

Where are the victims of trafficking?

by Richard Danziger

*There needs to be a common understanding of **who** the victims of trafficking are. Only then can the international community hope to improve its record in identification and protection of such individuals.*

While there is a common understanding of what trafficking in persons is, there are still sharp divisions over the understanding of who the victims of trafficking are, with governments on one side of the divide and NGOs and international organisations on the other. In short, there is a grave problem of definition – not of the sort to keep academics and others busy writing papers and attending conferences but, rather, one of a very practical kind. For it involves interpretation by policy makers and, most importantly, practitioners on the ground – both from government agencies and civil society.

An introductory seminar or workshop on trafficking always begins with a presentation of the definition in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the UN Convention against Transnational Organized Crime.¹ In many instances this is juxtaposed with migrant smuggling as defined in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the same Convention. Assuming that participants in this hypothetical workshop are from various government institutions as well as NGOs, the hope is that this will be a first step toward more specialised technical cooperation that may eventually lead to improvements in legislation, the establishment of joint government and NGO referral mechanisms, training of law enforcement officials in appropriate investigative techniques and, of course, development of protection and assistance structures in support of trafficked persons.

The capacity-building process described above has been successfully undertaken by the International Organization for Migration

(IOM) and others in many parts of the world. The intended results have been produced many times over and a large number of states – whether or not they have ratified the Trafficking Protocol – can be applauded for having established anti-trafficking mechanisms and good practices. Italy, for example, has comprehensive legislation with provisions for protection that are supported by working structures on the ground. Ukraine has extensive NGO coverage throughout the country that can claim success in reintegrating several hundred trafficked individuals. The USA has a system in place to grant residence status to trafficked persons and, where considered necessary, their families. Yemen, with the support of UNICEF and IOM, is providing protection and assistance to trafficked children and their families.

The list goes on but, while encouraging in comparison to the situation that existed five years ago, many gaps still remain, and almost universally the protection offered hovers below the minimum standards recommended, for example, by the United Nations High Commissioner for Human Rights. It should also be asked whether such developments have contributed to human beings being less vulnerable to being trafficked today than five or ten years ago. In the absence of any reliable data, one has to look at the various global estimates of trafficked persons by international organisations and the US government, all of which remain in the hundreds of thousands and none of which indicates any measurable decrease in the problem.

Perhaps the most important question we are confronted with is whether there have been any improvements in our capacity and

ability to find and identify victims of trafficking. Despite the many efforts made in this area by several NGOs and international organisations that have developed a number of good practices and shared these with others, the fact remains that the number of trafficked individuals who are identified as such remains very low.

Identification difficulties

There are many reasons why it is so difficult to identify trafficked persons. The criminal, illicit nature of the phenomenon precludes easy access to them. When they do escape from traffickers, the social stigma attached to being a prostitute or having been deceived into working in slave-like conditions may prevent them from coming forward and admitting to authorities, NGOs or family that they were trafficked. And even where those involved in the fight against trafficking do improve their capacity for identification, the traffickers have the resources and flexibility to change their *modus operandi* and stay a step ahead of police and assistance agencies.²

Too often victim identification is based on simplistic impressions

But there is another important reason for the poor record in identification of trafficked persons and here we go back to the issue of definition. The definition in the Trafficking Protocol is widely recognised and accepted, and indeed an increasing number of State actors at all levels have become aware of trafficking in persons as a significant global problem and a major human rights issue that needs to be confronted head on. This definition, coupled with appropriate training, should allow law enforcement agencies, immigration departments and others to better identify victims. The definition, broken down as it is into three components – mobilisation (recruitment, transportation, harbouring), means (coercion, de-



admission rules he or she has done so because of coercion or deception. Whether or not that person knew they were committing an illegal act is immaterial. The act was part of a process that from beginning to end had only one goal: that of exploiting the victim.

Regrettably, most trafficked persons are, in the eyes of society if not the law, suspect. They are illegal immigrants. They are prostitutes. They live and work on the margins of society, often in close proximity to criminal elements. This puts them at a distinct disadvantage when coming into contact with law enforcement or immigration officials even if such officials are trained in victim identification. This is of course also why we advocate for interviews of trafficked persons by

police to take place in the presence of a third party who can provide legal advice and psychological support. Unfortunately, there are still far too few instances where this third party counselling is present and many victims continue to go unidentified.⁴

At the other end of the spectrum there are those who are only too ready to define a wider array of irregular migrants as victims of trafficking. While it is true that irregular migrants may suffer at the hands of smugglers or have certain basic rights violated by destination States, this advocacy approach can further contribute to the notion that trafficking in persons is just one more migration issue rather than primarily a gross violation of human rights – a form of slavery usually occurring within a migration context.

There is no question that identifying victims – when they are found – is a difficult task. It can involve a

painstaking process of interviewing a person who may be ashamed or traumatised or still under the psychological control of the trafficker. It takes time to properly identify a victim, time that a law enforcement official may claim he does not have. It takes time because trafficking is a process, a continuum of actions leading to exploitation and not just a single event such as crossing a border illegally. Too often victim identification is based on simplistic impressions rather than as a result of a methodical process aiming to discover if the person's experience meets the Protocol definition.⁵

If identifying trafficked persons is already a major challenge today, the situation will only get worse with the increasing diversification in trafficking both with regard to the forms of exploitation and the profile of the victims.⁶ In Europe in particular, where trafficking is still largely considered within the context of sexual exploitation, the potential for errors in identification will only grow when confronted with victims trafficked for forced labour who may be male and non-European. But in other parts of the world too, as awareness of trafficking for non-sexual forms of exploitation increases, it is equally important to ensure that persons who suffer serious exploitation are not automatically considered to be trafficked, even while ensuring their rights are protected.

Improving identification and protection

There is no quick or easy solution to strengthening our ability to identify trafficked persons but there are two fields of action that would contribute to improved identification as well as protection.

It is essential that we increase efforts to ensure that the Protocol's definition of trafficking in persons is the one that is not only understood by all but also applied in practice by all those actively involved in combating trafficking. All entities likely to come into contact with trafficked persons (law enforcement, immigration, labour unions and inspectors, health and social services) need

IOM's Programme Coordinator Dr Samnang visits schools in Cambodia to raise awareness of the dangers of trafficking.

ception) and exploitation – is quite succinct and easily understandable in its description of trafficking as a **process** (though the absence of an explicit reference to trafficking within borders is a notable weakness³) but the problems begin when we start to try to define or describe the **victim**.

The most generally recognised area of confusion is that between trafficking in persons and human smuggling or other forms of irregular migration. Why, in the presence of two separate international Protocols on Trafficking in Persons and Smuggling in Migrants, each with a clear definition of the crime and, by consequence, the victim – in the case of trafficking the individual, in that of smuggling the state – is there still such a problem in distinguishing between the two?

The irregular migrant has infringed a country's admission rules. While the trafficked individual may also have infringed a

to be made aware of the issues, and specialised units within these bodies need to be trained in victim identification. This needs to be done in a systematic way rather than on an ad hoc basis as is often the case now.

Concurrently, those whose primary concern is protection of the rights of trafficked persons should also advocate for the rights of all migrants. This may not in and of itself directly contribute to better identification but the danger in ignoring broader migrant rights in the currently highly charged migration environment is that, by eliciting acceptance of the fact that a trafficked person is a victim, we risk further demonisation of those not recognised as victims. And that in turn will further compromise the protection of those victims of trafficking who - regrettably but invariably - will fail to be identified.

While we continue to develop more effective tools for victim identi-

fication, a rights-based approach should condition the treatment of all irregular migrants. This does not imply that identified victims of trafficking should be treated according to a lowest common denominator. Their special psychological, physical and social needs in both the immediate and long term must be met, their physical security guaranteed and their traffickers severely punished as befits the horrendous nature of the crime. At the same time all irregular migrants should be given the opportunity to demonstrate protection needs and, where these exist, receive appropriate protection. Such an approach, with the implicit building of trust it involves, would almost certainly lead to more trafficked persons coming forward and identifying themselves. And then, perhaps, we may begin to have better answer to the question "Where are the victims of trafficking?"

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For further information about IOM's anti-trafficking programmes, see: www.iom.int/en/what/counter_human_trafficking.shtml

1. www.unodc.org/unodc/en/crime_cicp_convention.html
2. *Changing Patterns and Trends of Trafficking in Persons in the Balkan Region*, IOM Geneva, 2004. www.iom.int/DOCUMENTS/PUBLICATION/EN/balkans_trafficking.pdf
3. The Council of Europe Convention on Action against Trafficking in Human Beings explicitly refers to trafficking as "national or transnational". This article focuses on transnational trafficking.
4. A majority of trafficked persons being assisted through IOM-funded reintegration programmes in Ukraine were identified after arrival back in their country. Many had been deported from the country to which they were trafficked.
5. Anti-Slavery International describes "a shelter in Albania to which all women departing to Italy and found in irregular collecting points were referred by the local police, being 'labelled' as trafficked." www.antislavery.org/homepage/resources/PDF/Protocoltraffickedpersonsokit2005.pdf
6. Regional Clearing Point, Rebecca Surtees, 2005, *Second Annual Report on Victims of Trafficking in South-Eastern Europe*, IOM Geneva www.iom.int/DOCUMENTS/PUBLICATION/EN/Second_Annual_RCP_Report.pdf