

On vulnerable migrants and their human rights: an essay

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Text essay

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The tales of Ivan and Sofia¹

The Ukrainian Ivan has completed his technical education, is 22 years old and unemployed.² Via an advertisement in the newspaper he gets into contact with a recruitment agency which he thinks can organize his migration in a legal manner. The presence of work and, in comparison with the Ukraine, relatively high salaries are the most important considerations when making his decision to depart to the Netherlands. He borrows money from family and two friends, pays 1,400 Euro to the recruitment agency for the passport and the same amount for the job mediation. The entire amount corresponds with two months of minimum salary paid in the Netherlands. Upon arrival in the Netherlands he contacts the agent, a compatriot, who introduces him to his employer in the construction sector. He further organizes Ivan's housing which costs 250 Euro per month. During two months Ivan works twelve hours per day without receiving any salary. As a result his debts mount. When Ivan confronts the agent about his salary, he threatens to fire him. Ivan keeps quiet out of fear that he will otherwise be unable to repay his debts and because he does not know where to find help.

Sofia is Nigerian and fifteen years old.³ She left school at a young age because her mother could not afford the tuition fees any longer. She starts to work in a restaurant to feed her five brothers and sisters, where she is approached by a Nigerian woman who promises her a job with a for Nigerian standards high salary abroad. The type of work is not mentioned. Sofia is eager to financially help her family and decides to accept the offer. From Abuja, the capital of Nigeria, she flies to Amsterdam. As recommended by her contact in Nigeria she requests for asylum and is transferred to a reception centre. After a few days a Nigerian woman picks her up and brings her to a house with several other girls. She has still no idea about the kind of work she must perform, until she is asked to get dressed in skimpy clothes. When she refuses, she is beaten and threatened with confinement. For a couple of days she does what is expected of her until the police raid the brothel and bring the girls to a shelter.

What causes the vulnerability of Sofia and Ivan and how could this have been reduced before the migration process? Is it due to their personalities and capacities, or is it in particular determined by political, economic and social factors? Are both migrants also victims of human trafficking and exploitation? These questions will be addressed in this essay. The causes and consequences of the vulnerability of the migrant, which traffickers take advantage of, will be examined from a historical, legal, political, economic and social perspective to clarify the complexity of the phenomenon and to critically examine current policies and practices. The aim of this essay is to shed further light on the vulnerability of migrants, including their weaker legal status, which often remains underexposed in the migration debate. It however cannot be ignored that generally migrants end up in a situation in which their dignity is preserved during the migration process.

Globalisation or 'the re-organization of the human family'⁴

Globalisation can be seen as the main characteristic of this time. It refers to the interaction that surpasses national borders and whereby the international flow of persons, goods, money and information increases in scope and intensity. Although frequently indicated in economic terms, globalisation has far-reaching political, social and cultural consequences.⁵ This has for instance led to an increase of migratory flows

worldwide with a scope of more than 200 million migrants. This concerns approximately 3 per cent of the world population.⁶ The result is that many families and other social networks have become stretched because members live temporarily or permanently in different places.

Socio-economic explanations of international migration frequently refer to the push factors in the country of origin and the pull factors in the country of destination.⁷ In this respect migratory flows (including refugee flows) are seen to move from poorer to richer countries, where more opportunities on the labour market and especially also higher salaries can be found. Globalisation has according to some led to increased migration pressure in relatively poorer countries and a growing demand for cheap and frequently semi- and unskilled workers in more prosperous societies. This is only one side of a complex system of supply and demand of labour. Demographic factors, such as increased ageing in Europe and related shortages on the labour market, have resulted in an increased demand for skilled workers in for example ICT. And although many appear to agree with the demand for such labour, until now no overview has been developed of all job vacancies.⁸

Frequently economic push factors concur with other circumstances: conflicts and persecution, natural disasters, a migration culture and relatively limited social opportunities because of gender inequality but also social exclusion on the basis of ethnicity, like in the case of the Roma and the Sinti. Also in the case of Sofia from Nigeria and Ivan from the Ukraine some of these factors play a part. Many migrants from West-Africa try to reach Europe out of conviction that protection from persecution, economic opportunities and - in general - a better life is awaiting them. The same applies to many migrants from the former Soviet Union. Thus many migrants from the Ukraine try to reach Western European countries in an illegal manner in order to find work.

Because of the interconnection of markets, people and information, globalisation further means that events in a particular place can have direct serious political, economic and social consequences for the rest of the world. This is for example the case with the current economic crisis. Secretary-General of the United Nations (UN) Ban Ki-moon utters it like this: "It would be naive to think that the current crisis will have no effect on the movement of people across borders, and on how people in general perceive migration and the migrants in their midst".⁹ Some migratory flows have already reversed because a number of sectors, such as the construction and the tourist industry, have already experienced the negative consequences of the financial crisis. Remittances to countries of origin have therefore decreased. This means that also the migrants' families in those countries have less to spend. Although migrants are not the only victims of the worldwide economic crisis, their dependence on macro-economic factors is evident.

Since 11 September 2001, when two planes flew into the World Trade Centre in New York, international and national policies have been strongly influenced by the fight against terrorism. The consequences have been that in particular migrants with a Muslim background find themselves discriminated against, in some countries earlier acquired human rights have been withdrawn and visa policies for many nationalities have become more strict. Also second and third generation migrants have been affected. The debate concerning integration policies has been stirred up.

According to recent research undertaken by the Brussels-based Migrant Integration Policy Index the Netherlands does not do badly. In spite of giving relatively few labour

rights to migrants with a status and although the conditions for family reunification and obtaining a long-term residence permit have become less favourable since 2004, the Netherlands is fourth on the ranking list of 28 Western countries, among which the 25 Member States of the European Union, which have been assessed for their integration policy.¹⁰ The risk still exists that xenophobia is promoted in order to find a scapegoat for instance the growing levels of unemployment in the Netherlands. And that is precisely what the UN Secretary-General cautioned against.

The human rights of migrants

It is obvious that macro-economic, political and demographic factors have an effect on migration. Migration was initially nearly exclusively explained by economic motives and studied to improve the overall understanding of cultural diversity and integration processes. The human rights of migrants and the lack of their protection by the host country were ignored. As a result of the violation of their rights, the migrants' contribution to development is less visible. They are sometimes purely regarded and treated as commodities.¹¹ To what extent do international human rights instruments offer protection to migrants? It is certain that migration is not a right in itself. Only the right to leave and return to the country of citizenship can be found in international treaties. But this does not mean that migrants have no human rights.

International human rights instruments offer a minimum number of standards which member states are obliged to comply with for the protection of human beings. Thus the Universal Declaration of Human Rights of 1948 and the International Covenants on Civil and Political and Economic, Social and Cultural Rights of 1967 of the UN bestow rights to every person without making any distinction on the basis of race, colour, sex, language, religion, political or other opinions, nationality or social origin, property, birth or other status. These rights also apply to migrants, also to those without a legal status. Although states have a certain margin to lay down restrictions on the enforcement of human rights, a number of them are absolute. These can under no circumstances be deviated from. The prohibition on slavery and forced labour are such absolute rights. In these conventions there is however no explicit recognition of the human rights of migrants.¹²

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of the UN of 1990 is in a certain way an answer to the shortcomings of the other international treaties concerning human rights. This migrant treaty also covers the human rights of illegal migrants. It is among others related to the right to life, the prohibition to torture or other cruel, inhuman and degrading treatment, on slavery and forced labour, freedom of expression, religion and conscience and to personal security. It does however not concern all migrant groups, such as refugees, and possible human rights violations which can take place during the migration process.

The migrant treaty of the UN is an example of the effectiveness - but also of the ineffectiveness - of international agreements. It has taken more than twelve years until the treaty was adopted with the necessary minimum number of twenty ratifications. Just like the migrant treaties of the International Labour Organization, still relatively few states have signed the migrant treaty of the UN because of both political and practical obstacles. No single important migrant destination country, among which the Netherlands, has signed the treaty.¹³

One of the thresholds which prevents ratification is related to a restricted interpretation of the migrant treaty of the UN. States are concerned that this treaty could hinder them in exercising their sovereignty, such as stipulating who can and cannot enter in order to for example combat illegal migration. Other states have insufficient capacity to develop and implement migration policy that protects the human rights of migrants. Furthermore the rights in the UN migrant treaty often contradicts the priorities of destination countries in the area of internal security and obtaining cheap labour. An example of this is the right to family reunification of migrants, which is particularly seen as problematic by many destination countries, including the Netherlands. More and more often only short-term employment contracts are offered, which excludes family members so that the social costs of the state are relieved. Furthermore, the Dutch government has for example in 2000 made clear that it hesitated ratifying the UN migrant treaty because of the equal treatment in giving social assistance, irrespective of the legal status of the migrant.¹⁴ The article concerned can however be interpreted in several ways and ultimately gives space to the state to determine and implement its own point of view.



The restricted acceptance of the UN migrant treaty, especially by important destination countries, questions its usefulness. Nevertheless the convention contains standards that states can be guided by and non-governmental organizations can call upon to protect migrants' human rights.¹⁵ The treaty offers of course no direct solution for the worldwide financial crisis, but it gives a normative framework for protecting migrants who unexpectedly end up in difficult situations.

Women trafficking and human trafficking

One of the worst aspects of migration is human trafficking. This practice is not new; in the eighteenth and nineteenth century many Africans were traded and transported by ship to overseas colonies to work on plantations. Europe closely followed the new United States with their prohibition on slavery. The national monument in the Oosterpark in Amsterdam remembers and reminds of the abolition of the slavery on 1 July 1863 in the Netherlands. It portrays the past as a group of people chained together, the present as a person breaking through the wall and the future as a person with raised arms symbolising the drive to be free.

The trade and sexual exploitation of women has also been tackled at international level. In 1904, the first international agreement was formulated to reduce the trade in white women for prostitution purposes. The following agreements against human trade were eventually replaced by the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949, but only less than half of the members of the UN at that time signed this treaty. The main principle underlying this instrument is that all prostitution – both forced and voluntary – is reprehensible. It took another fifty years before a new human trafficking instrument was developed, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Trafficking Protocol) which supplements the UN Convention against Transnational Organized Crime. Its second protocol aims at the suppression of the smuggling of migrants. The Netherlands ratified the UN treaty in 2004 and the two protocols in 2005.¹⁶

The UN Trafficking Protocol uses a new definition of trafficking in persons, which is as follows: 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'¹⁷ The victim's consent is irrelevant if one or more of the means given in the definition have been used.

The definition of human trafficking has been broadened and adapted to the current process of globalisation in which many migrant workers are recruited on the basis of deception and end up in a situation of forced labour, slavery or sexual exploitation. In the Netherlands up to 1 January 2005 indictable offences against the morals' (250a SR) was used in the Code of Criminal Law, and as of 1 January 2005 'indictable offences against personal freedom' (273a Sr, now 273f Sr). This article is an exact copy of the definition of human trafficking as given in the UN Trafficking Protocol. Because of this forced labour nowadays is part of the definition on human trafficking, although there is a lack of clarity on its scope within the Dutch justice system. The experiences of Sofie and Ivan outlined in the introduction concur with the definition of human trafficking, because both end up in a situation of exploitation by means of deception. Their protection as victims has however been insufficiently guaranteed by the UN Trafficking Protocol. The UN High Commissioner for Human Rights and the Council of Europe have introduced additional rules to better guarantee the protection of victims of trafficking.¹⁸

International monitoring mechanisms

The question is to what extent the countries that have ratified international instruments have actually adapted their legislation to these conventions. Therefore human rights treaties of the UN, among others the one concerning migrant workers, propose monitoring mechanisms in order to evaluate individual country reports. Their aim is to provide constructive recommendations to countries about a better application of the concerned agreements. Thus, one component of the UN Migrant Treaty is that its member states submit a progress report every five years that is extensively discussed with a committee of experts. Every meeting concludes with a set of recommendations given to individual member states. These monitoring mechanisms are more powerful than the one that belongs to the UN Convention against Transnational Organized Crime. Every two years a conference is organised for all countries which have signed the treaty and its protocols, but this event exerts less political pressure.

The annual report of the United States concerning trafficking in persons has a different effect on the fight against this crime. The United States takes up position as the guardian of freedom, democracy and human rights. Since 2003 the American government has published an evaluation concerning the way countries prevent and combat human trafficking and offer assistance to the victims of this crime every year. This analysis is accompanied by a judgement. Countries, among which the Netherlands that make themselves strong in this area, are in the first tier. Countries that are considered to be weaker can be found in tier two and in the third and last tier those countries can be found that have received a negative appraisal. Then there is also a watch list of countries that have the chance to move to the third tier. Just as the countries occupying the lowest tier, they also run the risk that the United States might offer them less aid.¹⁹

In spite of the classification of the Netherlands in the group of countries that are doing well, the United States consider the Dutch position regarding prostitution leaves something to be desired. In their vision, all forms of prostitution contribute to human trafficking, and that voluntary prostitution is morally reprehensible. For that reason all prostitution must be prohibited. So far research concerning the link between the different forms of prostitution policy and the possible reduction of trafficking in persons has however not resulted in an univocal conclusion.²⁰ In the Netherlands the abolished law on the prohibition of brothels in 2000 has in any case pushed back the number of minor prostitutes and illegal prostitutes and opened the way to improve the labour position of those voluntarily engaging in this activity. However the discussion concerning the best approach continues. In 2009, the parliament will discuss a new law on prostitution which gives more powers to local government authorities. Municipalities can prohibit this activity. The danger is that prostitution will then possibly be driven into the illegal circuit, which then increases the risk of exploitation.²¹

Does the monitoring by the United States have some result? In Moldova the pressure and financial support of the American government has led to comprehensive legislation to fight human trafficking. Yet the number of convictions of serious offenders remains extremely low because of corruption, insufficient onus of proof etc.²² The human trafficking assessments of the United States receives a lot of criticism. With some of the worst scoring countries such as Syria, Iran and North Korea, the United States has a tense relationship. This raises questions about the objectivity of the reviewer. Furthermore the American government puts the emphasis on a certain morality which, as mentioned above, can increase the risk of exploitation. And, as former justice minister

Donner noticed sometime ago it is 'the pot calling the kettle black'. The practice of the United States leaves much to be desired. And this is not critically assessed in the exercise that the rest of the world is submitted to.²³

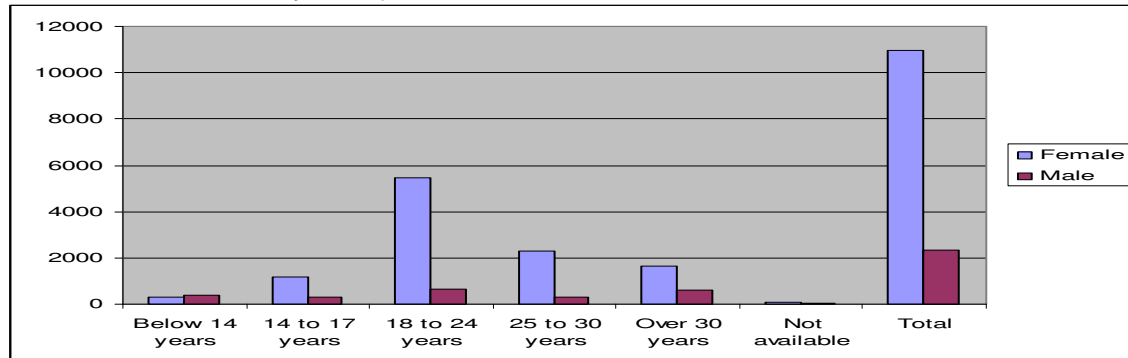
The risk of harm

Vulnerable is defined as frail and 'that which rapidly in one way or another sustains harm'.²⁴ The word 'rapidly' in the definition indicates an increased risk of damage. This cannot easily be avoided. As has been mentioned above, international political and economic developments have a large influence on the vulnerability of the migrant. Vulnerability is however also stipulated by personal characteristics such as age, sex, the level of education and training, the situation at home (possible domestic violence, a disrupted family, poverty), social exclusion (in the case of ethnicity), cultural norms and values, a conflict situation or natural disaster, the migration process itself, the residence status of the migrant and the situation in the country of destination.

Children and the elderly are always considered as more vulnerable because of their need for more protection. This applies also to young and old migrants because of age-related development, the need for (and right to) extra care and protection, physical and mental health etc. Also sex in combination with for example poverty can have important consequences for a potential migrant, such as with respect to access to education. The number of years of education is partially affecting the migrant's empowerment. Thus, relatively more girls and women of poor origins have enjoyed less education in comparison to boys and men of the same group, as a result of which they have less access to information about safe migration possibilities.

The stereotype of the vulnerable migrant does not always agree with reality. An illiterate female migrant, a minor or a Roma do not inevitably have negative migration experiences. On the other hand well-educated and in other ways empowered migrants can encounter problems. Data of the International Organization for Migration (IOM) concerning victims of trafficking in countries of origin and destination show for example that also women originating from rather well-off families with an education can become victims of trafficking. Although approximately half of the victims can be found in the 18-24 years age category, children and the elderly also fall into the hands of traffickers.²⁵ The majority of the identified victims consist of girls and women. This is a consequence of the worldwide approach to combat human trafficking which until the beginning of the 21st century focused in particular on sexual exploitation and to a much lesser degree on other forms of exploitation.

Table: Age groups and sex of IOM-assisted victims of trafficking from 1999 to 2008 (data obtained on 19 January 2009)



The Brazilian photographer Sebastião Salgado has fixed the lives of migrants fleeing war and hunger or those that have been driven by their hopes for a better life elsewhere, such as the workers in Cuban and Rwandan plantations and the Serra Pelada gold mines of Brazil, in black-and-white pictures. He has been criticised for the beautiful images because these would disguise the degrading living circumstances and the daily struggle of survival of these migrants.²⁶ Yet he not only shows the gravity of human existence, but also the physical and mental resilience, strength and dignity of people in difficult circumstances. These are the people that dare to take risks and decide to migrate.

The decision to migrate

Often the decision to migrate is taken by the individual him/herself or together with family members. This decision is motivated by the before-mentioned economic, political and demographic push and pull factors. Moreover the geographical dispersal of family members can be a survival strategy to diversify income sources. This can for example be observed in areas where natural disasters regularly take place, such as earthquakes and hurricanes and where Diasporas actively engage in the reconstruction of affected areas.²⁷ Furthermore the choice to depart can be positively influenced by returnees who show that migration can be successful for instance because they are able to build a house, buy luxurious articles, finance education or marry now that the bride price has finally been saved together. Also social networks such as family, neighbours or friends in the place of destination, smugglers and traffickers who tell false tales (like in the case of Sofie) or migration structures such as travel agents or recruitment agencies that support the migration process (like in the case of Ivan) can be decisive in the decision to migrate or not.

A minority of victims of trafficking are kidnapped or already sold at the beginning of the migration process – there is no element of choice. There are nevertheless also exceptions to this rule. For instance Irina, a Roma woman from southeast Europe, had already been traded on earlier occasions to work as a prostitute in Italy.²⁸ She was abused by her pimp and returned to her family in Albania twice. But again she was keen to earn money and she went to an uncle with contacts in the criminal circuit in order to be traded again. In exchange for this she would receive protection. She was sold to a man with whom she travelled illegally to Italy, first to Rome and then to Florence. She quickly got into an argument with him about money. He did not pay her and used physical

violence to make her more dependent on him. She escaped, was rounded up because of her illegal stay and deported to the country which she had left in the first place for better economic opportunities.

Also when children migrate there is not always talk of coercion. In many countries minors are considered a person with 'mature' responsibilities. Sometimes teenagers migrate at a young age to prove that they can manage such an adventure ('rite the passage'), to contribute to the household budget, because they are persecuted and/or possibly to save money for a marriage. In Afghanistan for example Abdul aged twelve migrated with a friend to Iran to work in the construction industry. He left before dawn without telling his parents. The journey was one big adventure: the travel through the desert was dangerous, the necessary aid of smugglers a risk and as a result of his illegal stay in Iran he could have ended up in prison.²⁹ Yet all went well and upon return in his birth village in Herat he was admitted as a man - he had proved that he could look after himself and return to his family with money.

The way in which the decision to migrate comes about can have far-reaching consequences for the course of the migration process. If a child is sold by a parent, then the purchaser further stipulates the treatment of the minor, the way in which the child passes an international border and what subsequently happens. The role of recruitment agencies, agents and smugglers is vital when the thresholds for regular migration are high or when no social networks are present in the country of destination. This frequently results in an accumulation of offences and human rights violations during the migration process. Consider for instance temporary confinement, theft and (sexual) violence. The pictures of dehydrated migrants who have drifted about on sea for a considerable time before being helped on shore in Sicily or the Cape Verdean islands are silent testimonies.

Vulnerability in the country of destination

The migrant meets new people during the migration process and gathers experiences, but misses at the same time the familiar environment, family and friends. The feeling of being uprooted, the desire to return home and the inner vacuum as a result of migration are strikingly reflected in the poem 'Immigrant' written by Elisabeth Eybers, a South African poet.³⁰ She for instance wonders who could have known that emptiness could be so heavy and without limitations.

Besides the feeling of being uprooted and of having nowhere to call home, language barriers, the unfamiliarity with local customs and institutions can play tricks on the migrant. That which makes the illegal migrant extra vulnerable are the high thresholds to gain access to protection and services such as housing, education and health care. Illegal migrants frequently end up in an informal circuit without a social safety net. Even if there are possibilities to receive for example health care, like in the Netherlands, pimps and other exploiters can deny access to these services in the case of human trafficking or forced labour. An illegal migrant can moreover risk a prison sentence or deportation if he or she lodges a complaint with the police concerning the employer. Also poor labour conditions can have a negative impact on the illegal migrant. Without health insurance an accident is expensive, in particular when it causes disablement or a long period of recovery.

The sex of the migrant is another factor which can lead to an increased vulnerability in the country of destination. Many girls and women find work in non-regulated employment sectors, such as in the area of domestic work. Even when regular migration channels are followed, then still the living and working in a household can still increase the risk of exploitation. Many girls and women do not have the possibility to seek necessary assistance when necessary because they neither speak the local language nor are familiar with the assistance circuit. Vulnerability is further reinforced as sectors in which many migrants work fall outside national labour legislation.

The regulation of migration

Susan Sontag discusses the criticism regarding the pictures of the Brazilian photographer Sebastião Salgado in her book 'Regarding the Pain of Others' published in 2003.³¹ She states that the groups of human beings on Salgado's pictures are nameless, because they are portrayed in their powerlessness. The multiple causes and kinds of human rights violations are brought under one denominator. This could lead to the conclusion that it is difficult to change anything at a local level in order to prevent human rights violations. It is however important to note the large variety in migrant flows and to recognize the people in these nameless groups in order to develop specific policy. This also concerns policy making concerning the regulation of migration which is often based on discriminating assumptions about men and women.³²

By regulating migration, migrants are not only empowered but also certain human rights will be protected. This is considered 'the vital nexus between migration management and human rights'.³³ Migration can be regulated in several ways. This is possible by improving immigration procedures, such as improving control at border crossings and making travel documents fraud proof, for instance by using biometric equipment. It means providing information about migration and employment opportunities in possible destination countries. Other means to regulate migration are a visa policy without too restrictive quota, labour rights training for employers and employees, language and cultural orientation training, the use of standard employment contracts and formal migration programmes for skilled and unskilled workers. In the case of international migration, multi-faceted policy must be developed in countries of origin, transit and destination. The coordination of such an international approach is thereby vital.

The oversight of employment agencies and agents that facilitate labour migration in countries of origin, transit and destination is very important. As the example of Ivan shows, the Ukrainian employment agency played a critical role in his illegal migration to the Netherlands. In many Asian countries many illegal, semi-legal and legal agencies are involved in the trafficking of migrants to other countries in Asia and the Middle East. They give misinformation, ask excessive mediation costs, cheat with visas, give contracts with wrong information, etc. For instance, in rural areas in Asian countries, agents are connected to employment agencies in large cities, play an important role in the recruitment of migrant workers. According to the blueprint 'Modern Migration Policy' of 2008, in the Netherlands the system of 'recognized references' (companies and universities) will increasingly take over the role of the government with respect to the approval of visa applications.³⁴ The abuse of such a system can be prevented if a powerful control mechanism is put in place.

In the case of a complete regulation of migratory flows, the risk for the migrant is that quota will be rapidly filled up and that his/her expertise (or physical capacity) is not needed. Many states will argue that non-regulated migration results in social, financial and political costs for society. Migrants and their family members view this issue differently. They can actually plead for irregular migratory flows to continue if there is limited work available in the country of origin and if they fill a gap in the labour market in the country of destination. Thus Khadija, a woman in the western province of Herat in Afghanistan, pleaded if her husband could continue to migrate to Iran to provide for his family.³⁵ Countries of destination are less interested in this type of argument in spite of the growing attention for the topic 'migration and development'. They rather continue to hold on to a policy which guarantees their internal security and protects the national labour market.

Law enforcement – the crime and the victim

Developing, adopting and enforcing civil, criminal, labour and immigration legislation can certainly contribute to the protection of the human rights of migrants. An important area of attention involves the oversight of employment agencies, and the prosecution of those that employ illegal practices. Immigration legislation regarding passports, visas, the smuggling of migrants, etcetera is meant to regulate migration and at the same time combat illegal migration. Furthermore, labour laws can play an important role in fighting exploitation that especially takes place in informal circuits where employers offer illegal work and evade paying taxes. Labour inspectors in numerous countries are used to their involvement in the fight against human trafficking. In Jordan for example the Ministry of Labour has for instance appointed labour inspectors from Bangladesh and Sri Lanka because they can communicate directly with their compatriots who work in the industrial zones.³⁶ A good cooperation with other countries is very important in order to combat criminal migration-related practices.

Fortunately, at national level, the link between human trafficking and transnational organized crime is frequently abandoned because this practice can also take place in a specific country, without the involvement of such criminal networks. In the European Union, Ministers of Justice and Home Affairs have indicated to give priority to the suppression of trafficking in persons, and in the Netherlands it is one of the six spearheads of the national criminal investigation bureau.³⁷ A few years ago a national observer on human trafficking was appointed. In 2005, the Service Centre human trafficking/smuggling has been opened and in February 2008 the Task Force on Human Trafficking has been set up. In 2006, the number of suspects of human trafficking has increased with 63 resulting in a total of 201 male and female suspects. In the same year, 70 convictions took place. In the Netherlands a start has been made with conducting lawsuits in the area of forced labour. In 2006, four trials took place related to forced labour in agriculture, the hotel and catering industry and in the cleaning sector.³⁸

It is assumed that the number of convictions will increase when more trafficking victims report the crime. Respectively the countries of origin and destination can provide legal assistance to the victim before and during the trial. The Netherlands has the so-called B9-regulation, which refers to a particular chapter of the Aliens Act. This regulation allows illegal victims to stay in the country on the condition that they report the crime, or, since the end of 2007, collaborate in another way in detection and prosecution. This regulation has however insufficiently contributed to an increase in reports. The reasons

that victims with and without a residence permit do not report vary from fear for reprisals of traffickers, low punishment for perpetrators, and little guarantee for protection to no prospect of a permanent residence status.³⁹ Although the prison sentence for human trafficking in the Netherlands will possibly be increased to up to eight years⁴⁰, the question is whether this gives victims sufficient trust to report the crime.



Depending on the country, a victim of trafficking and/or other human rights violations can receive compensation via criminal and/or civil legal procedures. This is meant to compensate the victim for physical and psychological harm and economic damage, thereby offering the possibility to symbolically and financially start a new life. In practice there are however few requests for compensation - and eventually even less awarded - because of fear, language barriers, hesitation to contact the authorities and lack of legal aid and information on rights.⁴¹ This is also the situation in the Netherlands, although compensation has been awarded in the majority of cases. It can however nearly never negate all negative experiences and consequences. The of origin Armenian poet Maro Markarian formulates it this way in her poem 'Justice':

*'There is something in this world
called Justice.
Compensation, Restitution
Are its other names.
But it is never called Punctual.
On the contrary, it always comes
too late. Like a missed love'.⁴²*

The identification of the vulnerable migrant

The protection of and assistance to vulnerable migrants, including victims of abuse, exploitation and trafficking, starts with their identification. How are the different definitions of particular groups of vulnerable migrants applied in practice, such as minors travelling alone and victims of trafficking? Is their vulnerability also recognised by the migrants themselves? The identification of vulnerable migrants is done by different actors. In addition to the police force and other government entities also non-governmental organizations (NGOs), customers, family, friends and embassies play an important role in their identification. For example the Philippine and Indonesian embassies have set up hotlines which can also receive sms-messages in those countries where many compatriots live. Furthermore the Philippine embassy opens its doors during weekends so that migrants can participate in activities, training and consular services.⁴³ In the Netherlands, the campaign 'appearances are deceptive' was set up to make customers of prostitutes and others in the direct vicinity of victims aware of signals of forced prostitution. In 2005 42 and in the first half of 2006 78 serious reports were received by the police.⁴⁴

Many vulnerable migrants are however not identified or approached in the wrong way, due to several causes. In contrast to a smuggled person, someone who has been trafficked is the victim of a human rights violation. In order to be able to prove that it concerns human trafficking, it must be established that the aim is exploitation. If there is already an identification mechanism in place for victims of human trafficking, then this evidence is not always available or victims dare not talk about their experiences. For example, an illegal migrant such as Ivan, who paid 1,400 Euro for a falsified passport to come to the Netherlands, often does not know that he will be exploited.

Recent research demonstrates that in the Netherlands between June 2005 and December 2008, 112 trafficking victims, including 19 minors, were detained because of their illegal status.⁴⁵ The same applies to victims of sexual exploitation in countries where prostitution is illegal. Therefore victims of trafficking frequently end up in prison instead of receiving the necessary protection and assistance that they are entitled to.

As already described in the example of Abdul, it depends on the local context whether children are regarded and treated as adults. They often consider themselves to be adults, and behave accordingly, sometimes as a result of negative experiences. The UN Trafficking Protocol is clear about the definition of a child - a minor is an individual below the age of 18 years. It is also clear about the determination of trafficking in the case of children. It stipulates that in the case of a child, consent and the means used are irrelevant in concluding that human trafficking actually took place. The application of the definition causes some confusion because in some countries all foreign children who travel alone are labelled as victims of trafficking. Yet it often concerns children who migrate in search of a better life, although the fact that they travel without escort can increase the risk of harm. When they are wrongly approached then the aid can rapidly be experienced as therapeutic and paternalistic.⁴⁶

Who are victims? Those that try to recruit new victims might have been a victim of trafficking themselves at an earlier stage. Do they perhaps buy their freedom by depicting their migration experience as a positive one in order to recruit two or three new migrants/victims?⁴⁷ Or perhaps because they do not consider themselves as victims in the first place? Who further determines what the experienced damage is and if for

instance the physical and emotional problems correspond to human trafficking as defined in the UN Trafficking Protocol? Is it in fact a negative migration experience? Research among prostitutes of Latin-American origin in the Netherlands shows that they are often considered as trafficking victims, whereas their migration and the activity chosen are the result of a conscious choice. Thus for instance Angelica from the Dominican Republic, just like three-quarter of the interviewed women, considers that in spite of the work she has had a successful migration experience which has resulted in house ownership and well-educated children.⁴⁸

The 'rescue industry' is as a consequence regularly criticized because, just like in the case of children travelling alone, insufficient value is given to the perspective of the adult migrant.⁴⁹ This applies both to women and men. In the first place men are in the vast majority of cases not recognised as victims of trafficking. They are rather seen as illegal migrants. At the same time they also do not consider themselves as a victim.⁵⁰ Within the regular assistance framework, female victims are frequently given the term 'survivor' to emphasise resilience, strength and agency in stead of the more passive word victim (which is the legal term). Both words probably do not entirely correspond with the self-image of many male but also female victims. This understanding must therefore be translated in tailor-made assistance services which takes this into account and listens to the migrants that were harmed during their migration process. In the case of male victims this means that among other things safe houses must be established to offer them protection and assistance. Safe houses especially for men do not exist in most countries.

Return or stay

A migrant who wishes to return to his or her country of origin sometimes does not dare to face relatives because of limited or no financial gain as a result of the migration process. Or there is a chance of prosecution in the country of origin, which is possibly the reason for the migrant to have fled his/her country in the first place. This can certainly be the case for victims of trafficking who fear reprisals or prosecution because of forced or alleged prostitution. In several countries, such as the United Kingdom and Canada, the refugee status has been granted to victims of trafficking. In the Netherlands a victim of trafficking can stay indefinitely for humanitarian reasons after three years of residence because of the B9-regulation. Yet in 2006 only half of the 34 requests for a 'continued' stay were approved.⁵¹ Until today a residence permit is linked to the judicial process and not to victim hood itself. Many victims of trafficking do therefore not receive the needed protection and assistance in the Netherlands.

Vulnerable migrants who unexpectedly cannot find work anymore as a result of the financial crisis or because they find themselves in a conflict situation or an area affected by a natural disaster, often return to their place of origin by themselves. In some cases the return and reintegration in the country of origin can be organized and supported. Thus, IOM takes care of plane tickets, transport to the final destination and, in coordination with other IOM offices, the safe return and reintegration of vulnerable migrants. In order to provide optimal support to victims of trafficking in the Netherlands, IOM, BlinN (Bonded Labour in the Netherlands, an initiative of Humanitas and Novib/OXFAM), SRTV (Foundation Religious Persons against Trafficking in Women) and ComensHa (Coordination Centre Trafficking in Persons, formerly Foundation against Trafficking in Women) have signed a covenant. The organizations mentioned

can now utilize each other's networks to meet the assistance demands of victims. Furthermore, the Immigration and Naturalisation Service, the Public Prosecution Service, the Bar, the police, local authorities, and Victim Assistance The Netherlands play each a role in supporting victims of trafficking and other vulnerable migrants.

The return of vulnerable migrants, in particular victims of trafficking, is sometimes supported by reintegration assistance in their country of origin. The question is if the vulnerability of returning migrants decreases as a result of this aid. The reintegration package can consist of direct assistance such as education, work mediation, temporary housing or psycho-social assistance. Vulnerable migrants however reject this aid on a regular basis. There are several reasons for this. The migrant might wish to leave all memories of the migration period as quickly behind as possible, and prefer to avoid ending up in a new dependent situation. Or the type of assistance does simply not correspond with what is necessary. Trafficking victims without other forms of support however often accept this aid.⁵² The shame as a result of negative experiences, and the causes of migration, such as limited education, poverty and a tense home situation, are however seldom removed as a result of such assistance.⁵³

The right to development is a human right. To comply with economic, social, cultural, political and civil rights can prevent migration, and its lack thereof is one of the main causes of migration. In practice insufficient attention is given to this issue. Prevention programmes which for example focus on the prevention of human trafficking are only to a certain degree effective and many migrants will eventually (again) be led by the temptations of material wealth and hope for a better life. While there is life there is hope. And with that the chance increases that the migration cycle starts again with the risk of harm present, especially when the economic, political, social and demographic context and the personal characteristics remain unaltered.

Recommendations

Could the situation in which migrants such as Sofia, Ivan, Irina and Abdul find themselves be any different? The following recommendations countries of origin, transit and destination can reduce the vulnerability of migrants:

- To ratify and comply with international human rights instruments, including the UN migrant treaty (in particular by important destination countries), in order to reduce/eliminate some of the causes of migration and to protect the human rights of migrants during the migration process;
- To promote regulated migration, for example by improving immigration procedures and by carrying out a not too restrictive visa policy, by providing information about migration and employment opportunities in countries of origin, by organizing training to employers and employees, by promoting the use of standard employment contracts and by introducing temporary migration programmes for skilled and unskilled labourers;
- To combat trafficking in persons and migrant smuggling. This can be prevented by ratifying relevant international instruments, such as the UN Trafficking and Smuggling Protocols, to enforce these rules in national legislation and to ensure that they will be complied with;

- To free more capacity for the inspection of labour to identify and combat forced labour and slavery in all its possible forms;
- To separate suppression of trafficking for the purpose of sexual exploitation from the debate concerning morality and prostitution, and to support a climate in which the labour rights of prostitutes are guaranteed to avoid a situation in which these activities slip away into the illegal sphere;
- To ensure better access to education and health care for illegal migrants and their families;
- To promote a coherent integration policy of migrants, also concerning the labour market and with respect to family reunification;
- To apply the guidelines given in the UN Trafficking Protocol and by the UN High Commissioner of Human Rights and the Council of Europe in the field of the protection and assistance to victims of trafficking;
- To improve the identification mechanisms of victims of trafficking to distinguish them from illegal migrants and, in some countries, of those who are voluntarily working in the prostitution sector;
- To modify the criterion for a residence permit for trafficking victims so that this is granted on the basis of victim hood and not on the basis of their obligatory participation in the legal process;
- To set up assistance mechanisms for vulnerable migrants which correspond with the characteristics of different groups and the divergent causes of vulnerability. In this context also shelter for male migrants who have incurred harm must be considered;
- To give improved access to systems of compensation for victims of human rights violations, including vulnerable migrants and victims of trafficking.

It is important to prevent human rights violations instead of repairing them because a complete recovery is only possible in exceptional cases. The protection, assistance and compensation given to victims seldom remove the main causes of migration and vulnerability, as a result of which the chance of recurrence of human rights violations during the migration process continues to exist. Part of the solution can be found in supporting regulated migration channels. Furthermore only a situation of peace, security and an fair economic distribution (in the broad sense of the word) could take away particular causes of migration - and vulnerability.

However, migration, and the search for adventure and a better life, are inherent to human beings and will always continue to exist. And as such also a certain vulnerability of the migrant.

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³ This case is fictive but based on qualitative data collected by the IOM during the provision of direct assistance to Nigerian victims of trafficking.

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²⁴ <http://nl.thefreedictionary.com/kwetsbaar>

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²⁷ See for instance World bank (2005) 'Global Economic Prospects 2006: Economic Implications of Remittances and Migration'. World bank, Washington, pp. 100.

²⁸ This case is based on qualitative data gathered by the IOM during the provision of direct assistance to victims of trafficking. The name is fictive and a number of facts have been changed.

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