



Cross-Border Migration and Human Trafficking: An Introduction to Policy Issues

This study contributes to the current debate on international migration and the Best Practices (BP) for countering the illicit movement of, and trade in people. The study focuses on women and children in Sub-Saharan Africa (SSA) and examines the conditions under which cross-border migration there – as an element historically embedded in livelihoods systems – becomes intersected with practices formally defined as human smuggling and trafficking. We begin with acknowledging an extant hierarchy of regimes of migration – mediated by formal and informal rules regarding entitlements to protection and meanings of mobility. We note that in SSA, as elsewhere, diverse social processes have formed migration regimes. They bring together different elements which then evolve into relatively stable forms of social organisation. Evidence suggests that such regimes are socially differentiated. The differentiation may be shaped by an interaction between government rules and norms and the practices of the facilitating social networks that may circumvent them in various ways. Depending on the highly contextual distinction between legality and illegality of migration, social networks can be active at different nodal points of the migratory process: providing information to influence decision-making at entry point, transferring and harbouring and placing migrants at work.¹ A migration regime shaped by what may be called

1. For example, in the case of Canada, Bear (1999) illustrates seven distinct categories of migrants based on their entry status and long-term status, being: 1) legal-legal (legal entry and legal immigration); 2) illegal-legal (illegal entry under false or undocumented methods with the goal to change status after arrival); 3) legal-illegal (legal entry with time-specific visas and overstay); 4) illegal-illegal (by independent means such as own-account or through friends); 5) illegal-illegal (by indentured means such as through the service of organised crime networks who prepay migration costs to be repaid after successful entry -- sometimes even when entry is unsuccessful); 6) legal-legal (through similar indentured means as under 5, but with a legal status); 7) internal migration (mobility within the same national jurisdiction during intermediary status prior to integration).

'distress entry' in combination with false or partial information is more likely to evolve into human smuggling and trafficking – regimes known for their hazard, lack of accountability and human rights abuse.²

The study approaches the interface between migration and human trafficking in SSA from the angles of governance and poverty. Poverty as vulnerability – an outcome of changing livelihood systems – is one factor at this interface that can result in a variety of forms of human trafficking for labour exploitation. We adopt a broad definition of governance: being the active norms by which a community is ruled. Our notion of a community is equally broad and covers domestic units, such as: kinship-based organisations and households³; market and non-market-based social organisations as well as the state. The governance of migration is viewed as consisting of overlapping sets of normative rules which may include: those embedded in domestic units of livelihood systems regarding resources, duties and eligibility for migration; the formal and informal contractual practices adopted by facilitating social networks; state regulation, and practices of immigration control. Each set of rules may have its internal logic and ethical substance. Under particular conditions an interaction between these different sets of rules may transform each other's internal logic and produce patterns of mobility with different consequences, conflicting interests and concerns. This research is basically exploratory, but we hope that by approaching the subject matter through the angle of governance it will be possible to synthesize an array of different analytical positions in order to more clearly discern issues of consequence, thereby assisting future searches for practices which more adequately address human rights abuse in migration processes.

1.1 Knowledge on Human Trafficking: Challenges to Policy

Many aspects of human trafficking remain poorly understood even though it is now a priority issue for many governments. Information available about the magnitude of the problem is limited. Laczko and Gramegna (2003) note the growing consensus on the existing difficulty in measuring and monitoring trafficking given the wide range of actions and outcomes covered by the term (including recruitment, transportation, harbouring,

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2. 'Distress entry' is the term given to migration caused by a combination of factors of absolute and relative deprivation (material, social, cultural and symbolic).
 3. Moser (1999) makes an important distinction between the family as a social unit based on kinship, marriage and parenthood, and the household as a unit based on co-residence for such purposes as production, reproduction, consumption and socialisation which may or may not acquire the social features of the family.

transfer and receipt).⁴ While the existing body of knowledge about human trafficking serves for raising public consciousness about the issue, it is still not rigorous enough to lend support to comprehensive action programmes addressing the different dimensions of the problem.

The struggle against human trafficking requires a different approach from that of trafficked goods – such as drugs and small arms – despite the similar aspects of illicitness. Common to the trafficking of goods and the trafficking of human beings are some key factors such as: degrees of weakness in the state apparatus of countries which send, serve as transit, and receive; large tax-free profits; the use of violence and threat to deter denouncement and prosecution. Unlike with illicit goods, human trafficking involves a process of exploitation – from debt dependency to enslavement – to ensure continued income from the same trafficked persons.⁵ Traffickers objectify persons under their control, put them at work without payment, subject them to repeated sale, and may force them to take deadly options to destroy evidence – or murder them (Truong, 1998, 2003a). Governments and those civic organisations, which seek to free trafficked persons from enslavement or servitude, and to prosecute traffickers, must deal with people who have been placed in such difficult situations that their perception may have been transformed, and their survival mechanisms manipulated in ways that strengthen rather than reduce dependency.

Current efforts to counteract human trafficking fall into three categories: (a) prevention and deterrence, (b) law enforcement and prosecution of traffickers, (c) protection of trafficked persons, ‘rehabilitation’⁶ and assistance in social reintegration. Unfortunately these official procedures face many problems of circumvention such as fragmented evidence, judicial

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4. Article 3 of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children includes all these actions and outcomes in the definition of trafficking. It also includes ‘exploitation’ particularly ‘exploitation of the prostitution of others’, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.
 5. Throughout this report we refer to those trafficked as ‘trafficked persons’, ‘trafficked children’ or ‘trafficked women’ rather than ‘victims’ or ‘victims of trafficking.’ Wood (1985) forcefully argues that the labels used for certain ‘categories of persons’ reflect the power relations between the namer and the named. We have therefore chosen a less disempowering term in this report and, even though the majority of the literature still uses it, we avoid the use of the term ‘victim’ except in direct quotes or official titles and statements.
 6. We use the term ‘rehabilitation’ here to refer to medical and psychological assistance for trafficked persons’ recovery from abuse and related illnesses. It does not carry any moral connotation; that is an issue still subject to inconclusive debates (Truong, 2003b).

disharmony within and between national legislative systems and weak social institutions with logistic problems and inadequate professional capability to lend adequate support to trafficked persons. Such circumvention serves to boost the impunity of perpetrators and thus maintain the opportunity for re-trafficking. A proliferation of funds and resources now exists for raising public awareness, for legal reforms and for the development of new practices to protect human rights in a transnational context of migration and human trafficking.

The diversity of forms of trafficking – particularly those with transnational links – tends to defy the authority of current theories pertaining to migration and their affiliated analytical tools (Castles and Miller, 1998). Where theory is in the making rather than ready made, engaged organisations tend to turn to social learning to develop their practices. Social learning emphasises the merit of hands-on experiments, of direct trial-and-error, and of the power of examples of successful intervention. The preference for immediate action shaped by learning from actions taken in practice is driven by the concern for efficient use of time, money, and other resources. A classification of practices and projects that are perceived to deliver the desired outcome is part of the process of a codification of new norms of intervention.

1.2 Research Goals and Methodology

Our interest in this research into practices which counter human trafficking stems from our long-standing practical and theoretical engagement with issues that were previously marginal but which in the last decade have become the epicentre of a global social crisis.⁷ Considering the complexity of the problem and the context of our research – being without the benefit of field research and observation of practices in action – it is both impossible and unethical to make qualifying pronouncements on the impact of a particular line of intervention.⁸ Our emphasis is on an understanding of the cognitive functioning of particular epistemic communities⁹ engaged in

7. The crisis includes the concern for refugees, internally displaced persons, migrant workers, commercial sex workers and mail-order brides.

8. Communication and data collection was limited to questionnaires sent by email and occasional contact with the respondents by telephone.

9. The term 'epistemic' is used to refer to something that concerns knowledge. The report uses Peter Haas' concept of 'epistemic community' defined as a network or group of knowledge-based specialists with an authoritative claim to policy-relevant knowledge in the domain of their expertise. Members of such a community hold a common set of beliefs on problem causation, validation of means of intervention and evaluation, as well as a common policy endeavour (Haas, 1992a).

the struggle against human trafficking, in order to appreciate the specific choices made (for action) in their context. The challenge in examining effective ways to address human trafficking lies in removing the padding around the social and political worlds in which particular practices defined as 'best' or 'successful' are embedded; and in so doing contribute to a resolution of tension, and create bridges between different communities of actors in the policy field.

Given the current status of knowledge on human trafficking and the risk of erroneous claims, our aim is to direct the reader toward the need for public dialogues on diversity to be undertaken in the spirit of what can be called 'epistemic egalitarianism'.¹⁰ In the field of human trafficking epistemic egalitarianism should foster dialogues – between policy-making bodies, engaged grassroots organisations and scholars – that effectively address the congruence of forces behind the shortfalls in human rights protection. This means having trafficked persons, returnees and their families take part as 'knowing subjects' in dialogues on how best to protect their rights.¹¹ Such dialogues can be built on experiences of inclusion already taking place in several countries, notably the participation by returnees in the formulation of intervention at micro level.¹² Their narratives and insights should be channelled into the policy field and scholarly interpretative works. This may help to foster a shared understanding of the problem and a collective support that does not take for granted some standardised definition of human trafficking but is capable of responding to the diverse needs and 'situated' rights of trafficked persons and their families.

10. By 'epistemic egalitarianism' we mean the application of democratic principles in the process of knowledge construction, beginning with the acknowledgement that each perspective has its own merits. Building and sharing knowledge should be a democratic endeavour generated and continually regenerated through what Sandra Harding calls 'fruitful coalition and respectful dialogues' between different perspectives (Harding, 2000: 257).

11. Lessons on participation can be drawn from the struggle against HIV/AIDS. For example, in the combat against the HIV/AIDS pandemic the Thai Government has adopted a participatory approach which includes persons living with the disease as active members of policy panels. Such persons can share their knowledge about their needs, and how particular social treatment of carriers of the virus and their families can contribute either to the reduction or to the spread of the disease.

12. For example, in the last decade civic organisations in the Philippines working with entertainers who returned from Japan with their children have managed to build a platform of dialogue with municipalities in both the Philippines and in Japan to build support systems to prevent re-trafficking. Through these dialogues, dignity, a sense of belonging and the ability to secure a sustainable livelihood for the future of the children have emerged as the key issues at micro-level intervention. Some returnees have emerged as leading advocates against exploitative migration (Truong's field notes from interview with returnees in Manila in 2003, facilitated by Carmelita Nuqui, Director of Development Action for Women Network).

Aware of the complexity of issues underlying the constellation of actions framed as human trafficking, we see the merit in bringing to the fore the standpoint of those whose daily lives are most affected by policy choices. We view policy as a deployment of different fields of social energy (guided by a variety of knowledge frameworks and interests). These are capable of cooperation, or of competition or of conflict. Affected persons unrepresented by the guiding frameworks tend to carry the social burdens of errors in decision-making without having an avenue for criticising the beliefs upheld by policy-makers, nor for exacting a response to their requests for change.

Extant avenues to assert alternative beliefs such as the World Bank's 'Voices of the Poor' or the World Social Forum are difficult to access by some of those stranded in different frameworks of legislation without effective citizenship – as are trafficked persons. We therefore see our main task as contributing to an avenue through which the rights and dignity of trafficked persons can be addressed from the standpoint of their location, so as to give socially grounded meaning to human rights protection as a policy objective. We concur with Kardam (2004) that emerging global regimes of rights and social equality need new methods of scrutiny at the point of application. We regard the transformation of governance – from the control and discipline of the social body to a process of dignity enhancement for those stripped of their rights – as a key objective in this scrutiny.

Lack of resource deprived us of opportunity to observe first-hand the application of practices in the anti-human trafficking campaign in SSA. We have relied on the diversity of routes of knowledge on the Internet and databases of various organisations. Aware of the fact that the diffusion of information also means the spread of misinformation, we supplement the knowledge provided on websites with a thorough review of publications and reports of meetings that offer additional insights on organisations in Africa engaged in the anti-human trafficking campaign.

Our research focus has sharpened through the data-gathering process. The attempt to create a framework for the analysis of what is labelled as 'Best Practices' in policy circles was vexed by major questions regarding norms and values, leading to the decision to provide an analytical lens through a social learning approach. Voices from the field permeated the returned questionnaires and helped alert us to the multi-dimensional nature of poverty and most importantly the significance of the global/local dynamics of deprivation. Poverty and deprivation may be a cause behind the adoption of migration as a temporal strategy to sustain livelihood systems. But poverty and deprivation can enhance risks in decision-

making due to the absence of means to verify the information available (which may be partial or false). The messages behind these voices have led us to revisit the process of learning – about poverty – as it takes place within academia and policy circles, and to reveal the social and political worlds in which concepts of poverty and recommended practices for its reduction are embedded.

1.3 Trafficking of Women and Children: The Burdens of Structural Adjustment Policies – Problematique and Report Structure

Radhika Coomaraswamy – the United Nations Special Rapporteur on Violence Against Women – explains the predominance of women as victims of human trafficking as follows:

‘... the lack of rights afforded to women serves as the primary causative factor at the root of both women’s migration and trafficking in women. The failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminisation of poverty, which in turn has led to the feminisation of migration, as women leave their homes in search of viable economic options. Further, political instability, militarism, civil unrest, internal armed conflict and natural disasters also exacerbate women’s vulnerabilities and may result in an increase in trafficking’.¹³

She states also that the phenomenon of trafficking in children needs child-specific remedies which must take into account gender-specific features. Dottridge (2004:19) endorses this view and further proposes that child-focused action should try to minimise their specific vulnerabilities, enhance their capacity to assess risk and articulate worries, and pay attention to gender and age differentials. Sub-articles (c)¹⁴ and (d)¹⁵ under Article 3 in the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children – which supplements the Convention against Transnational Organised Crime (also abbreviated as the Trafficking Protocol) – give specific attention to the trafficking of

13. The quote is taken from page 4 of the report. The complete report of the UN Special Rapporteur can be accessed from the website of the UN Economic and Social Council (ECOSOC) at <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.2000.68.En?Opendocument>.

14. Sub article (c) says “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”.

15. Sub article (d) says “‘Child’ shall mean any person under eighteen years of age.”

children. The article places special onus on parents not to abuse their position of authority or the vulnerability of children in their care.

As an element in the broader contexts of changing livelihood systems, migration has perhaps been more prominent in Sub-Saharan African (SSA) than elsewhere due to ecological dynamics specific to the region and the legacy of colonial spatial policies. In the last two decades the population in this diverse region has experienced adverse social changes with serious implications for the institutional and cultural structures that have shaped the security of their livelihood for decades, if not centuries. The worst drought in modern times has now lasted nearly half a century. The eruption of social conflicts into militarized violence has involved one in four of the countries in the region (Luckham *et al* 2001), and the HIV/AIDS pandemic is taking a disproportionate toll there: 26 countries among the 28 worst affected in the world (Whiteside, 2002). SSA has over 10 percent of the world's population but HIV/AIDS affects 6 per cent of its total population – roughly 24.5 million people. It was estimated that by 2004 some 2.3 million people in the region would have died of AIDS (UNAIDS, 2005).

Poverty, conflict, environmental and health problems become mutually exacerbating. Pressures of the Structural Adjustment Programmes (SAPs) implemented by the greater majority of countries in the region since the 1980s have further aggravated different internal crisis tendencies. In many respects the 1980s and 1990s could be referred to as the decades of 'lost growth' and 'lost human development' for SSA – the gender and age dimensions of which are only beginning to emerge.

In Chapter 2 Coomaraswamy's views – on the lack of rights and the feminization of poverty as causative factors of violence against women (including trafficking) – are extended to explore the deeper dynamics of poverty and its intersection with migration and the affect also on young men and boys.¹⁶ We locate the main reasons as seated in the economic marginalisation of SSA, affected per pro¹⁷ the process of global integration. We found some significance in the gender logic embedded in the social and political world of the SAPs. This logic is built on a male-centred vision of economy and society, according to which the domain of care – being the non-monetarised daily maintenance activities of persons and institutions that make production possible – is by and large never accounted in the calculus of growth and redistribution. The outcome is a multi-layered process of transmission: a shifting of burdens derived from shortfalls in

16. The feminization of poverty is defined as the increasing numerical proportion of women among the poor.

17. i.e.: through and by way of.

crisis management at state level down to the level of households and farms and every one of their members. The gender-based burdens carried by women are seen to be increasing through disputes over land rights – which tend to favour men; through the intensification of women’s labour-time in paid and unpaid farm and non-farm work, and under the pressure to accommodate other needs which derive from male-centred sexual norms.

Where it is possible we identify how these burdens are transferred to children within the context of an extended family-based livelihood system. We argue that the emergence of autonomous migration over long distances by young people and children (male and female) – to get work, or to find care, or to provide care for sick adults – are clear signals of distress. The obliteration of the significance of care systems – traditionally upheld by women – in policy visions, discourses and practices over two decades of structural reforms is now resulting in an unwanted by-product: the strained elasticity of household and kinship relations. These relations now span many locales across a vast geographical space. We note a furtherance of this process in the erosion of norms of entitlements to protection embedded in the ‘moral economy’ or ‘economy of affection’ (Hyden, 1983:82) due to a weakened structure of accountability.¹⁸ In some cases this elasticity can transform the economy of affection into an economy of violence.¹⁹ The rise of migration by children and young people within and beyond traditional practices may thus signify more than a temporary means to make ends meet. It could even be putting at risk the long-term path out of stagnation and future recovery of this region. The mechanisms of intergenerational transmission of poverty constitute a key area for research to find ways to reverse current trends.

Chapter 3 offers analysis of the political, legal, social and cultural aspects of migration and human trafficking in SSA. It reveals the tensions between international regulatory frameworks and the diversity of practices of mobility in the region. It would appear that regulatory frameworks have not adequately addressed the paradox between the liberalisation of economies on a global scale and the non-liberalisation of labour mobility.

18. Hyden introduces the term ‘economy of affection’ in his theory of an African peasant mode of production, based on his work on African agrarian societies, and defines it as ‘a network of support groups, communications and interaction among structurally defined groups connected by blood, kin, community or other activities for example religion. It links together in a systematic fashion a variety of discrete economic and social units which in other regards may be autonomous.’ (Hyden, 1983:82)

19. For example children from ‘fluid’, ‘split’ and double-rooted households may be sexually abused by their stepparents, and forced into prostitution possibly to sustain the livelihood of these fractured entities (Moser, 1999: 9).

Where borders are traditionally 'porous' due to the long history of human movement in which free movement was the norm – as in the case of West Africa – border control during post-independence nation-building can trigger social anxiety and lead to conflict at different levels of society, particularly in times of economic uncertainty (Pécoud and de Guchteneire, 2005: 20-21). The current regulatory frameworks are torn between different objectives with limited prospect for resolution: 1) *laissez-faire* (tolerating undocumented workers, without formal acknowledgement of their presence, so long as they contribute to the economy, remain invisible and pose no real challenges to human rights protection); 2) *punitive* (crackdown on undocumented migrants and criminalization of activities in their life-worlds); 3) *instrumental* (recognizing the value of their contribution both to the host society through their labour and to the society of origins through their remittances, and ensuring the protection of their rights by a variety of means).²⁰ In the context of SSA there seems to be no clear policy direction, owing perhaps to the weakness of states already pressured by problems of growth and redistribution, civil conflicts and other crises.

The limited success in inter-governmental negotiations for a resolution on international migration as trade in services – currently covering skilled personnel in the context of foreign investment as a primary group – has left an ambiguous zone within which illicit cross-border migration occurs. Migrants who are searching for opportunities available in the low-skilled or ill-defined sectors and who move in this zone become subject to unscrupulous practices of recruiters, facilitators and also border controllers. It is most necessary to separate the strands of interaction between the changes in the macro environment as affecting particular economic sectors and the concomitant social responses at all levels: individual, household, labour markets, firms and farms. Such responses may have contributed to the shaping of migration patterns by which individual and collective strategies – of coping with the pressures of exploitative migration practices (including trafficking) – have served to institutionalize it. Although the paucity of data does not permit firm conclusions, evidence does suggest the merit of a sector-specific approach that is capable of discerning the dynamics motivating both the illicit transfer of labour (from one locality, region or country to another) as well as the different actors involved.

In Chapter 4 we introduce Haas' concept of epistemic community in an attempt to locate the position of different actors engaged in

20. Worldwide migrant remittances – defined as the monies earned or acquired by non-nationals that are transferred back to their country of origins (IOM, 2004) – have become one of the most significant financial flows, in some years exceeding Official Development Assistance (ODA), (Ratha, 2003).

countering human trafficking, and in the search for Best Practices of migration management. We show how a given conception flows directly from the particular framework of knowledge, values and norms that a community adopts. Contending epistemological dispositions on human trafficking are closely linked with how international migration is explained in the contemporary context of globalisation. Despite a shared ethic on human rights protection that underlies anti-trafficking policy there exist operational differences regarding how this goal may be achieved. The concept of Best Practice may serve as a heuristic device to question the relationship between dominant forms of social knowledge on international migration and trafficking, the visibility or invisibility of causative factors, and the structure of power and authority in decision-making.

A selected number of practices by participating organisations in this research is presented in Chapter 5. The chapter discusses their profiles, strengths and weaknesses, the way they understand what brings about trafficking and the replicability of their practices. Their own narratives serve to accentuate the key areas requiring further reflection. We note that communities of practitioners in SSA share an awareness about the significance of bridging and synchronizing the three levels of intervention (prevention, prosecution and protection), but this awareness at times remains detached from actual action owing to the lack of resources and institutional capabilities.

Chapter 6 – The Way Forward – points out how practices of migration management can benefit from a more holistic approach – one which addresses a broad set of overlapping livelihood systems. Rather than treating each practice as a separate entity, our evolving understanding of the situation in SSA has shaped our belief that each one may best be treated as part of a broader process of transformations within a web of social relationships. These relationships vary in strength according to the context that activates trafficking processes. Discussions on human rights protection must therefore be grounded in the specific setting of social transformation and any dialogue on the different possible directions guided by the principle of inclusion and justice for all. In the context of international migration for work, resolving the paradox between the liberalisation of economies and the non-liberalisation of labour mobility appears most urgent in order to minimize risks in cross-border migration and to eliminate the social conditions that have allowed slave-like practices to flourish.