

Surely something is better than nothing? The Australian response to the trafficking of women into sexual servitude in Australia

The trafficking of women into sexual servitude in Australia is a complex, predominantly hidden problem of which the true extent and nature is difficult to ascertain and widely contested. The Australian government has recently identified the 'illegal international trade in people' as a 'repugnant trade' that requires a national response (Minister for Justice & Customs 2003). In October 2003 this response was revealed in the form of a four-year whole-of-government \$20 million package, the 'Commonwealth Action Plan to Eradicate Trafficking in Persons' [the Anti-Trafficking Package]. Considering the seriousness of the issue and the inadequacy of past approaches to trafficking,¹ this whole-of-government package was a welcome development. Since the announcement, however, there has been little critical engagement with the substance of the package. While policy implementation can be a lengthy process, by February 2004 representatives from the Attorney-General's Department (the lead agency with the primary responsibility for the coordination and implementation of the package) stated that 'implementation of the package is now progressing quite well and it is essentially fully operational' (Blackburn in JCACC 2004:14).

Given that the Anti-Trafficking Package is now functional, a critique of major aspects of the package is timely, if not overdue. The package, focused on criminalisation and prosecution, falls clearly within the purview of the criminological gaze. Thus it is through this lens that limitations of the package will be identified and explored, limitations that will have direct implications for the ultimate 'success' of the package in eliminating the trafficking of people, particularly the trafficking of women into sexual servitude.

Background: Trafficking in Australia and the policy response

The illicit nature of people trafficking, particularly the trafficking of women into the sex industry, ensures that accurate data regarding both its nature and extent remains elusive (Makkai 2003). While the federal government maintains that 'numbers appear to be low' based on data provided by the Australian Federal Police (AFP) and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) about known cases, Project Respect, the lead counter-trafficking non-governmental organization in Australia, maintains that at least 1000 women are trafficked into Australia annually.²

While the government has dismissed reports that sex trafficking occurs more widely than indicated by official statistics,³ it has nonetheless identified people trafficking as a high priority issue,⁴ which culminated in the release of a joint press statement by several government ministries in October 2003.⁵

1 See Carrington & Hearn, 2003; Maltzahn, 2004.

2 Most recently the AFP identified 14 victims of trafficking for whom it has 'solid, sustainable evidence and information' (Lawler in JAACC 2004b:4). In comparison, Project Respect's recent report documented approximately 300 persons who had been trafficked into Australia over a six week period (although this report included those trafficked into a variety of industries approximately 90% were women trafficked into the sex industry), a finding they used to support their estimate that 1000 women are trafficked into the sex industry on a yearly basis (Roxon et al. 2004:3).

The illegal international trade in people has been growing considerably in recent years. Australia will not tolerate this repugnant trade which deals with women and children in a sexually exploitative manner. Today we are announcing a comprehensive strategy to fight this insidious crime (Minister for Justice & Customs 2003).

The central focus of the Anti-Trafficking Package is the enhancement of the detection, investigation and prosecution of all those involved in the trafficking of people. The package also prioritises victims' needs with a commitment to the provision of comprehensive victim support services in Australia and to working collaboratively with countries of origin (particularly South East Asia) to work towards the prevention of trafficking (Attorney-General's Department October 2003).⁶

While the package is 'designed to focus on the full cycle of trafficking from recruitment to reintegration and to give equal weight to the three critical areas of prevention, prosecution and victim support', the allocation of funding indicates that criminal justice is the central focus (Blackburn in JCACC 2004:14). Of the \$20 million funding package, over half will be directed towards policing resources to enhance investigation, enforcement and prosecution measures.⁷

Examining the response

A gendered criminological critique of the Anti-Trafficking Package reveals specific aspects of this package as counterproductive to the original intention. Key concerns include the legislative framework, the reliance on women as evidence, and the conditional provision of victim support. Taking this critical engagement one step further, I then explore the implications of an Anti-Trafficking package that conceptualises the trafficking of women into sexual servitude exclusively within a criminal justice framework.

New package: old legislation

The Anti-Trafficking Package identified that the existing Commonwealth legislation (the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*) needed to be reviewed and amended to reflect the definitional and legislative framework established by

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- 3 Past estimates by Project Respect and others that the trafficking of women into the sex industry involves hundreds of women annually have been dismissed (see Minister for Immigration and Multicultural and Indigenous Affairs 2003), however there has been no official response to Project Respect's most recent report.
 - 4 Many factors have been identified as influencing the federal government's decision to prioritise trafficking on the national agenda including political pressure from the US in addition to the persistent media attention given to the issue in Australia (see Alcorn & Minchin 2003; Maltzahn 2004; O'Brien & Wynhausen 2003).
 - 5 The package was released by the Minister for Justice and Customs, Senator Chris Ellison, the Minister for Immigration and Multicultural Affairs, Senator Amanda Vanstone, the Minister for Foreign Affairs, Alexander Downer MP, the Attorney-General, Philip Ruddock MP and the Minister Assisting the Prime Minister for the Status of Women, Senator Kay Patterson.
 - 6 See Attorney-General's Department, October 2003 for the full details of the package.
 - 7 Six months after the release of the package the actual details of the budget are not yet publicly available, despite the package being 'fully implemented'. However it is known that \$6.6 million will be distributed to victim-related measures (\$1 million to assist AusAID's financing of trafficking-related aid work and \$5.6 million to the Australian-based victim support package) and \$0.4 million has been allocated to the community awareness campaign. Communications with the Attorney-General's Department have indicated that the total remainder of the funds, i.e. \$14 million, will not be directed exclusively to the AFP, however given that funding on the other major aspects of the package have been specified, only policing-related initiatives remain.

the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*⁸ [the Trafficking Protocol]. This process of review is currently underway, with indications that new offences will be established to ensure Australia fulfils its obligations under the Trafficking Protocol, thereby enabling Australia to ratify the protocol following the implementation of the legislation.⁹

The package has been operating for approximately three months and is thus in the early stages of implementation, a critical stage in the success or otherwise of the policy as the first few women attempt to access and test this new system (Maltzahn 2004). That the change to the legislative framework has not yet occurred means that the package is currently operating within existing legislation.¹⁰ This is problematic given the limitations of the 1999 legislation which has been the subject of criticism particularly for its limited definitional framework.¹¹ In particular, the offence of 'deceptive recruiting' as defined by the legislation does not extend to those who agree to work in the sex industry but are deceived about the nature and conditions of their work¹² yet this is the situation for the majority of trafficked women (Carrington & Hearn 2003:9; Maltzahn 2004; Sassen 2000). Presumably, then, many women will be ineligible to access legal protection (dissuading other women from attempting to access the system) and until the legislative reform takes place many traffickers will escape prosecution.

Trafficked women as evidence

The criminal justice system is dependent upon trafficked women to expose traffickers in order to initiate investigations, ideally with charges and prosecution to follow. Within this criminal justice framework, trafficked women are at once victims and 'evidence'. The dependence on women to identify themselves as victims, without an appreciation of the contradictory and complicated ways women may choose to identify themselves, is indicative of the limited appreciation of the wider issues that may inhibit women from approaching authorities. The vast communication gap between trafficked women and the legal system is difficult to bridge due to factors including language barriers, women's mistrust of authorities, women's fear of reprisals from traffickers and the difficulties associated with accessing a population that is predominantly hidden and inaccessible. Further, many women may not want to be 'rescued' by the criminal justice system, a fact given little consideration by policy makers (Coomaswamy 2003:23).

Through utilising the familiar repertoire of the criminal justice system, simplistic victim/offender dichotomies may further obscure the complexities of sex trafficking as a migration and economic issue under conditions of globalisation. The criminal justice system needs to

8 Australia became a signatory to the Trafficking Protocol on 11 December 2002, a little over two years after the Protocol was opened for signature (November 2000). The Trafficking Protocol is one of three supplementary protocols to the *United Nations Convention Against Transnational Organised Crime* [UNODC 2004].

9 This information was made available through communications with the Attorney-General's Department.

10 It is worth noting that legislation to expand investigative capabilities of authorities in relation to telecommunications interception (*The Telecommunications Interception and Other Legislation Amendment Act 2003*) was successfully introduced and passed to come into force on 6th February 2004. Amendments to both this and the Sexual Slavery legislation were detailed in the Anti-Trafficking package, yet the trafficking legislation is still under review.

11 For further discussion of the weaknesses of the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* see Ford 2001; Carrington & Hearn 2003.

12 The UN Trafficking Protocol disregards the issue of consent, focusing instead on the element of deception (UNODC 2004).

acknowledge the broader issues involved and the wider experiences of trafficked women. By prioritising the needs of these women above those of the criminal justice system, there is the potential for the criminal justice system to benefit through an increase in women willing to engage with the system¹³ and for a system to be created that comes to play a more complex role in the transnational movement of people.

Conditional support & conditional recognition

The Anti-Trafficking Package introduced a 30-day bridging visa, providing access to an 'intensive support package' to all those who claim to have been trafficked, enabling them 'the time and space to determine whether they wish to cooperate with law enforcement agencies' (Blackburn in JCACC 2004:25). Women have 30 days to decide whether they will assist law enforcement agencies through providing statements and testimony throughout the investigation and trial process. Those who cooperate and are willing to assist are eligible for a criminal justice stay visa (specifically a Witness Protection Visa applied for by an agency such as the AFP on a woman's behalf) enabling them continued access to comprehensive support for the duration of the criminal justice proceedings. However, for those who are 'not willing' or 'able'¹⁴ to assist law enforcement agencies with investigations:

the situation they are in ... who have whatever immigration status they have, either having come here legally or illegally...[is that they] will be dealt with according to that regime. People who *may* be victims of crime who then have concerns about their return to their country have the range of issues which are normally considered in determining whether a person is a refugee available to them, which is a separate stream of activity (Blackburn in JCACC 2004:23; my emphasis).

These provisions are *conditional*, placing women 'in a position where they must choose between support and involvement in investigation and testifying, or nothing'¹⁵ (Roxon et al. 2004:5). Thus for trafficked women, participation in the legal process is a 'choice' not only to pursue 'justice' but to give their experience legitimacy. Providing support only to those who agree to participate in the criminal justice system negates the experience of women who have been trafficked and who choose not to (or cannot) assist. Such arrangements are symptomatic of state interests being foremost. Even those who assist with the investigation process and are granted criminal justice stay visas have no guarantee of long-term support or of permanent residency within Australia beyond the criminal justice process. Thus, trafficked women are placed within the criminal justice system and reconfigured as evidence, as prosecutorial 'tools', who have legitimacy and legal status in Australia only through the criminal justice system and only while they are within that system. Regardless, all women will ultimately be dealt with according to their immigration status. A victim-support package that identifies victimisation as of secondary importance arguably fails trafficked women before it begins.

13 See for example Goodey (2003) regarding the increase in successful prosecutions in countries that have extended the provision of services to trafficked women, reflecting a more informed understanding of their needs and concerns.

14 There has been no information provided publicly regarding how agencies will determine whether women are 'able' to assist with investigations. This raises some concerns, such as whether women who are willing to provide information but whose initial statement indicates that they have little useful information for further investigation will be deemed 'unable' to assist with investigations and therefore be ineligible for assistance, despite their preparedness to assist.

15 This has been further criticised for potentially weakening the credibility of testimony given by trafficked women in court, such that their evidence could be discredited based on their motives for testifying, i.e. that it may increase their chance of being granted permanent residency in Australia (Iselin 2003:11).

Conceptualising a global issue *globally*

The Anti-Trafficking Package continues in a similar vein to state responses internationally to trafficking, maintaining a focus on a criminal justice response to which prosecution is central, arguably due to the 'seeming practicality' of this approach and the increased likelihood of 'tangible results' (Goodey 2003:423). The concerns with the current package identified thus far identify problems with the 'nuts and bolts' of the package itself, however addressing these issues will not 'fix' the limitations of this policy. On the contrary, they are indications of the inherent problems associated with an approach to trafficking that focuses on criminality, victimisation and law enforcement. Rather than isolating trafficking in a criminal justice framework, trafficking needs to be reconceptualised within the broader social, economic and structural conditions that are produced by, and impact upon, all nation states particularly under conditions of globalisation. In so doing, the international trafficking of women into the sex industry can be located within a wider pattern of gendered labour and migration patterns that have arisen out of these conditions. Nationally, there has been no engagement with the conditions under which women choose or are forced to seek opportunities to migrate. Yet the context in which women seek to migrate is fundamental to understanding the many factors that contribute to the existence and maintenance of the trafficking of women into the sex industry, as 'migrations do not just happen: they are one outcome or one systemic tendency in a more general dynamic of change' (Sassen 1998:116).

Under conditions of economic globalisation, a globalised 'market place' has emerged as a result of the freeing up of market places and shifts in the traditional work structures of both developed and developing economies (Sassen 1998). Further there has been an increasing demand in developed nations for women from developing nations to provide services (of both a legal and illegal nature) that were once provided by women and contained within the home and the nation, including nursing, domestic services and prostitution. Thus, opportunities for women to provide their services to an international clientele have led to a 'transnational flow of labour' (Coomaswamy 2003:21). Sassen links the presence of women from developing economies in these international migration circuits to conditions in their home countries including the growth in unemployment, the closure of firms in traditional sectors oriented to the local market, the promotion of export-oriented cash crops and the burden of government debt (2000). The interplay between economic conditions in the Global North and the Global South together produce and maintain this gendered pattern of cross-border migration, giving rise to women's desire, opportunity and ability to migrate (Sassen 2000). Women thus seek to migrate as a result of complex personal circumstances including the increasing pressure to maintain the economic viability of their households, their communities and their nation. However, simultaneously many others seek to profit from women's labour as 'through their work and remittances, women infuse cash into the economies of deeply indebted countries and into the pockets of 'entrepreneurs' who have seen other opportunities vanish' (Sassen 2002:273). Trafficking can thus be identified as one possible outcome of this transversal migration process whereby women are vulnerable to exploitation by those who wish to profit 'off their backs' (Sassen 2002).

Trafficked women are at once identified as victims of crime and as violators of borders that can be identified as evidence of a break down in the government's ability to maintain national borders (see Berman 2003:37). In response to this 'threat' the national response is to invoke a strong criminalisation response that includes the tightening of border controls.¹⁶

16 This can be seen in the development of a package that provides only conditional, short-term visas to women who have been identified as victims of trafficking and the enhancement of border control practices both within Australia and in South East Asia to hinder women's migration into Australia.

However, rather than ‘combating this repugnant trade’ such an approach is most likely to have the counteractive effect of increasing women’s vulnerability and fostering women’s dependence on traffickers (Berman 2003). Consequently the trade may be driven further underground, pushing women further away from accessing assistance and further towards highly organised transnational criminal networks¹⁷ (Sassen 2000; Maltzahn 2004). In this sense trafficked women can be seen as ‘pawns in someone else’s game [whereby]...their voices and interests are compromised as states uphold sovereignty and stem the tide of migration’ (Coomaraswamy 2003:34).

Conclusion

The development of a federal government package to address trafficking presented an opportunity for the Australian government to tackle a difficult and serious issue. Yet the Anti-Trafficking Package reflects a narrow view of this complex problem. While women are central to this issue and therefore to any effort to ‘combat’ trafficking, the interests of women within this package are secondary to the interests of the state and the criminal justice system. The new Anti-Trafficking Package fails to regard women who have been trafficked outside of a criminal justice system framework. In so doing it dislocates women from their every day lives, disregards the conditions which have forced them along this transnational journey and reconceptualizes them as evidence. Further it denies any consideration of Australia’s contribution to the conditions which impact upon women’s desire to migrate and the possibility of approaching this issue from a humanitarian or human rights perspective.

The emphasis on the prosecution of offenders reflects a short-term approach to addressing this issue. Rather than attempting to engage with the systemic issues that perpetuate the cycle of trafficking women into sexual servitude in Australia, the hope is to ‘nail’ some prosecutions which will then be held up as indications of the government’s ‘success’ in this fight against trafficking. The impact that a handful of successful prosecutions will have may simply be to increase the risk for traffickers and thus increasing their potential profits. While the intention of the federal response to trafficking may be commendable, it appears that the foundation upon which it is built, a foundation that relies on law enforcement as the panacea, is somewhat shaky. This will have direct implications for the government’s ‘success’ in achieving the aim of ending this ‘illegal trade in people’ and, more importantly, will limit any positive impact this package could have upon the lives of women who have already been trafficked into Australia and those who will be trafficked into Australia in the future.

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17 Anecdotal evidence suggests that such impacts are already occurring. As the Government has concentrated its efforts in Thailand, a major source country for trafficked women, it appears that women are now simply being sourced from other countries such as South Korea (Maltzahn 2004).

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