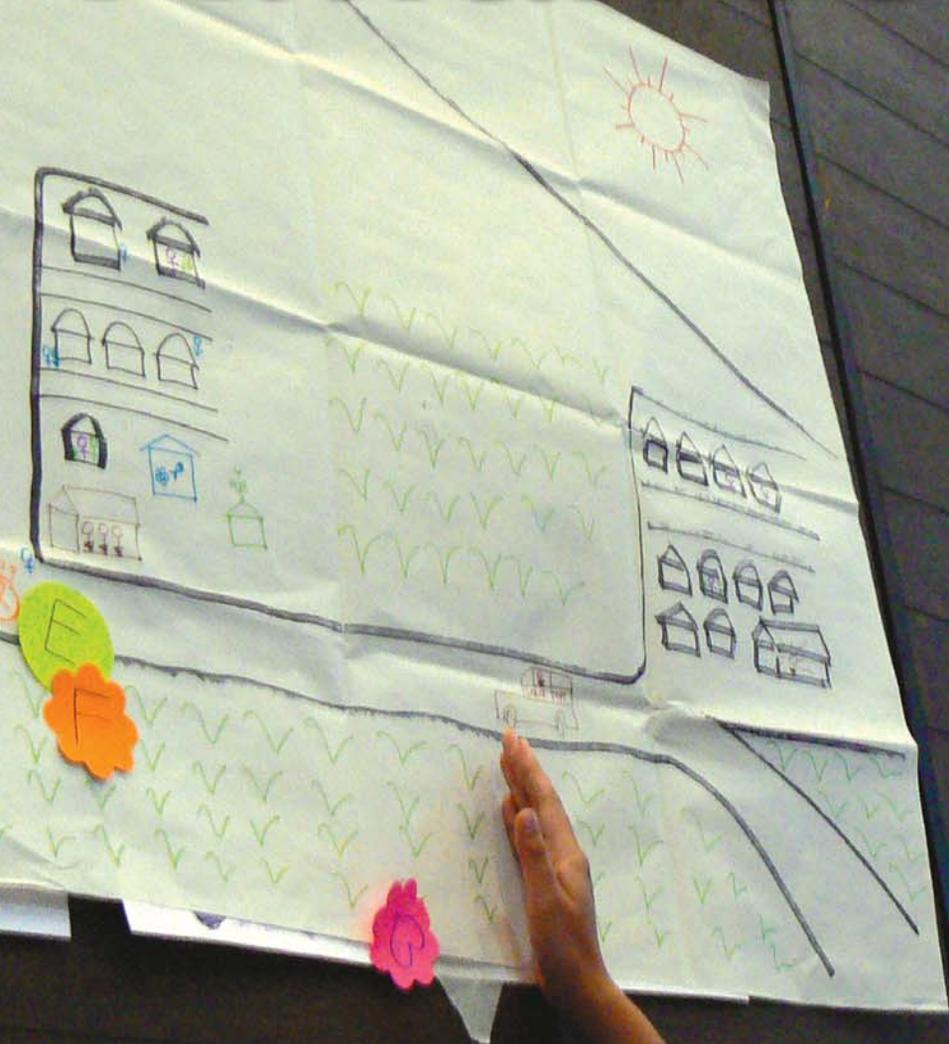


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Alliance News



Beyond Anti-Trafficking Frameworks
Linkages between Trafficking, Migration,
Gender, Labour and Globalisation



Global Alliance Against Traffic in Women



Editor's Note

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The Migrant Worker, The Refugee, and The Trafficked Person: What's in a Label?

Jackie Pollock

In an age where globalisation depends on the movement of goods, ideas, people, production sites and power around the world, it is the movement of people that creates the most suspicion and fear. Immigration regimes responded by becoming more and more restrictive, especially during the economic recession in the 1970s. Policies of making migration temporary with fewer pathways to permanent settlement proliferated as did carrier sanctions, tighter border controls, and more visa restrictions. After the terrorist attacks on Americans in 2001, these control mechanisms have been further strengthened globally and the profiling of people who move has been increasingly institutionalised. Different visas are issued or denied to different categories of people, each with its own set of rules and regulations and each with a separate protection regime. Demarcations between a trafficked person, a smuggled person, a refugee, a documented migrant and an undocumented migrant are spelt out ever more painstakingly in international conventions and in domestic laws and policies. Not surprisingly, this has also affected the levels of welcome, hospitality, tolerance, or rejection that the various categories of people receive in the countries of destination. **In whose favour have these demarcations worked? And should rights advocates be demarcating their work according to these categorisations? This article explores these questions in relation to three categorisations of people who move: migrant workers, trafficked persons and refugees.**

Prior to Leaving

Refugees are victims of civil and political rights violations fleeing persecution or threat thereof, while migrant workers move for livelihood reasons often in response to violations of their social and economic rights. Current protection regimes dictate that one set of violations are more acute and deserving of protection than another. The person who has been tortured for their political beliefs and moves to another country, may receive asylum. But the family who is starving because of the economic mismanagement of their country and move to another country are treated as illegal migrants and will be deported.

Nevertheless, the journey out of the country is often fraught with difficulties for both migrant workers and refugees. Information is scarce and emigration and

immigration policies are restrictive. In many authoritarian states, leaving the country is as dangerous as entering the neighbouring country. The migrant/refugee might have to travel through conflict zones, through areas that are landmined, and pass numerous checkpoints manned by armed authorities. If they leave by plane, they have to overcome endless bureaucratic barriers just to get the right documents.

To do so usually involves time, knowledge of the system and costs. In both cross-border migration and overseas migration, it is unlikely that the migrant/refugee has the resources and the information to get past all these obstacles on their own. They must therefore employ a broker to assist them. Many of these brokers are business people, offering a service for a price. But if the environment and restrictions in place require the broker to perform some illegal activities - such as acquiring a passport for someone who would be arrested as a political activist if they applied for a passport themselves, or a travel document for a woman who is below the designated age of travel for women - the costs and the risks increase for both the broker and the migrant. A business deal can quickly degenerate into a situation of abuse, exploitation or trafficking.

For rights advocates working in countries of origin, it is important that migrant rights and anti-trafficking groups work together to provide as much practical, honest, non-value laden information as possible about travel, migration and conditions in potential countries of destination. It is the duty of rights advocates to improve access to information for people whose access is limited. If the restrictions on travel are part of the cause of migrants being vulnerable to trafficking, rights-based groups must not be party to these restrictions by re-iterating them blindly in posters and brochures.

Messages which are laden with moral judgments or those that are very prescriptive will stifle open dialogue and consultation in the community. No one considering migrating will dare to consult with anyone else about their migration. It will be secret, clandestine and therefore ever more dangerous. Access to comprehensive information on the other hand would expose the inequalities that make people vulnerable and allow communities to act against these discriminatory migration policies.

Providing information can also present a risk for migrant rights groups. When the migration regimes are so strict and there is no legal migration, non-governmental organisations (NGOs) run the risk of being categorised as traffickers when they provide information or assistance for safe migration. Migrants themselves also risk being labeled as a trafficker if they share their expertise about migration routes, availability of work and provide tips on how to survive the journey and the work. Rights groups must speak out against these unfounded allegations and must dare to provide information and to support migrants to share their information.

Movement

Migrants rarely use conventional modes of transportation. They are more used to travelling in the backs of trucks hidden under roses or cabbages, in airtight containers designed to transport food, in the luggage compartments of luxury buses, and on overcrowded rickety boats. They may not pass the visa section and the transport they use has certainly not passed any safety checks. Even those travelling on planes with passports move across the multiple borders in the airports (check-in, immigration, customs) with trepidation, knowing their journey may be aborted at any moment. They again need to employ brokers to navigate these various obstacles and to weave through the mazes deliberately created to make movement of poor people as complicated as possible.

Rights groups must challenge these complex mazes that negatively impact on the safety of both migrant workers and refugees. These mazes are created deliberately by governments to allay the fears host populations express but result in deaths of migrants and refugees, violence and harassment, and trafficking. **It should be exposed that the maze not only relieves but also fuels the fears and suspicions. It sends a message that says: "We must make it difficult for these people to come to our country, because they are a threat". No one is sure what sort of threat they pose, but the message is sent and the maze is secured. And so long as anti-trafficking groups and migrant rights groups work separately, the maze is unopposed.**

In the Country of Destination or Transit

Once in the country of destination or transit, the migrant/refugee needs to survive. Migrant workers may already have secured work before they left where as others will be searching for work on arrival. Under the control or management regime of migration, policies for migrant workers ensure that they can only stay in the country for a temporary period of time and only so long as they have work. Migrants are offered short border passes, seasonal work permits, time bound work permits. Sometimes there is the possibility of renewal, sometimes there is a proviso that the migrant cannot return again for a certain period of years.

People who have been abused and traumatised in their country of origin will not be able to enter the job market immediately. Under the refugee protection mandate, durable solutions must be found for refugees. These have traditionally consisted of three solutions, repatriation (only voluntary), resettlement and local integration.

Meanwhile, the person who has been identified to be a victim of trafficking is usually offered a temporary period of stay while they give testimony. They can stay as long as the state keeps track of them, they can stay as long as they help to rid the host society of the traffickers, but then they should go. A few countries offer trafficked people a 'reflection period' or a period of time to recover or to make a decision about taking a legal case against the trafficker. In most of the countries where there are options to offer long-term refuge, trafficked victims have to prove that they fit into the same category as the refugee - that they will face persecution on return and that they form a distinct social group that faces systematic discrimination. Under the Palermo Protocol on Human Trafficking¹, states may offer legal, temporary, and/or permanent humanitarian alternatives to repatriation, including access to asylum procedures, if they conclude that the repatriation carries a serious risk for the victim and/or his/her family². The issue of resettlement to a third country is also part of the current debate for trafficking victims. But these solutions are not binding: there is no principle of non-*refoulement* as exists for refugees.

Connecting trafficking victims' right to stay to the criteria set out for refugees is problematic. The criteria for refugees are directly related to the abuses which happened or were likely to happen in their home country. The person who has been trafficked has experienced abuses in the country of destination. The right to stay needs to be tied to a different set of criteria. Some countries are already exploring this. The Anti-Trafficking in Persons Programme in the United States (US) helps to certify victims of "a severe form of trafficking" so that these individuals are able to receive federally funded benefits and services to the same extent as a refugee so they can begin a new life in the US³. Canada and Costa Rica have made significant developments in applying the refugee definition to trafficking victims. Some administrative or judicial decisions exist that recognise the persecutory character of human trafficking for the purposes of recognising refugee status. These include the risk of re-victimisation and the recognition of non-state actors, such as brokers, criminal organisations or family members as agents of persecution.⁴

Nevertheless, trafficked persons are typically returned home after a period in a rehabilitation centre. There has been very little discussion about the possibility of integrating trafficked victims into the host community, although it is one of the durable solutions proposed for refugees. The temporary policies for migrants on the other

hand are aimed at keeping workers segregated not integrated. In that logic the only durable solution is the return of the migrants, trafficked or otherwise, to their countries of origin. Meanwhile the durable solution for the industries and services where migrants work is a constant, permanent market for labourers who are flexible, malleable and not union savvy. The policies for migrant workers are thus governed by the economic agenda over the civil, political and social rights agenda. Thus, current migration policies ensure that migrants return home before they have had the chance to settle down, to inter-marry, to have children, before they have become leading members of unions, before they have become active members of society, and before they have gained the confidence to exercise their rights.

Even the mandate for durable solutions for refugees is circumvented by many receiving countries. Unwilling to provide permanent refuge, governments house refugees in camps which segregate them from the general population and impose restrictions on their movement and on their right to work. These camps result in protracted refugee situations or situations where refugees are not able to avail any of the durable solutions for long periods of time. While most of these camps are in the developing world, developed countries hold an equal amount of responsibility for prolonging these protracted situations by not implementing the durable solution of resettlement more effectively, more expansively, and in a more timely manner.

In the last few years, a fourth solution has been added to the refugee arena and that is labour migration as part of the durable solutions framework⁵. The right to work for refugees should be integral to all durable solutions since it involves agency over livelihood. But this is different from suggesting that refugees avail of the labour migration systems to access safety and security. Today's labour migration regimes are far from durable and refugees moving in a regularised labour migration program would be afforded no citizenship rights or long term protection. In some African countries, refugees are being issued with passports from the country of origin and work permits from the country of refuge. Advocates of the scheme argue that flexibility is a benefit of the program, as it can provide an interim solution pending eventual repatriation. They suggest that it recognises refugees' resilience and agency and that it is the security and autonomy provided by an economic livelihood that is most important for the majority of refugees. Unfortunately, the reality of today's world is that labour migration is deliberately made the least secure of options for migrants.

For the moment then, it would seem to be a highly dangerous solution for refugees. But maybe this is exactly the moment when refugee rights and migrant rights groups should be coming together to challenge the insecurity and precariousness in labour migration for all migrants, to challenge the lack of autonomy and long-term security in labour migration schemes.

Resisting Categorisation

The struggles for migrant workers are multiple struggles. They have moved away from economic and social rights violations, such as including lack of access to health care, education, adequate housing, and employment opportunities. But they often face the same in the country of destination.

There are examples of migrants resisting rights violations all over the world. In some countries, migrants have joined together to fight the exploitation in the workplace, in other countries to fight the lack of access to health care or education. Migrants form their own associations, unions, or join existing ones. They form community-based organisations or NGOs or join with existing ones. It is a major battle, because each of the areas where groups are fighting for rights, is an area which would improve the integration of the migrants, in direct opposition to the purpose of temporary labour and migration policies.

It may seem at this point that different groups are needed to support and represent trafficked persons, refugees and migrants and that each should diverge to fight their own battle, but it may actually be that it is imperative for different rights groups to converge and fight a battle against the making of temporary human beings, against the temporary suspension of rights, against the segregating of people. Imperative today because the trend is more and more towards making all migrants 'forced temporary beings'.

Because of the different legal international rights protections for refugees and trafficked persons and the general lack of one for migrants, it is assumed that the three groups should also keep themselves apart. There are indeed situations and policies which do separate them: asylum seekers and refugees are housed in camps or detained in detention centers, while migrants are housed on work sites or detained in immigration detention centres, and trafficked persons are confined in isolated houses, on fishing boats at sea, or held in rehabilitation centres. But despite these segregations, they do sometimes move together and they do sometimes work together. This is important for rights groups to recognise and to support. Migrant workers know if there are trafficked victims among them. A factory may have a special area where people are held against their will and not paid anything. Raids have exposed sleeping quarters in the roof rafters for trafficked persons. A fishing boat may have a group of fishermen who join for a few fishing trips, but a core group of fishermen who have experienced gross violations and are not allowed to leave. A brothel may have sex workers who come to work and leave to go home and a group who are kept there permanently even if they want to leave.

Those migrants who are not trafficked and who are aware of the situation want to free their colleagues from slavery-like conditions⁶. They also understand that such an action

will improve their own bargaining power for better conditions. However, migrants do not live in an environment conducive to acting against abuses, since any action can easily result in loss of their legal status. Migrants who wish to report abuse are themselves liable to be arrested or to be threatened and harassed by the employer and, where the authorities are complicit in the conditions of the trafficked persons, by the authorities. As long as this remains, the situation of trafficked persons continues in silence. Migrant workers need spaces to exercise their rights and legal access to be able to address all forms of exploitation in the workplace. Eliminating the culture of tolerance around exploitation of all migrant workers would ensure that working conditions for all workers were decent and dignified and would also free trafficked persons from exploitation. Being able to expose situations of gross abuse without repercussions would free trafficked persons and increase the bargaining power of the non-trafficked worker. If migrant workers are to be recognised as important agents in the fight against trafficking, they must be supported by and in contact with anti-trafficking groups as well as migrant rights groups.

In conclusion

Today there is pressure on rights groups to define and demarcate their territory. Anti-trafficking groups, refugee groups and migrant groups each define their own messages, services and advocacy. The groups receive funding from different donors and in very different amounts. Governments and local populations react differently to each of these groups. Migrant groups are at best tolerated and at worst are banned by countries of origin. Failed states do not want their failures broadcast and as migration is a direct response to the social and economic failures, they prefer to keep it hidden. Refugees expose the political and civil failures and thus suffer a similar response from the governments of the countries of origin. Anti-trafficking groups, on the other hand, publicly receive acknowledgement and recognition of their work while on the ground they often face a complete lack of cooperation by local authorities who may be involved in trafficking.

One anomaly however, is that authoritarian and military regimes seem to welcome discussions and diversions about a handful of unscrupulous traffickers or about the exploitation of their citizens in another country. They can lay the blame on someone else, not themselves. Trafficking fits the bill nicely. The anti-trafficking framework also rewards what authoritarian governments do best, that is enforce the law, arrest and detain. In addition, these regimes can earn some praise in the international arena by addressing a gross human rights violation such as trafficking. Consequently, there are countries where rights cannot be openly discussed but where the government is active in the anti-trafficking arena.

Anti-trafficking, refugee and migrant rights groups need to expose this hypocrisy face on. They need to join forces to expose the conditions which result in people having to leave their countries of origin, whether it be for violations of economic, political or civil rights. They have to unite in challenging the restrictive migration regimes which increase migrants' and refugees' risks of death, abuse and trafficking. They need to come together to confront the policies which segregates people by their migration status and perpetuates insecurity and impermanence into the lives of so many people. Together, anti-trafficking, refugee and migrant rights groups must join with unions and local workers to protest the exploitation and diminishing labour rights for manual and service workers. Migrant workers, refugees and trafficked persons and their support groups must start to question the labels that are written in indelible ink but which reflect only a portion of a person's life.

Endnotes

- 1 For more information on the definition of trafficking go to: www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html
- 2 UNHCR (2009), *Considerations on the Issue of Human Trafficking from the Perspective of International Refugee Law and UNHCR's Mandate*, para 18. www.acnur.org/biblioteca/pdf/7013.pdf.
- 3 www.acf.hhs.gov/programs/orr/programsanti_trafficking.htm
- 4 UNHCR (2009), *Considerations on the Issue of Human Trafficking from the Perspective of International Refugee Law and UNHCR's Mandate*, para 20. <http://www.acnur.org/biblioteca/pdf/7013.pdf>.
- 5 Long, K. (2009 October), "Extending Protection? Labour Migration and Durable Solutions for Refugees" in *New Issues in Refugee Research*, Research Paper No 176, Refugee Studies Centre, University of Oxford. <http://www.unhcr.org/4ad334a46.pdf>.
- 6 Pollock, J. (Feb 2001), *Beyond Trafficking Jams: Creating a Space for Trafficked Women*, The Irrawaddy Magazine, Vol 9, No 2 http://www.irrawaddy.org/article.php?art_id=2140.



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HUMAN RIGHTS at home, abroad and on the way



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