

Protecting Human Trafficking Victims
The State and the Over-Legalization of Victimhood

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Abstract An important aspect of a state's responsibility to battle human trafficking is to protect the victims. Yet, it is not uncommon to find a states' duty to protect victims wanting. We argue that this is because the definition of victimhood lies at the intersection of state sovereignty and international norms. States are encouraged to over-legalize the process of identifying victims and thus maintain their sovereignty. To gain leverage over this issue we present the results of a survey conducted among trafficking shelters in Guatemala. Each of the surveyed shelters identify the state as a major obstacle between them and victims.

Keywords

Human Trafficking Victims, Over-legalization, Victimhood, International Security, Guatemala

Introduction

On December 25th, 2003, the first legally binding international instrument on human trafficking entered into force; namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also known as the Palermo Protocol). The Protocol highlights the obligations of States to counter the increasingly pervasive crime of human trafficking within their borders. These obligations include such state-based aspects like the prosecution of those traffickers its agents apprehend, but also the prevention of the crime through border security and enforcement. Further, it requires of states a measure of protection for the victims of this crime, including their resettlement within their borders should the case warrant it.

While making no distinction as to which of these three may be of more importance than the others, the Protocol largely leaves their fulfilment up to states. This has led to a great difference in the level of attention these three responsibilities, often referred to as the 3Ps (Cho et al., 2014) – prosecution, prevention and protection – receive from states. Whereas prosecution and prevention are reliant on aspects of the state’s security apparatus and law enforcement, protection is a wholly social issue that asks states to engage in a costly program of shelter and rehabilitation for individuals who are more likely than not characterized as undesirable. That is - they are foreigners, in a state illegally, and, with few active voices in their defence - easily characterized as seeking to take advantage of a state’s welfare policies.

Further, the definition of a ‘victim’ will vary and often be the result of legal distinction and not one’s experiences. For instance, it is not uncommon for trafficked individuals to find themselves forced into prostitution yet be deported as criminals. Trafficking victims then find themselves in a situation where, even where they are discovered and their status as victims recognized by the state, they are thrust into a poorly funded system that may not improve their situation.

This paper presents findings from interviews conducted at the shelter-level, that support our prediction of lesser-developed states suffering from what can be described as an over-legalised approach to the protection of victims, and those at higher risk, of falling prey to human trafficking. Focusing on Guatemala, a state with a recent, tragic history of shelter management, we find that shelters across type and purpose, are apt to identify the

state as a prominent part of their daily functions; if not always in a positive way. We also find evidence that access to international material support and networks can help overcome the problem of over-legalisation. We argue that the inherent trend towards treating trafficking as a security issue, not a social or rights issue, invites a heavy hand from the state in the service of its responsibility to victims. Often, this leads to counterproductive results.

This paper continues in four parts. After presenting an introduction to the relevant literature, we introduce the survey, both the content and a description of its administration. Following this, we present the findings and analysis, before concluding with some comments about future works.

Theoretical Development

While the Protocol is clear in its expectations of states, the responsibility to protect victims of trafficking has been notoriously absent from human trafficking research. Thus, when compared to a state's responsibility to prosecute and prevent trafficking there is a noticeable tendency for both scholars and practitioners to use these as the key means by which a state is evaluated. This is likely a product of the state's preference for addressing the problem of trafficking with security policies (Volha et al.,2015), or those that fall within the traditional scope of a state's monopoly on force within (and up to) its borders.

In addition to the ways in which the individual should be identified, policies and laws implemented may at times only focus on prosecuting the offenders, rather than protecting the victims. In the case of the United States, the Victims of Trafficked and Violence Protection Act 2000 (VTVPA) recognizes the need to protect victims but fails to offer the necessary means and instruments for the protection to be effective. Rieger, 2007).

Guatemala finds itself in a similar situation: lawmakers have sought to regulate human trafficking through reforming Article 202 TER¹ of the Criminal Code with the 2009 Law against Sexual Violence, Exploitation and Trafficking in Persons (SVET) (US Department of State, 2016). Although the SVET-law does highlight the need to protect victims, there is no state-wide policy that provides assistance to human trafficking victims.

Moreover, increases in the militarization of borders or the empowerment of police and security agencies in identifying trafficking victims is then a common consequence of security-based trafficking policies. While these can and often do help to deter (and thus prevent) trafficking and capture traffickers to be prosecuted, they can result in counterproductive outcomes for victims. For instance, victims may turn against law enforcement when working at, for example, massage parlours as they fear they will be arrested (Nair 2010). This may lead to the police failing to identify a trafficking victim and instead arrest an illegal immigrant occupying a potentially illegal profession.

By the same token, work conducted by the Centre of Criminology at Middlesex University found that negative externalities can also occur when the police no longer consider the use of saunas, massage parlours and/or private rooms by prostitutes as a priority, because their main responsibility are to ‘clean up the streets - not to police sex’ (Bennetto, 1996). Thus, victims may be overlooked or ignored for ‘bigger’ crimes. Jim Laird (2016, 106) refers to this as the ‘taggart syndrome’, which alludes to police-officers who are investigating ‘minor’ crimes being moved away to work on ‘major’ crimes (Hales, Gelsthorpe, 2012).

Hales and Gelsthorpe (2012) noted that the failure of protecting human trafficking victims lies within the inability of police-officers to facilitate or respond appropriately to disclosures of victimization or to understand the obstacles to free disclosure due to ongoing threats to the arrestee, limited access to legal representative, and inability of victims to understand the process or language. There are many aspects that must be considered when seeking to identify a victim: age, gender, source, prevalence of extreme security measures at the workplace,

¹ ‘Trafficking in persons: The recruitment, transportation, sufficiency, retention, harbouring or receipt of one or more persons for the purpose of exploitation constitutes an offence of trafficking in persons. Anyone who commits this offence shall be liable to imprisonment for a term of eight to eighteen years and a fine of three hundred thousand to five hundred thousand Quetzals.’ (TER Código Penal de Guatemala, art 202)

suspicious movements of a person and suspicious activities, indicators of psychological trauma, cultural and linguistic dilemmas (Nair, 2010). In addition, when assessing a victim, one must have the ability to manage difficult situations, prevent recurrence of trauma, avoid judgmental comments, and assure that the possible victim is fit to be interviewed, meaning that the victim should be informed about the process of the interview, as well as be willing to share their experiences with complete honesty (Nair, 2010).

Often these attributes require special training that unlikely fits the traditional scope of a vice or immigration officers' duties, and it will be these officers who are often the first to contact a trafficking victim. (Farrell, Pfeffer, 2014). Thus, victims may be more inclined to respond to the fear of being treated as criminals or illegal migrants when confronted by such agents than being open, willing collaborative witnesses. The former can deny them the status of victims, therefore increase the probability of deportation, and there is no promise of their victim status being recognized even when they cooperate.

Unlike the securitized responses to trafficking the social responses, within which much of the protection discourse resides, requires the state to empower agents or the victims themselves at cost to its sovereignty. The very idea that repatriation should occur with at the victim's desired pace and with their well-being in mind challenges the state's power over its borders – who enters, and who exits. It further asks states to invest resources into programs of potentially long-term care. Existing studies indicate that women who have been trafficked for sexual exploitation, and who are in contact with post-trafficking support agencies, present symptoms of post-traumatic stress disorder, depression and anxiety (Cwikel et al., 2004), as well as high levels of hostility and aggression (Hossain et al., 2010).

The entirety of the protection of victims as well as their reintegration has been described as an ongoing process (Reimer et al., 2007). Studies have found that for psychological recovery to be possible, a multi-agency response, providing protection from traffickers, safe housing, physical healthcare, psychosocial support, legal representation, and a welcoming and hospitable host community is needed. In other words, there is no unilateral approach in protecting victims from human trafficking, but rather a network of people and institutions that assure the safety and rehabilitation of the victims (Macy, Johns, 2010). This includes paying closer attention to the real

ongoing risks with multiple agents such as the police, psychologists, advocates, lawyers, etcetera (see for example Yuen, 2007).

Unfortunately, studies have found that the approach to the recovery of victims has lacked organization, with participants from multiple agencies being unclear as to their role and to the overall goals of the treatment (Malloch, Rigby, 2016). Jim Laird (2016) notes that, ‘often there are competing priorities among the agencies involved and a lack of any strategic overview’ (Hales, Gelsthorpe, 2012, pp.106 – 107). What is more, although empowered to help trafficking victims, non-profits and non-governmental organizations often find themselves struggling with a lack of resources (Shelley, 2010, pp. 316 – 317).

Victims should be housed together in culturally sensitive shelters where their native languages are spoken (Dalrymple, 2005), have trained professionals that are in charge of their rehabilitation process, have access to gender-appropriate health care, and psychological assistance (Tefferi, 2003). Although emergency accommodation and alternative care options are an important part of recovery and reintegration, reports suggest that in some contexts victims (especially children) are staying for far too long in shelters, which in turn make parents believe that their children are ‘better off’ staying in a residential shelter Malloch, Rigby, 2016). As will be discussed in the Guatemala case, this creates a prolonged family separation in contexts where resources are limited.

Alternately, Shigekane (2007) notes that regardless of the period of family-separation, victims not only return to their family, but also to a community. Shigekane (2007) further states that, ‘a community’s response to trafficking is as important to a survivor’s successful integration as is the availability of meaningful services and support’.

While these are issues all states struggle with, some states have been better able to meet some of these expectations than others. For instance, in Norway, victims are granted residency if they are willing to provide trafficking information. For Norway, protecting victims also creates witnesses for prosecuting traffickers. Although this may seem reasonable, one must understand that an essential part of deciding whether to cooperate or not relies on the individual’s recovery and trust, especially trust in the state (Brunovskis, Skilbrei, 2016).

Comparatively, Guatemalan authorities often take too long before interviewing the victim, which leads to the victim losing hope of protection, therefore denying the exploitation when interviewed (UNICEF, 2016). In worst cases, the length of time gives the aggressors a chance to visit their victim, threaten them, and therefore make victims change their statement about their victimization when interviewed by Guatemalan police authorities. In the case of underage victims, the Attorney General of Guatemala has been assigned to legally represent those who lack parents or any legal representative, as well as to handle all necessary measures to protect the rights of these minors. Although the Attorney General initiates the process to rescue minors, it is not the state body that decides on what should be done with victims after they have been rescued. Moreover, the Attorney General's office is not only responsible for rescuing human trafficking victims, but must also take care of sexual violence cases, which at times may enter in confusion with the human trafficking cases (UNICEF, 2016).

Guatemala's experience with the protection aspect can be recognized as a low capacity state's experience within an over-legalised issue area. Over-legalisation has been described as when international norms and laws come into conflict with domestic norms and laws (Helfer, 2002).

Brennan's (2014) examination of the experiences of labour migrants from the Dominican Republic offers an example of this phenomenon. This nation was able to improve its standing with the U.S. State Department by identifying more trafficking victims regardless of their experiences while working abroad (Brennan, 2014). The result was that individuals who had experienced legitimate trafficking and those that had experienced some lesser forms of labour exploitation were 'collapsed' into the same category making 'it less likely that social services will be developed to focus on the specific needs of truly trafficked individuals' (Brennan, 2014, pp. 117).

With the previous theoretical development around the issue of the protection of human trafficking victims, we suspect that:

Hypothesis one: State institutional practices in strict accordance to organisational and legal guidelines are less likely to identify, therefore protect a victim.

Because the state entities do not distinguish the different experiences each victim may have encountered, thus ignoring that 'one size approach' does not fit all victims.

We further suspect that:

Hypothesis two: Shelters with no multi-agency response to restore the lives of the victims, are less likely to effectively protect a victim.

As mentioned before, a multi-agency response, providing protection from traffickers, safe housing, physical healthcare, psychosocial support, legal representation, and a welcoming and hospitable host community is essential to assure the safety and restoration of victims. To have a multi-agency response also means to have a network of people and institutions experts in their professional field.

Hypothesis three: Shelters with no or low cross border authority and no cooperation with local agencies providing assistance at the victim's country of origin, are less likely to effectively protect a victim.

This is not only due to shelters lacking the authority of determining when the victim is prepared for repatriation, but also their inability to ensure a safe return and follow up on the ongoing protection (if any) at the victim's country of origin. Arguing that trafficking is a regional problem, it therefore requires a collaborative network among enforcement agencies throughout the region, including a shared understanding of how to identify human trafficking victims and an infrastructure to support the exchange of information. In many border areas of the Latin America, immigration and police officers often do not even have phones or fax equipment capable of contacting their counterparts across the border (Guinn, Steglich, 2004).

Hypothesis four: Shelters presenting victim-centric rehabilitative procedures that recognize holistic rehabilitation measures, are more likely to effectively protect the victim.

Because it avoids the creation of any ambiguity (started off by the state to ensure the victims protection) between a victim's right to direct her own rehabilitation and what the state considers to be best for the victim, thus retarding effective protection. In other words, it recognizes the victim's right to act voluntarily and independently.

Hypothesis five: Shelters who support victims even after leaving their institution, are more likely to reintegrate themselves.

Because it will ensure that the victim is able to enjoy their rights (to employment, to education, etcetera) on the principles of equality and non-discrimination, while preventing the recurrence of victimization.

Methodology

To test the above hypotheses in Guatemala a survey was administered directly to three shelters in Guatemala regarding staff appreciation of the shelter's respective relationship with the government and ability to complete their tasks. The shelters were chosen after an evaluation of trafficking and exploitation familiar to the region. The names of the shelters have been redacted to prevent any possible identification of staff whose answers were perhaps negative regarding their respective shelter. Each shelter was contacted via email to assess their willingness to participate in the survey, and an appointment made for its completion.²

The surveys were conducted by this study's primary author on 14 – 16 March 2018. The individual surveys took approximately two hours with each shelter's representative given an opportunity to both answer the questions and qualify their answers.² These qualifications were recorded by the study's primary author. Audio-visual recording was forbidden in each instance in the best interest of the shelters' residents.

The survey consisted of 36 questions total, and was broken into five phases: Rescue, Restoration, Repatriation, Rehabilitation, and Reintegration. Each shelter was able to assess their performance on each of these phases, which the primary author then standardized with a 'traffic light' methodology. This is a visualization of the shelters' performance from green (or 'good practices') through yellow, to red (or 'poor practices'). Each shelters' assessment by phase and question may be seen in the tables under the Appendix. The answers are not intended to be comparable across the shelters as any means of finding which is relatively 'better' or which is relatively 'worse'. The shelters serve different purposes; one is focused solely on juveniles, another solely on women, and thus should not be considered comparable.

Shelter one has three different programs: the first provides comprehensive care to girls and female adolescents who are victims of sexual violence. The second focuses on under-aged girls and female adolescents, who have been victims of human trafficking and of sexual exploitation. Lastly, the third program provides comprehensive care for unaccompanied migrant children and adolescents who require 'special needs' of

² It was made clear when contacting the shelters that the survey was intended for a shelter representative to complete and that no information regarding individual residents or victims, or their cases, would be sought. The University Internal Review Board in a letter dated May 7, 2018 deemed the survey to not meet either criteria for research with 'human subjects' or 'clinical investigation'. See Appendix A for a sample survey.

protection. All programs include a shelter, in which they provide five substantial services: psychosocial accompaniment, strengthening of family-ties, promotion of municipal protection systems, advocacy and prevention, and legal accompaniment. Although the three main shelters are found in Guatemala City, shelter one also has branch-offices in Alta Verapaz, Baja Verapaz, Quiché, Quetzaltenango, and Amatitlán.

Shelter two is a feminist, non-profit, women's organization created in April 1988. In 1991, it assumed the commitment to develop a strategy aimed at protecting the life, safety and integrity of women survivors of violence, and that of their children as well. In 1997, because of the need to protect women in high-risk situations, it created the first shelter of temporary protection. Currently, this effort has been expanded to Guatemala City, Esquintla, Suchitepéquez, and Rabinal (Baja Verapaz). Shelter two is divided in two strategic areas; each with its own operational guidelines. The first area is defined as 'empowerment strategy'. This strategic area is monitored by the network and it works directly with the protection of victims. The second area is defined as 'intervention strategy' and focuses on strengthening and complimenting the empowerment strategy outside of the network. The analysis of Shelter two in this paper is strictly focused on the empowerment strategy of the organization.

Shelter three is an institution with a long tradition in the care, protection and guarantee of children's human rights. It was founded in Guatemala by Covenant House International in 2010. As of 17 January 2011, it officially opened the first shelter to provide protection for children adolescents victims of sexual violence and human trafficking. It provides the following programs: residential program, family reintegration program, legal program, public education and awareness program, and appropriate stimulation program.

Results

Beginning with the rescue phase, this is an area where the shelters are more likely to describe difficulties when it comes to fulfilling their mandate and working within the bounds of the law. Shelter one, which focuses its efforts on juvenile females, makes a distinction between those who have been sexually exploited when being a victim of human trafficking from those who are victims of sexual violence. Interestingly, although the shelter is part of the 19 sub-commissions responsible for the detection of victims, the shelter cannot participate in the rescuing and/or 'recruitment' of victims, since this task is done by a judge in the Guatemalan Childhood and

Adolescence tribunal (CHA-tribunal), whose responsibility is to dictate which individual qualifies for protection.

They noted that:

We only care for children who are under eighteen years of age, which means they are not considered an adult yet. If we were to receive these minors without the legal procedure, it can be considered as child-abduction by the law. For this reason, we wait to be contacted by the CHA-court or any other public ministry competent for detecting a victim. It is complicated for victims to reach out to us because they must go through this legal-procedure and most of them do not know how to get access to this procedure.

Shelter one's facilities are defined as being of temporary protection, and although they can influence the time in which a victim should remain under the protection of the shelter, the judge, who initially issued the provision of protection, has the final word. Shelter 1 provides monthly reports of the victim to the judge. However, the CHA-judge also receives reports from other sub-commissions such as from the Attorney General's Office. This can lead to a disparity in goals between the courts and shelter. Shelter one reports that, "Having reports come from different entities may enter in conflict and at times have the judge take the wrong decision for what is best for the victim... at least from our point of view".

Since the tragedy of the Virgen the Asunción, the protection of victims of human trafficking has become more complex: judges now fear making decisions without being well informed, which is why they now solicit court hearings: "Of course, it is important to have better informed judges, however, they must also take into consideration that procedures are now taking too long, and they leave us, as well as the victim, with great doubt and concern as to whether the victim will still be under our protection or not".

Shelter two accepts female adults (18 and over) who have been victims of violence against women. The age of these women has allowed them to voluntarily reach out to the shelters without following a prior legal procedure. Shelter two, however, does not 'rescue' victims. Women around the country are aware of the existence of this network, not only due to its longevity, but also because of its a strong public presence, in which they inform women through the radio, television and public events, such as the recent march for International Women's day. Moreover, the shelter has managed to create a support network all around the country, in which they have noticed how former women who have been part of the network inform other women. Nevertheless, the identification of

a victim has been complicated, because the term ‘violence’ is broad. Many victims are also referred to by other organizations and/or public entities, such as by the Public Prosecutor’s Office.

When this is done, shelter two would normally receive the victim without going through the victim-identification process. However, they have also realized that such organizations and public entities refer victims to simply shift responsibilities.

We have had cases where the Public Prosecutor’s Office has referred a victim to us. Once the victim arrives to the shelter, we realize that the case presented by the public entity does not match with what we heard from the victim. Other organizations prepare women with fake stories so that, when they reach our shelters, they can have a higher possibility of acceptance. When these women arrive to our shelters, we realize that their stories were made up because they may at times “forget” their story. In short, many institutions like to see us as a hotel, where victims can simply arrive whenever they want and leave whenever they want.

Shelter three does not participate in the rescuing and/or ‘recruitment’ of victims, although it is considered by the state to be a sub-commission of detection of victims. In other words, victims cannot directly reach out to the shelter without going through the legal victim-identification procedure conducted by a CHA-judge. It identifies itself as an organization of last resort, which is why it is not willing to recruit victims, but rather wait to have victims be sent to them. When dealing with victims from different nationalities, shelter three is least concerned with knowing the victim’s nationality at first.

Victim’s lie or refuse to tell us where they came from. We tend to detect their citizenship throughout the process of protection and as soon as we are aware of what country the victim came from, it is in our obligation to contact the consulate of that country. If the consulate decides to repatriate the victim back to the country of residence, it is in our obligation to do so. If not, we may continue with our own procedures.

The CHA-judge has the last word in deciding when the victim should leave the shelter. However, similar to shelter one, shelter three can submit reports about the victim to influence the judge’s decision. However, it can only host fifty to sixty victims at a time.

The restoration phase is one in which the shelters are able to perform better, but still they face their challenges. Most notably, shelter one’s struggles lie in the provision of counselling and information services in a language the victim can understand: “Although we do provide to some extent information in English, we have victims who are illiterate or speak an indigenous language...”.

Shelter two rarely assists victims in restoring them with their family members, however, it does follow another procedure defined as ‘comprehensive accompaniment’. This procedure is based on providing women with all the required information regarding, among others, legal assistance, women rights, labour rights and health insurance. They then let the victim decide what she believes is best for her. After the victim has made the decision, they are provided with an accompanist. The role of the accompanist can vary depending on the decision taken by the victim, but overall, the accompanist’s role is to support and guide the victim through the steps she has to take based on her decision. The accompanist must serve as guidance, regardless if he/she believes that the victim has not made the best decision. Non-judgment is a crucial quality the accompanist must fulfil, when accompanying the victim.

The role of an accompanist is broad. An accompanist can be a teacher, a legal service provider, a social worker, etc. The most common case we have here (Shelter two) are single mothers wanting to file a lawsuit against the father of their children for alimony and/or spousal support, but do not know where to file the request, what documentation is needed, and are frightened to raise their voice when attending court hearings. The accompanist’s task in this case is to facilitate the mothers’ access to all this information, but also emotionally support and encourage mothers to speak out when going to court. In other words, the accompanist becomes the shadow of the victim.

Yet at the same time, shelter two has also had many cases in which the restoration phase has slowed down due to violence among women within the shelter.

Having a community in the shelter where almost all of the victims have lived surrounded by violence throughout great part of their lives does make them believe that violence is the correct way to solve issues. We implemented tables of dialogue and warned women of a possible “causal discharge/exit”. However, many victims purposely misbehave and that is when we know that the victim is trying hard to leave the shelter, meaning she is no longer willing to be here.

As for shelter three, after the victim has received a period of reflection and all the required emergency welfare, the shelter does strive for restoring the relationship between the victim and the family of the victim. In addition, all victims receive physical, psychological, psychiatric and social assistance. Shelter three also provides victims with a midterm evaluation in which they are able to solicit measures of change within their protection process. Part of these changes may include abandoning the shelter. The shelter must agree with the decision made by the victim. Once the victim leaves the shelter, shelter three must inform the CHA-judge in order to not be held responsible for any events occurring after the abandonment of the procedure.

Although we do provide the victim with all the necessary information, especially regarding their legal status, many of them do not have a clue of what is going on in the legal procedure until they actually arrive to the shelters. This is a huge challenge for us, because victims arrive to our shelters believing that this is a jail.

According to shelter three, the ‘victim-filtering system’ of the CHA-tribunal to identify a victim is vague. Not only do they send victims to any random shelter that has empty spots, but they provide shelters with false information so that the victim can be eligible to the internal requirements of the shelters. It is shelter three too which is the only to participate in the repatriation phase, although shelter two does make an effort to keep track of victims who have decided to be repatriated. After an informed consent, if a victim decides to be repatriated to her family, an accompanist must help her re-establish ties with her family members. In many cases, although the victim is confident that the family is willing to protect her, she oversees the fact that the aggressor has easy access to her. Shelter two does intend to keep track of the victim through phone calls or by providing the victim with real-estate services, however, they have encountered situations in which the victim changes her phone number or is seen sharing these services with the aggressor.

One of our major issue that needs to be tackled is the male chauvinist idea that women must forgive the aggressor, because at the end of the day “he had good reasons to do what he did”. Structural violence is not only embedded in the minds of many men, but unfortunately also in the ones of women. Violence against women and femicide are not cultural relative, but a crime.

The rehabilitation phase is where all three shelters perform the best. Not only do all three residential programs provide victims with individual and collective services, but all their services are also provided by professional authorities; experts in their field. They are constantly encouraged to continue with their vocation and to actively gain new academic, as well as practical knowledge. The skills they acquire in this phase goes from learning how to read and write to learning how to seek for job opportunities. The shelters also help victims create a so called ‘Life project’. In this project, the victim has to be able to create a new stable and concrete identity of him/herself, set life goals, identify his/her strengths and weaknesses as a person, and change certain short-term inappropriate habits, such as avoiding coarse vocabulary, putting greater attention to personal hygiene, etc.

Shelter two does note, as a neutral intervener in the decision of victims, that it cannot guarantee that victims will continue with the protection process: “We cannot force adult women to continue with their protection process. Most of the victims we attend tend to show antipathy when we inform them about the psychological

treatments they must go through. Unfortunately, psychological treatments in Guatemala are still seen as a taboo”. Victims, for the most part, do receive professional assistance, but they lack a sufficient amount of staff members. They currently have lawyers treating five to seven cases at once and no doctors to provide medical assistance.

Shelter three, perhaps predictably when considering it is the only one that participates in repatriation, also receives full marks in the reintegration phase. Shelter three incentivises the reintegration of victims through ambulatory control, academic scholarships, and job opportunities. Shelter three’s social workers are key actors in this phase, because they are in charge of the expansion, as well as strengthening the network of support and security around many communities and even abroad. Social workers seek to find legal counsellors, doctors, paediatricians, political leaders, human rights activists, and so on, to increment protection and defence near places where victims have been reintegrated.

Shelter one only keeps track of the Guatemalan victims remaining within the country, which is not to say they repatriate the victim. They have also had cases in which victims regret their decision of abandonment and want to return. But in order to return, the victim must again go through the entire legal process with a CHA-judge. Most of the time, the judge does not transfer the victim to the same shelter he/she has abandoned, but rather to another one. Shelter one believes this is an inappropriate procedure, because, there is no adequate method to transfer victims’ health and treatment records among shelters, meaning that victims would have to start the protection process from scratch. Also, empty spots in shelter are immediately taken, which means that victims are then put on a waiting list. There have been worst cases where the judge does not consider the victim to be eligible for protection anymore.

The only major action shelter one takes in the reintegration phase is to seek to find ‘alternative families’ that are willing to adopt or be held responsible for a child/adolescent: “Finding alternative families is hard. Many do not wish to have children who have been through violent experiences. Moreover, we have to evaluate the family to assure ourselves that the victim will be in the best hands possible”.

Shelter two, while not an active participant, is open to women who voluntarily return as part of the reintegration phase. But even this has limits:

Our responsibility is to empower women [empowerment strategy] so that by the time they leave the shelter, hopefully they will no longer require our presence. With that said, our doors are always opened for the victims if they decide to return. However, they are no longer able to reside in our shelters. They can only receive supplementary services that need to be scheduled beforehand. We cannot offer them residency, because they are usually reserved for new arrivals, but also because we do not want to “accommodate their lives”.

Discussion

The above summary of the shelter’s responses to the surveys, and the visual representation of those responses in Figure 1.0 make it clear that the shelters are most likely to find their efforts bound to just those phases in which the victim actually resides with them. While this might make some sense in terms of the mandate the state assigns them or the shelter themselves voluntarily choose, it necessarily enhances the state’s role in both the recognition of one’s victim status, and the threat of a victim falling back into the same environment that they were initially taken from.

[Figure 1 Here]

As Figure 1.0 shows, shelters one and two have their lowest score in the repatriation phase followed by the reintegration phase. All shelters have a relatively low score in the rescue. These phases are also, arguably, the most consequential aspects to a state’s sovereignty. Who can stay within a state’s borders, who or what experiences a state chooses to formalize as necessitating victim status, and how much effort, financially and temporally, a state is due these individuals, all speak to a state’s ability to do what it pleases when it pleases. Furthermore, the fact that a court will often determine who does and who does not belong in a shelter in the rescue phase will act to legitimize these individuals’ victim status; and conversely delegitimize the victim status of others.

Interestingly, apart from the rescue phase, shelter three seems to score high in all phases. Important to note is that this shelter is the only one in this study that is internationally funded, and has a larger network outside of Guatemala, which is beneficial for both an effective repatriation of victims and an appropriate resource allocation. As a shelter, also fulfilling an international agenda and having larger support from international stakeholders, the protection process of human trafficking victims appears to be more efficient.

In an over-legalized system, as trafficking often is for developing and underdeveloped states, the seemingly aspirational standards set by international norms and institutions can create discontinuity between the actual and the *de jure*. That is, objective standards of who is and who is not a trafficking victim may be overlooked by the state to adapt to local-level capacities and circumstances.

Conclusion

The Guatemalan shelters analysed in this research paper do not explicitly specialize in trafficking in persons, which is essential in view of the specific needs for care the human trafficking victims have. However, this is partially due to external factors: the number of state entities that intervene in the victim-identification process, the inexistence of protocols of victim-identification, the no-participation of shelters to help identify victims, the uncountable interviews executed by multiple authorities (Attorney General, police, CHA-judge, shelter). The latter indicates that shelters may at times be aggravated with the intervention of other public and/or private entities, which in turn will complicate the fulfilment of their duties: protection process taking too long, re-victimization of the individual, failure of identifying, therefore rescuing a victim, etcetera.

Moreover, laws such as the law against Femicide and other Forms of Violence against Women or the Law for the Comprehensive Protection of Children and Adolescents seem to overlap with the law on Law against Sexual Violence, Exploitation and Trafficking in Persons. The first, which is at the core of shelter two, ignores the fact that human trafficking victims may have been trafficked by women, thus seeing men as the only potential threat to victims of human trafficking. The second issues protection measures to safeguard the rights as minors, but not necessarily with regards to their victimization as trafficked victims. Agreeing to the fact that shelter one and shelter three do provide to a certain extent assistance to children and adolescents victims of human trafficking, a system to provide assistance to adult victims of human trafficking has not been developed in Guatemala, especially for those who fall under the problem of labour exploitation.

Interestingly, all three shelters never mentioned labour exploitation as a consequence of human trafficking, but rather focused on sexual exploitation and how women are the main target for this crime. For this reason, the shelters only focus on offering temporary protection to female victims.

In sum, Guatemalan shelters not only have a low capacity due to lack of funding, but their duties are also overshadowed by numerous entities that take place in the protection of human trafficking victims, especially in the victim-identification process as well as in the repatriation phase. Moreover, Guatemala presents laws that overlap with the existing Law against Sexual Violence, Exploitation and Trafficking in Persons. Guatemala best exemplifies the extent to which national norms and laws in many Latin American nations enter into conflict with the international ones, thus leading to an over-legalised system that may at times, as seen in this article, have negative impacts in the protection of human trafficking victims.

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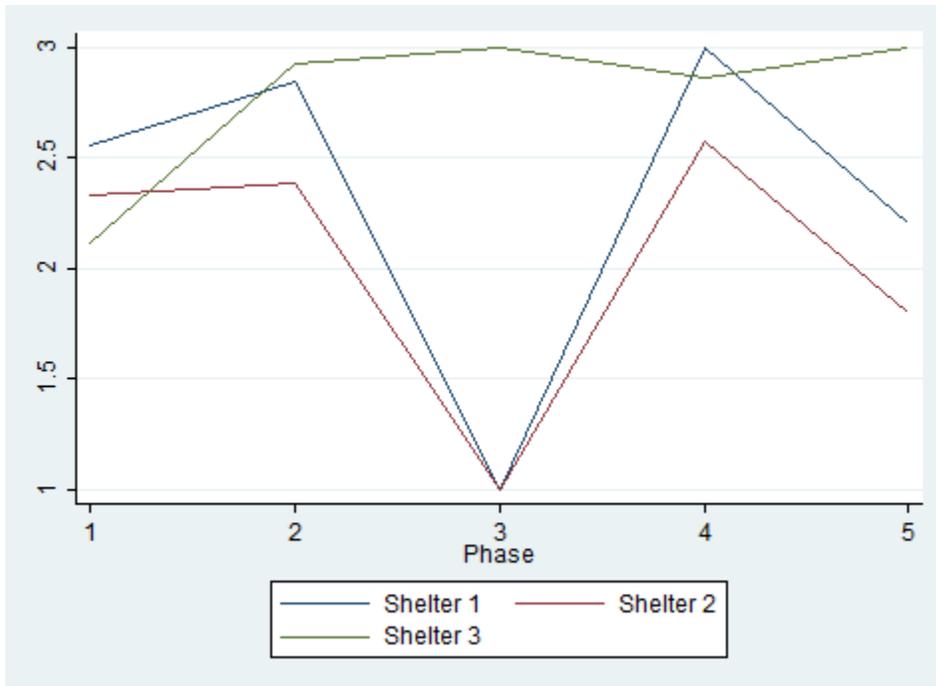
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Figure 1: Average Score of each Protection Phase³



³ The Y axis represents the traffic light methodology. The methodology is represented by a score between 1 and 3 where green = 3, yellow = 2, red 1. The X axis represents the phases of the protection process, namely rescue, restoration, repatriation, rehabilitation, and reintegration.

Appendix:

Table 1. Aggregated Findings – Traffic Light Methodology on Rescue Phase

Rescue Phase				
#	Indicators	Shelter 1	Shelter 2	Shelter 3
1	Who is eligible to enter the shelter?	Green	Red	Red
2	Do victims reach out to the shelter?	Yellow	Green	Red
3	Does the shelter reach out to victims?	Red	Green	Red
4	Is the shelter opened to victims of any nationality?	Green	Green	Green
5	Is the shelter opened to victims of all age?	Yellow	Green	Yellow
6	Is the shelter opened for victims of both sexes?	Yellow	Green	Green
7	Does the shelter have a maximum occupancy?	Green	Yellow	Green
8	For how long are victims allowed to stay in the shelter?	Yellow	Red	Yellow
9	Does the shelter make an internal distinction between the experiences the residents went through?	Green	Yellow	Green

Table 2. Aggregated Findings – Traffic Light Methodology on Restoration Phase

Restoration Phase				
#	Indicators	Shelter 1	Shelter 2	Shelter 3
10	Do victims get a personal “reflection period” before receiving assistance?	Green	Red	Green
11	Does the shelter help and/or assist with the restoration between the victim and the family of the victim?	Green	Red	Green
12	Are victims provided with emergency welfare (including but not limited to food, succor, clothing, health)?	Green	Yellow	Green
13	Does the shelter include measures to provide for physical recovery of the victim?	Green	Red	Green
14	Does the shelter include measures to provide for psychological recovery of the victim?	Green	Green	Green
15	Does the shelter include measures to provide for social recovery of the resident?	Green	Green	Green
16	Do victims have access to counselling, and information, in particular with regards to their legal rights?	Green	Green	Green
17	Are victims provided with counselling and information regarding their status in a language that they can understand?	Red	Yellow	Yellow
18	Are victims provided with educational and training opportunities that will prepare them in terms of labor, educational and social integration for when leaving the shelter?	Green	Green	Green
19	Does the shelter provide a gender-sensitive approach to all the aforementioned services for victims? (e.g.: different healthcare for women as opposed to men)	Green	Green	Green
20	Is the physical space, where the victims spend most of their time, in good conditions (including but not limited to living rooms, bathrooms, etc.)?	Green	Green	Green
21	Does the shelter work in cooperation with non-governmental organizations, other relevant organization and other elements of civil society?	Green	Green	Green
22	Does the shelter supervise residents from possible harassment/violence that may be found within the shelter itself?	Green	Green	Green

Table 3. Aggregated Findings – Traffic Light Methodology on Repatriation Phase

Repatriation Phase				
#	Indicators	Shelter 1	Shelter 2	Shelter 3
23	Does the shelter repatriate the residents to a state party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving state party, the right of permanent residence?			
24	Is the shelter aware of where its residents are being repatriated to?			

Table 4. Aggregated Findings – Traffic Light Methodology on Rehabilitation Phase

Step 4: Rehabilitation Phase				
#	Indicators	Shelter 1	Shelter 2	Shelter 3
25	Does the shelter ensure the acceptability of the resident’s continuance in the vocation (example: victim’s continuation on the protection and services offered by the shelter although the victim was tested with HIV positive)?			
26	Does the shelter provide a space within the counseling services in order to permit residents’ voice their thoughts?			
27	Are counselling services in the shelter conducted in collective groups?			
28	Are counselling services in the shelter conducted individually?			
29	Does the shelter strengthen the capacity building of the residents (including but not limited to trauma counselling, distress opportunities, etc.)?			
30	Are the residents provided with professional assistance (including but not limited to psychologists, teachers, doctors, legal service providers, etc.)?			
31	Does the shelter determine whether the resident has been rehabilitated or not? If yes, how?			

Table 5. Aggregated Findings – Traffic Light Methodology on Reintegration Phase

Step 5: Reintegration Phase				
#	Indicators	Shelter 1	Shelter 2	Shelter 3
32	Does the shelter work in cooperation with other institutions/organizations/civil society in order to facilitate the integration of residents after their stay in the shelter?			
33	Does the shelter keep track (for reasons of further protection) of their residents after they have left?			
34	For how long does the shelter keep track of its residents after they have left the shelter?			
35	Does the shelter provide re-integration services (including but not limited to job opportunities, re-integration programs, sport clubs, etc.)?			
36	Can victims reapply to the shelter if and when feeling unsafe?			