The trafficking of children through a human rights lens

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Abstract

In recent years, trafficking in people has re-emerged as an issue of international concern. Despite a paucity of reliable data, there is a widespread view that the majority of victims of trafficking are women and children. Children, and concerns about violations of their human rights, also feature prominently in international rhetoric and policy. But in reality, the rights of child victims of trafficking are often lost in highly politicised debates that tend to focus on organised crime, illegal migration and issues of state sovereignty. In this paper I explore (some) causes of and responses to the trafficking of children through a human rights lens. A central causal factor is demand, which is closely linked to cultures of human rights denial and assumptions that some children are less than human. I argue that while the causes of trafficking are themselves violations of children’s human rights, so too are many responses. The denial of ‘rescued’ children’s rights to protection and participation in decisions made about their lives is a further abuse of already traumatised children. If policy responses to trafficking in children are to support child victims, a greater recognition of human rights issues is necessary.
In recent years, trafficking in people has re-emerged as an issue of international concern. Despite a paucity of reliable data, there is a widespread view that the majority of victims of trafficking are women and children. While there is little clear evidence to support these claims (see Anderson and O’Connell Davidson, 2004, p 22), there is clear evidence to suggest that children (in largely unknown numbers) are victims of trafficking (see Human Rights Watch; ILO-IPEC, 2002a; ILO-IPEC, 2002b). Children, and concerns about violations of their human rights, also feature prominently in international rhetoric and policy. But in reality, the rights of child victims of trafficking are often lost in highly politicised debates that tend to focus on organised crime, illegal migration and issues of state sovereignty (see Anderson and O’Connell Davidson).

Trafficking in children is first and foremost a violation of fundamental human rights – and violations often occur not only during, but also prior to and after the actual experience of trafficking. This article grapples with these issues by examining some aspects of trafficking in children through a children’s rights lens. The first part of this article briefly outlines the international normative framework around children, trafficking and human rights. The second section explores two factors that contribute to trafficking: vulnerability and demand. The final section provides an analysis of the ways in which responses to trafficking may further contravene the human rights of children.

**Trafficking Children and Children’s Rights: The International Normative Framework**

The almost universal ratification of the United Nations Convention on the Rights of the Child (CRC) has led to quite remarkable shifts in policy and programming for children, towards rights-based models drawing on the Convention. The CRC is built around four key concepts that underpin the human rights of children: survival, development, protection and participation. The notion of children having participatory rights is quite radical and remains controversial. Participatory rights are embodied in several articles of the CRC, the most important of which is Article 12, which states that:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12 entitles all children, including those who have been victims of trafficking, to the opportunity to express their views about decisions that impact on their lives.

The CRC through Article 35, requires States Parties to take all appropriate measures to prevent the sale of and traffic in children. Beyond that specific article, trafficking of children violates a range of human rights guaranteed to children through the Convention – from the rights to survival and development (Article 6) through to the rights to education (Article 28), leisure (31) and protection from exploitation (Articles 32, 34, 36). More fundamentally, trafficking of children is anathema to the basic principles upon which the Convention is built – and indeed to the human rights framework more broadly.

In 2002, the Office for the High Commissioner for Human Rights announced a set of Human Rights Guidelines on Trafficking. Guideline 8 calls for special measures for the protection and support for child victims, and draws on the Convention on the Rights of the child in calling for the best interests of the child to be taken into account and for the views of the child to be respected. Other guidelines call for the needs of victims (adults and children) to be given due attention (although interestingly not their rights) and for root causes of trafficking to be addressed.

In November 2000, the United Nations General Assembly adopted the Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol). The purposes of the Protocol, stated in Article 2, are “to prevent and combat trafficking in persons, especially women and children”, and to “protect and assist the victims…with full respect for their human rights”. Trafficking is defined as involving the “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent….for the purpose of exploitation” (Article 3a). Defining a child as any person under the age of eighteen years – in line with the CRC – Article 3c of the Protocol states that:

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 (outlined above).

Article 6 of the Protocol sets out the forms assistance and protection to which victims of trafficking are entitled, while Article 8 calls for repatriation of victims to give regard to the safety of the person and to, preferably, be voluntary.

The International Labour Organisation (ILO) has also significantly contributed to the normative framework on the trafficking of children. In 1999 the International Labour Organisation adopted Convention 182, aiming to eliminate the worst forms of child labour. While Convention 182 leaves much to the discretion of individual states – trafficking is explicitly stated as one of the worst forms of child labour (Article 3a) to be targeted for immediate action. The explicit inclusion of trafficking in 182 (and earlier ILO conventions) recognises that trafficking of children is always a gross violation of human rights, regardless of the activity or situation into which children are trafficked.
Thus there exists a reasonably extensive rights-based framework embedded in the international normative framework. Yet in reality, the human rights of children are regularly violated not just through the process of trafficking itself, but prior to being trafficked and after being ‘rescued’. The factors that contribute to the trafficking of children are often themselves fundamental violations of the human rights of children. Responses to children who have been trafficked can in themselves be abusive – particularly when they revolve around detention and/or deportation to an uncertain or hostile environment.

Causal Factors: Vulnerability, Demand and Denial of Rights
The factors that contribute to trafficking are complex and multifaceted, and I do not seek to provide a comprehensive analysis of causes here. I will, however, focus on vulnerability and demand as particularly significant factors that result in the trafficking of children.

Poverty is often cited as a cause for trafficking in people, not only children. For example, Skeldon has argued that “the elimination of trafficking is unlikely to be realistically achieved through legislation and declarations of intent, but by improvements in the socio-economic status of the population” (2000, p 8). Poverty is a critical factor. But it is increasingly recognised that poverty alone is not a significant explanatory factor. Vulnerability and discrimination are equally important causal factors. Stephen Devereux defines vulnerability as “a concept that combines exposure to a threat with susceptibility or sensitivity to its adverse consequences.” (2001, p508) As Devereux goes on to point out, “poverty and vulnerability are not synonymous, [but] the poor face greater exposure to livelihood threats” (2001, pp508-9). Vulnerability is often greatest among marginalised groups that face discrimination and social exclusion.

For children, vulnerability also relates to their position in age-based hierarchies. If gender-based discrimination contributes to making women vulnerable to trafficking, it is age-based discrimination that makes children so. Girls face dual vulnerability, based on sex and age. The nature of age-based discrimination is not only interpersonal (ie: based of personal relationships, such as parent-child, teacher-student, community elder-youngster), but is also structural – it is deeply imbedded in social and cultural values and reflected in policy processes and systems of governance. Structural discrimination on the grounds of age – often manifesting in the disregard of children’s concerns, experiences and views – spans religious, cultural and national differences.

The trafficking of children includes trafficking for purposes such as early marriage and illicit adoption. Each of these results from the relatively powerless position of children both within families and within communities more broadly. In parts of Africa, trafficking and traditional practices of early marriage have been linked – particularly when “men do not have the possibility of finding young girls in their community (such as in the case of migrant workers (UNICEF 2003, p 6). Similarly, in South Asia, there are linkages between early marriage and trafficking, “as control of the girl passes to the groom with social consent” (ILO 2002a pp 45-46). UNICEF estimates that between 1,000 and 1,500 babies are trafficked from Guatemala each year for adoption by couples in North America and Europe (UNICEF). While
numbers of this kind must be viewed with some caution, there is considerable
evidence that illicit/illegal adoption is an important dimension of international
trafficking. When adoption occurs beyond transparent regulatory processes, it is even
more difficult than usual to ensure that children are destined for caring families, rather
than abusive or exploitative situations. These brief examples indicate that in diverse
parts of the world – within very different cultural settings – children are often
considered the chattels of adults. Children’s rights frameworks are undermined by
this ongoing reality – but are made all the more necessary because of it.

Children without family support are particularly vulnerable to trafficking (Human
Africa found that of the 96 children interviewed in Togo “almost 30%…had
experienced the death of a mother, father or both parents”; in Cameroon, 60% of the
329 children interviewed were from single parent families (see ibid, p 11). Included
in the broad group of children without family support are children who have been
abandoned or have run-away and those who have migrated alone from rural to urban
areas in search of work. Many of these children seek an income on the streets, where
they are regularly viewed as a public order or security problem by authorities and
afforded little protection from the state. Given their separation from their families and
the hostility of their environment, promises of work in other places are likely to be
appealing.

Vulnerability – in conjunction with discrimination and social exclusion – creates an
environment within which it is possible for trafficking to occur. But this is the only
part of the picture; an equally important dimension is demand. The practice of using
very young boys as camel jockeys in the United Arab Emirates, is linked to the
poverty and vulnerability of poor children in parts of South Asia. More
fundamentally, the practice results from the demand of wealthy camel owners and
race enthusiasts for light weight, compliant jockeys, and from an acceptance of the
exploitation of some children within the industry. Human rights groups, such as Anti-
Slavery International, have questioned the political will of the Government to end the
trade, which continues despite the announcement in 2002 of a ban on the use of
children under the age of 16 years and lighter than 45 kilograms in camel racing.

Human Rights Watch notes that the “trade in Togolese girls was particularly extensive
in Gabon, a relatively wealthy country with a small population and consequently a
labor shortage, and where compulsory schooling and strict child labor laws fuel a
growing demand for foreign child labor.” (2003, p 21). Trafficking continues despite
the existence of anti-trafficking laws. Many girls trafficked into Gabon are destined
for household service. Indeed, in many countries around the world, there is a demand
for cheap, controllable domestic labour, although, as Anderson and O’Connell
Davidson point out (2004, p 54), this does not necessarily equate to a demand for
trafficked labour. It does, however, often equate to a demand for child labour (usually
of girls), and may result in trafficking when “local supply” is insufficient. As Judith
Ennew has pointed out, the “close links between bonded labour, fake adoptions,
prostitution, trafficking and...maids of all work” is well recognised by those working
to combat child labour (2004).

Each of these examples demonstrates to critical role that receiving countries play,
both in terms of adopting and enforcing legislation – but also in terms of the attitudes
of their citizens to the young of other countries, and towards children who are considered to belong to no-one.

Responses to Trafficking in Children: Protecting the Rights of Children?
Notwithstanding the international human rights framework discussed earlier, responses to trafficking in children often pay scant attention to children’s human rights, and may result in further violations. In some cases, there are potential contradictions between relevant international instruments. This final section will explore the ways in which two pillars of children’s human rights – participation and protection – may be undermined by international policy relating to consent and by the responses of individual states.

As discussed, the Palermo Protocol, now one of the primary international instruments dealing with trafficking in children, states that while adults may initially consent to trafficking as a result of deception, children under the age of 18 cannot give valid consent. Thus, “any recruitment, transportation, harboring or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used” (UNODC). This interpretation of the trafficking of children aims to remove the defence of consent from those engaged in the trafficking and exploitation of children. On the face of it, this position that is justifiable in terms punishing perpetrators and protecting children. However, if we consider the issue through the lens of children’s human rights there are serious concerns about its potential impact on some children.

The view that children cannot give valid consent to trafficking assumes that children have no individual agency. This potentially renders them silent, with no opportunity to articulate why they may have initially agreed to leave their country of origin. Bhabha has pointed out that “traffickers are involved in a significant minority of child asylum cases” and that “among some nationalities….children’s search for asylum is facilitated by exploitative and abusive practices” (2004, p142). This suggests that unaccompanied children may turn to traffickers to escape persecution, abuse, exploitation, discrimination or violence in their own country. Children may also be seeking to escape economic hardship. In each of these circumstances, the fact that children may have initially given consent to traffickers – while not a legal defence or moral justification for the abuse of trafficking – is an important explanatory fact that should be listened to and taken into account when formulating responses. Without such consideration, the most likely outcome for children who have been victims of trafficking is repatriation into the very situation they have sought to escape. Such an outcome is especially likely given evidence to suggest that “separated children find it much more difficult than adults to gain asylum. They have difficulties in getting adequate legal representation, their cases are more likely to be postponed and to drag on over time, and they have less change of being granted refugee status” (Bhabha, 2004, p 143). The failure to consider children’s views and the failure to consider the dangers that may face a child when repatriated are contrary to children’s rights to participation and protection, and result in policies that are likely disregard children’s realities and re-victimise them. Thus, given this potential shortcoming in the Palermo Protocol, it is critical that it is not interpreted and implemented in isolation but in conjunction with other human rights instruments, most importantly the Convention on the Rights of the Child, with particular consideration to Article 12.
If international policy relating to consent gives rise to concern from a children’s human rights perspective, the practice of many nation states is cause for alarm. Despite rhetoric, particularly at the international level, about the protection of victims of trafficking, evidence (both substantiated and anecdotal) suggests that the reality is rather different. The treatment of child victims of trafficking is often punitive rather than protective. Human Rights Watch reports that Togolese children trafficked into Gabon are often subject to “periodic round-ups...[and] repatriation to the embassy concerned (2003). Security or public order based responses such as this are not uncommon. Equally common is the practice of placing children in institutions – often in conditions akin to detention or imprisonment – while they await repatriation and/or the trial of the traffickers. Institutionalisation of child victims of trafficking often violates a range of human rights – from the right to education to the right to freedom from arbitrary detention and the right of children not to be incarcerated with adults. Moreover, institutions the world over have been revealed as dangerous places for children, where sexual, physical and emotional abuse can go unchecked unless there is a strong commitment to transparent mechanisms for child protection and clear avenues through which children can express grievances and seek help. Protection rights are regularly denied to child citizens who are institutionalised in their own countries, suggesting that foreign children – who are often invisible to the public or considered to have no right to remain in the country – are even more vulnerable.

If formal policy responses can contravene children’s human rights, particularly rights to protection, so too can the behaviour of individual agents of the state and cultures of corruption. In some cases, rather than assisting and protecting children who are victims of trafficking, law enforcement and government officials and non-government workers may be engaged in or benefit from abuse and exploitation (see for example ILO-IPEC, 2000a). Human Rights Watch claims that in Bosnia those engaged in trafficking girls into positions “need harbour little fear of criminal prosecution or punishment for their crimes; trafficking laws went largely unenforced, providing no protection for the victims of serious human rights abuses. Corruption within the Bosnian policy force allowed the trafficking of women and girls to flourish.” (2002) Thus corruption, the lack of ethical and moral frameworks proscribing the abuse and exploitation of children, and the absence of legal or social sanctions militate against the protection of children who have been trafficked.

Conclusion

Human Rights Watch spokesperson Widney Brown argues that “It has become obvious...that the only way to successfully end trafficking is for states to hold abusers accountable and to remedy the underlying human rights abuses that create the conditions for trafficking”. Remediing the underlying human rights abuses requires us to reflect on a number of issues. First, how does development impact on vulnerability? Here ideas around human development pioneered by U1 Haq and the human capabilities promoted by Amartya Sen may offer some potential by focusing attention not only on the eradication of poverty, but also on responding to social exclusion and discrimination, including age-based discrimination. Rights-based approaches to development may also be useful, particularly if they contribute to a rethinking of children’s roles in development and the ways in which development impacts on children. This essentially means shifting away from a view of children as victims or beneficiaries towards an understanding of children as citizens. A rights-based approach would also necessitate according equal priority to children’s
participation and protection rights, alongside survival and development rights. A second, perhaps more challenging question, is how to the demand for forced children’s labour can be quelled. Where they exist, domestic institutions and organisations based on principled ideas around human rights (see Risse, Ropp and Sikkink, 1999), accompanied by legal sanctions and operating within the broader framework of international human rights standards, may offer some potential for change, albeit incrementally and over the medium to long term. Third, how can responses to trafficking in children be transformed? The first step towards such a transformation is a recognition by governments and communities of child victims as bearers of human rights, as set out in CRC, and complimented by the range of human rights instruments outlined earlier in this paper. As such, they are entitled to be both heard and to be protected. To be meaningful, such a recognition would be followed by the revision of existing policies to bring them in line with basic principles and strong commitment to implementation. This is no easy task, and we are still a considerable distance from this first step.

References


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