duties of identification and by giving social institutions the role of gatekeeper) cause numerous human rights violations for those who are exploited but have no way of demanding redress as they risk deportation. Undocumented migrants in Sweden are excluded from the wider benefits of the welfare state and they are reported to be at risk of frequent moves, exclusion from education and healthcare, sometimes resulting in unnecessary death. (Khosravi, forthcoming 2009)

The effect on vulnerable migrants of their exclusion from welfare provision in both senses is that their isolation increases and therefore the risk of being exploited as well as a decreasing likelihood of finding ways out of an exploitative situation. Being included as workers yet excluded as citizenship rights bearer leaves migrants dependent on their internationally guaranteed human rights- this results in interesting contradictions. The human rights courts have several times decided that states acted unlawfully by using excessive force during deportations and have therefore created a situation where states have sovereignty over who resides but need to respect the human rights of those who do. Lack of access to healthcare in country of origin is a reason to prevent deportation; so the next test case needs to be how it can be that undocumented migrants are excluded for these services in Sweden and other European countries. The Committee on Social Rights of the Council of Europe, which has as a task to monitor the application of the European Social Charter, ruled that "legislation or practice that denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter." (http://www.coe.int/T/E/Human_Rights/Esc/4_Collective_complaints/List_of_collective_complaints/RC14_on_merits.asp#TopOfPage)

Cosmopolitanism

'Cosmopolitanism' is a concept used more widely recently and describes various things for different debates. Here I use the term as the branch of political theory that holds that the scope of morality is global and that therefore the boundaries of nation-states should not determine the reach of morality. Another way of putting it is an assumption of human equality as the basis for moral reasoning about global politics. Debates on global justice and on open borders are both places where cosmopolitan positions are taken; within cosmopolitan circles there are generally three views: global justice requires global redistribution of resources so that a situation with less economic inequality can be reached. The ultimate vision is one of a global progressive taxation scheme, but in the absence of the necessary infrastructure cosmopolitans settle for some global tax which is paid by governments into a fund for development or an individual tax on speculative currency transactions, such as the Tobin tax. This is a tax proposed by the Canadian economist Tobin, which would prevent the excesses of currency speculation. (See Dowling in van den Anker, 2004) Secondly there are those that argue for open borders or a feasible variation that allows people to move freely and therefore have access to labour markets and the option to send remittances home. In fact, remittances are now so high on the list of sources of income in some countries that certainly international development funds don't compete and in some cases nor do foreign investments. Thirdly there are those who feel that we should not waste our activist time on

arguing for open borders but focus on investment in developing countries as a duty of the rich.

From the perspective of combating trafficking in human beings, cosmopolitanism can help in several ways. First, it provides a normative and wide-scope perspective from which we can emphasise the need for long-term prevention of trafficking. Second, it provides us with a list of principles which would make a difference to the human rights approach to trafficking. The principles I proposed elsewhere include: Respect for the rights of victims; cosmopolitan impartiality (justice for all); respect for the agency of victims; commitment to long-term structural change in the global economy; provision of support to develop viable alternative livelihoods. (van den Anker, 2004)

Duties for governments are then to develop initiatives that support long-term prevention of trafficking by investing in development, collaborating on global schemes for taxation and debt relief, and pushing for global corporate social responsibility and fair trade, signing up to the convention on protection of the rights of migrant workers and their families.

One additional angle from which to view cosmopolitanism as relevant to trafficking for forced labour is global citizenship. This concept is mostly used as a source of duties over and above duties of national citizenship and it includes solidarity across borders. (van den Anker, 2002) Yet, there are clearly people who miss out on effective national citizenship and who need solidarity within borders. For example, in Sweden undocumented migrants are excluded from access to social rights such as education, health care and housing; they are, however, included in the labour market in practice which leaves them vulnerable to exploitation without means for redress (Khosravi, forthcoming 2009).

Taking global citizenship seriously, means that trafficking in human beings is the responsibility of all of us. We can distinguish three forms of responsibility, based on the excuses people put forward for not doing anything about it. Excuse number 1 is: It wasn't me (who trafficked or exploited someone.) This relates to type of responsibility number one which would be something like I am responsible only if I directly caused harm to someone. This type of responsibility is based on being guilty of the harmful practice indirect causation. Excuse number 2 is that this isn't anything to do with means it happens far away from me. This ties in with responsibility type number two and that is that I am responsible when I am a beneficiary of the harmful practice. This is sometimes opposed to by people who believe that we only have a duty of solidarity only for people who are in my proximity and I have a connection with in terms of fellow citizenship. Then excuse number three is that I can't do anything as I have no impact on these things; I have no power to stop it. This relates to responsibility as a duty to act if one is able to make a difference to a situation or a person. It is this latter type of responsibility that is relevant for anyone having cosmopolitan principles and seeing in the harm done to exploited migrants. In the cases of trafficking for forced labour as well as other type of labour exploitation we have duties as fellow human beings that are based on simply having the means to contribute to change. Moreover, we are of course also beneficiaries as badly paid labour keeps prices down for us as consumers.

The correlative duties to these responsibilities are another way of trying to get to creating the necessary change to prevent the harming of migrant workers. In the case of direct responsibility, being guilty of an act or practice that is harmful we have the duty to stop, accept punishment, apologise, and compensate. In the case of being indirect beneficiaries we have the duty to stop benefiting personally, to stop the practice, and to support the harmed. In

the case of taking responsibility just because we can, we need to create alternative practices, systems and institutions. We need to actively raise awareness, educate on human rights and develop unharmed ways of interacting. The actual forms of social change that we engage in can be small and yet make a difference. As Ghandi said: what you do seems insignificant but it is important to continue doing it. You may start by smiling at your neighbour or the equivalent in the context of vulnerable migration: making friends with someone outside your regular mainstream social circle. On a second level, you may contribute to mopping up the spills of the social system; in our case, this may mean setting up shelters for trafficked persons, arranging for rights advice or implementing just labour practices in your own house, organisation, community or firm. The third level of creating social change is to contribute to changes in the law; in the case of trafficking NGOs and grassroots organisations have been very influential on this level of social change. The final level of social change is to contribute to the transformation of the social system. This involves daring to think of alternatives, as practiced in 'another world is possible'-type events and social dreaming. Taking full responsibility implies us make friends with migrants, mopping up the spills of an unjust migration regime, campaigning to change the law and contributing to the transformation of society. To combat trafficking we all need to take responsibility for what we do to harm others, what we accept in our daily lives while others are exploited, and where we can help to prevent harm. Trafficking is not an isolated practice by distant 'bad' people, it is caused by the inequality in the world, the restrictive migration regimes, restrictive and complex labour laws and restrictions on welfare states. Examples of actions that can be taken by everyone are to give priority for fair trade shopping, campaign for local migrants and their families, to campaign for human rights or to organise reflection on the meaning of borders and the principle of hospitality.

Conclusion

Developed western economies (but increasingly also economies in transition) depend on the work of migrant workers. There is a great disparity between the profits these workers generate for these economies, the dependence of whole sectors of economies on the workers and the level of protection from trafficking and exploitation the states guarantee for them. In this paper I argued that it is the complex and restrictive migration regimes, the national labour laws and the limited access to welfare states that leave migrants vulnerable to trafficking for forced labour. In response to this analysis I proposed a cosmopolitan approach which I explained would affect attitudes towards migrants within states as well as beyond them. I would therefore conclude that the best approach towards combating trafficking for forced labour in all industries is not either a human rights-based approach, or raising awareness of women's rights and or campaigning for better access to the welfare state. Instead these should all be seen as part of one set of responsibilities for international organisations, states, local authorities and non-state actors such as NGOs, businesses and individuals.

Cosmopolitanism means we have duties across borders to assist in making human rights accessible to all at home and abroad. It also means we have duties towards people who cannot access human rights due to their migration status within our countries. States can make a difference and they should do so not only to their citizens, but to those who reside in their borders and those who are in need outside of those borders. The times that social justice domestically and global justice could be seen as separate is long gone. In an era of mass migration for all sorts of reasons and in all sorts of forms justice does not neatly let itself be separated out between justice with a global scope or justice towards 'our own'.

Methodological nationalism will no longer provide a practical implementation of principles of justice.

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